



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/24/3054

Re: Property at 101 Middlemuir Road, Inverurie, AB51 4JB (“the Property”)

Parties:

Mr Steven Combe, Mrs Lynne Combe, 1 Pond Way, Wymondham, Norfolk, NR18 0XD; 1 Pond Way, Wymondham, Norfolk, NR18 0XS (“the Applicant”)

**Mr Scott Mackie, Mrs Gail Mackie, 101 Middlemuir Road, Inverurie, AB51 4JB
 (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Ann Moore (Ordinary Member)

Decision

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for recovery of possession but postpone the period of enforcement by 30 days.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to a short assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondents in relation to the property.
2. The application included,

- a copy of the tenancy agreement.
 - section 33 notices
 - notices to quit
 - execution of service by sheriff officers for the section 33 notice and the notice to quit.
 - section 11 notice to local authority
 - inspection reports
 - rent statement
 - statement by the landlords
3. The case called for a case management discussion on 4 March 2025. Appearing was the Applicant's agent, Elaine Elder of Aberdeen Considine & Co and the first respondent, Scott Mackie.
 4. The second respondent had not been served with the application papers. She was not at the case management discussion. The tribunal determined that it would have to continue the case for service of the papers on the second respondent.
 5. The first respondent confirmed that he wished to oppose the application for eviction. He confirmed that he was not challenging the validity of the notice to quit or the Section 33 notice. His challenge was based on the question of reasonableness.
 6. The case was continued to a hearing and for the papers to be served on the second respondent. The hearing took place on 17 June 2025. In attendance were the Applicant's agent, Elaine Elder of Aberdeen Considine & Co and the first and second respondents, Scott Mackie and Gail Mackie.
 7. Additional papers which had been submitted were:-
 - For the applicant:-
 - i. updated rent statement of 18 February 2025.
 - ii. Productions submitted in March 2025; and
 - iii. Submission on 27 May 2025
 - For the respondents:-
 - i. Written representations on 2 March 2025
 - ii. Written response and productions on 9 May 2025
 - iii. Copy text on 4 June 2025

Discussion

8. The Applicant's agent confirmed that she was seeking an order for eviction. She noted that there was no challenge to the Notice to Quit or the section 33 notice. In addition to the written submissions, she confirmed that:- the notice to quit and section 33 notice had expired on 11 June 2024, and the respondents remained in the property. They had ample time to find somewhere else to move to. The applicants wished to renovate the property, and they were aware of the condition of the property. Once they had carried out the renovations, they would either relet the property or, if conditions in the market were favourable, they would proceed to sell it.
9. There were outstanding rent arrears of £2,800. She advised that a payment had been made yesterday for June's rent. She noted that the rent is due on the 10th of every month not the 16th. She advised that the tenants were generally about 2 and a half months in rent arrears, and this had gone on for some time. There had been efforts to try and address the rent arrears, but there was little progress in clearing the arrears. She believed there was no effort by the respondents to adhere to the rent payments. She advised that the landlords would not be changing the date when rent was due as requested by the tenants, as she did not consider it would address the rent arrears.
10. She advised that the respondents had not provided any supporting documentation showing what efforts they had made to find suitable accommodation since the notice to leave had been served.
11. She referred to the inspection reports for the property, and she submitted that the respondents had not maintained the property in a proper condition. There was damage to the doors, and there was neglect of the garden ground.
12. The applicant's agent confirmed that previously the property had been let out and the landlords had been receiving a rent of £1450 at that time. A reduced rent had been agreed, a number of years ago. The landlords considered that a higher rate

was achievable; however, given the ongoing rent arrears, the landlords did not believe that the tenants would be able to manage increased rent, and the landlords had therefore decided not to increase the rent.

13. The applicant's agent advised that the property was the landlords' only property. The landlords resided abroad. They retained the property, which was their former home as an investment for their retirement. The landlords are in their 50s. The landlords do not own any other property which they rent out.
14. There had been a financial detriment to the applicants as they were paying legal and estate agency fees, and the costs for a gardener.
15. The landlords had served the appropriate notices on the local authority, and they were aware of these proceedings.
16. The respondents advised that they had paid £1,100 this month. The second respondent advised that she recently lost a job, had been unemployed, but had now secured new employment. She was currently sorting out Universal Credit. The first respondent paid the other half of the rent. She advised that the arrears had reduced this year to £700 in February 2025, but they had built back up due to her losing her job. She advised that she had been in touch with the letting agents and was seeking to enter into a repayment arrangement. The second respondent said that they were trying all they could to sort out matters.
17. In relation to the replacement doors, they said all doors had been replaced. She submitted that her middle son has mental health issues and during COVID he had been lashing out and this had caused the damage to the doors. The first respondent advised that the doors had been replaced in October 2022. He said the side garage door had been replaced. He stated that the respondents did not use the patio door. He advised that the internal doors had been replaced other than one bedroom door, used by one of the younger sons in the property. A replacement door had been purchased for that room but hadn't been put in place in case that younger son damaged it again.

18. The first respondent advised that in October 2023 they had asked the landlords to change the day when the rent payment was due. They suggested that this kept the arrears showing. If the date of payment was changed, they would be able to prioritise rent payments and address the arrears.
19. The respondents had been applying for housing everywhere and they would have left the property, but they have not been able to secure anywhere suitable to move to. They advised that they were on all the local housing lists, but everything the housing associations have is too small for them. They have applied for a number of different private lets but have been unsuccessful on each occasion. They confirmed there are four adults living in the property, the 1st respondent (eldest son 32) and 2nd respondent and two younger sons, 17 and 18 years old. The local authority has advised that each is an adult, and they each require a room to themselves.
20. The respondents advised that in terms of the condition of the property they were going to replace the carpets within the property. They would have worked with the landlords and adhered to any request by the landlords in terms of the condition of the property, but it was never advised to them exactly what was required. The respondents advised that there was a lack of communication from the landlords, if they had concerns about the property. The respondents advised they had not been asked to do the things that were now being complained about by the landlords. The respondents advised that they had addressed the complaints about the garden ground. If the landlords had told them what was wrong with the property they would have worked with the landlords to sort it out. The threat of eviction was having an emotional effect on them all.
21. The applicant's agent questioned how they would change the carpets in October 2023 and refurbish the property as they were suggesting, when they were continually in rent arrears. The second respondent advised that they were suggesting papering and painting of the property. They would address the redecoration on a room by room basis over the course of a year, and they would replace their carpets over that period. The second respondent further advised that

some of the rooms were damp and there was no point in replacing the carpets in those rooms. The second respondent advised that they had raised the issue of damp during the inspections but not heard anything further. They advised that they had not chased up the issue with the landlord.

22. The applicant's agent advised that the inspection reports had been forwarded on to the tenants and they were aware of the issues which had been raised within those reports. Respondents advised more feedback should have been given about what they needed to do. They were referred to emails in the applicant's bundle of productions dated 5th of October 2022, between the letting agent and landlord. Raising that the property required to have a deep clean; the garden needed attending to; and doors had to be replaced. The respondents confirmed that they were aware of these matters. They said that they had dealt with the gardening issues. They had also replaced the doors. The property had had a deep clean in 2022. There had been difficulties doing the garden on occasion as the second respondent worked as a support worker a lot and the first respondent often worked a night shift. The respondents said that for most of the duration of the tenancy there had not been rent arrears. Rent arrears had only been outstanding since around June/July 2024.

23. There were four incomes coming into the property. The second respondent advised that her middle and youngest sons were only earning £250 per week and were not therefore contributing to the household outgoings. The second respondent advised that she will be receiving Universal Credit to pay for her rent and the first respondent is due to pay the other half rent.

Findings in Fact

24. We found the following facts established:-

25. That there was in place a short assured tenancy.

26. That there was a tenancy agreement between the Applicants and the Respondents in respect of the Property.
27. The property was 101 Middlemuir Road, Inverurie.
28. The landlords were Steven Combe and Lynne Combe.
29. The tenants were Gail Mackie and Scott Mackie.
30. The tenancy commenced on 10 March 2017 until 11 September 2017 and continues month to month thereafter.
31. Clause 2 is rent. It states that rent is £900 per month and due on the 10th of each month.
32. Clause 6 allows for a rent increase. The current rent for the property is £1,100 per month.
33. Clause 9 deals with maintenance and the tenants are obliged to maintain the property in good tenantable repair and condition, including any garden ground.
34. Clause 15 allows the landlords to inspect the premises.
35. The tenancy was signed on the 10th of March 2017.
36. The AT5 Form was in the prescribed format and was dated 8 and 10 March 2017.
37. The notice to quit contained the prescribed information, and was dated 5 April 2024, it sought vacant possession as of 11 June 2024. It provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notice on 9 April 2024. The notice to quit terminated the tenancy on an *ish* date.

38. The section 33 notices contained the prescribed information and were dated 5 April 2024; they sought vacant possession as of 12 June 2024. It provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices on 9 April 2024.
39. There was a section 11 notice addressed to the local authority.
40. The rent statement as of 10 February 2025 showed rent arrears of £3,300. As of 17 June 2025, rent arrears were £2,800. The tenants had paid June's rent on 16 June 2025.
41. The property inspection reports showed the property to be in a poor state of decoration and cleanliness. There had been damage to internal and external doors. Some doors had been repaired. The garden area was in a poor state of repair.
42. The landlords had instructed a gardener to tidy the garden due to receiving complaints about its condition.
43. The landlords intend to renovate the property.
44. There are four adults residing in the property. They are all working. The tenants have sought advice about rights to benefits. They have sought advice about securing other accommodation from the local council.
45. The landlords were suffering financial detriment, due to the rent arrears, deteriorating condition of the property, inability to increase rent; and cost of hiring tradesmen to improve the property condition caused by the tenants.

Reasons for Decision

46. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its term; tacit

relocation is not operating; no further contractual tenancy for the time being is in existence; the landlords has given notice to the tenants that they require possession of the house; and where it is reasonable to do so.

47. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondents. We were therefore satisfied that the tenancy had reached its *ish* and that tacit relocation was not operating. We also noted that a section 11 notice has been sent to the local authority.

48. Having regard to the question of reasonableness, we have taken into account the following matters.

49. The respondents oppose the order being granted, saying it is not reasonable. They relied on various factors, including that one of the younger members living in the house had had mental health problems, which explained why there had been damage caused to the property. It appeared that this was no longer an issue, as this young person was now working, was no longer receiving mental health support and his anger appeared to be under control. In addition, there was no evidence submitted of what mental ill-health he suffered from. We placed limited weight on this factor as a reason why we may refuse the order.

50. We note that the respondents had been trying to secure alternative accommodation but had been unable to do so. They advised that they would become homeless and would not be able to secure suitable alternative accommodation in the locality, and this may lead to one or all of them losing employment. We place weight on this factor as a reason for refusing the order, however it is limited, as we have no evidence to support the attempts they have made, and they did not provide evidence of what accommodation is available in the local area.

51. The respondents considered they had complied, in the main, with the tenancy conditions and in all the circumstances, it would not be reasonable to grant an order for eviction. We find that the property is in a poor condition, as evidenced by the inspection reports. The poor condition appears to have been an ongoing factor during the tenancy and there appears to have been an ongoing deterioration of the property over the term of the tenancy. We considered that the deterioration was more than fair wear and tear. This is a factor which would weigh against the respondents in assessing if the order should be granted.

52. The respondents believed that the landlords should have kept them better informed as to what standard the property should have been maintained to. We consider that they were given fair notice of this matter as there appeared to have been ongoing contact from the letting agent raising issues about the condition of the property and they were provided with copies of the inspection reports. They considered that any breaches or failures to address concerns arising due to their tenancy were matters arising from poor communication by the landlords for example, whether or not they had to deep clean the property; purchase new carpets, or what was necessary to keep the garden tidy. We do not agree with the respondents; we consider that these matters were fairly obvious, and a common sense approach should have been taken. Each inspection report highlighted that the property needed to be better cleaned, the garden photos showed it was unkempt; the woodwork and paintwork internally was dirty and marked in places. We did not consider that they had failed to maintain the property to a significant extent, but we do think that there had been a failure, which was in excess of what would be considered to be fair wear and tear. We find that this factor weighs against the tenants.

53. They also considered that the rent arrears could be addressed if the date on which they had to pay rent was moved to a different date. We did not find the arrears to be significant. We did find however that on some occasions they were in excess of one month and therefore even if moving the payment date within the month might have assisted them, there would still on some occasions have been arrears. We find that this factor weighs against the respondents.

54. The applicants sought recovery of the property due to the ongoing rent arrears; the ongoing poor condition of the property externally and internally ; and because the landlords wish to refurbish the property. They did not consider that they could carry out refurbishment with the current tenants residing in the property. They advised they had received complaints from neighbours in respect of the condition of the garden ground. They advised that they had difficulties over the years with the respondents cancelling or seeking rescheduling of inspection reports. They also submitted that this was the only property which they rented out. This had been their former home, and it was to be an investment to be used to support them in their retirement. They were in their 50's. They were unable to raise the rent to current market value. They submitted that the conduct of the tenants was causing them financial detriment.

55. Both parties had competing reasons for the outcome that they sought. The condition of the property was poor, which appeared mainly to relate to poor cleaning, and the tenants being less careful than other tenants may have been in the property. Had the property condition been the only reason for seeking an eviction, it may not have been reasonable to grant such an order.

56. We consider that there appeared to be ongoing rent arrears, however over a number of months these arrears often related only to one month's rent and were not for a significant sum. It was not a significant breach albeit it did appear to have been an issue ongoing for some time as it was mentioned in several inspection reports. It had not been properly addressed by the tenants. If this had been the only issue it may not have been reasonable to grant such an order.

57. Even if the tenants had not agreed to the inspections being carried out straight away, there was plenty of evidence of inspection having been carried out, there were several reports lodged. We did not consider that this was a breach by the tenants.

58. The landlords were concerned about financial detriment and reference was made to the costs of instructing solicitors, letting agents and a gardener. No evidence

was provided in support of this financial loss. The landlord's agent also submitted that the landlords wished to raise the rent but did not think that the respondents would pay it given that they had ongoing arrears. The rent had previously been £1,450. They had agreed a rent reduction some time ago. They considered that the rent currently paid was too low. We consider that there is merit in the landlord's complaint that they will suffer financial detriment regarding loss of rent, inability to raise it to market value rent, and ongoing deterioration of the property.

59. The tribunal considers that it should grant an order for eviction. While we consider that each matter taken individually was not in itself significant in weight, we find that taking the various matters together, then on balance the landlords are entitled to the order.

60. It appears to us that the issue of the condition of the interior and exterior of the property could have been addressed a significant time ago by the tenants and this has never happened. The condition of the property is poor, and while some aspects may be due to fair wear and tear, we believe that the other aspects of the poor condition is not fair wear and tear. We find that it was the direct result of the tenants' use of the property. We did not agree that it was the landlord's failure in terms of communicating to the tenants the standard that the property should be maintained to and had the landlords given specific advice, then the property would have been maintained to that standard. Much of the complaints by the landlords was covered in the inspection reports and these were sent to the tenants. The tenants have also been given notice that the garden should be maintained to a better standard. We did not consider that detailed advice had to be given by the landlords about the garden maintenance, again the photographs and commentary made clear what the issues were. We place weight on these factors as reasons for granting the order.

61. We also found that there was a degree of contradictory evidence provided by the tenants in respect to the condition of the property in relation to :- the garden ground and whether they accepted it was properly maintained; whether the property was properly cleaned; and whether they had any intention of taking steps to upgrade

the property. The failure to take any steps to address the issues was blamed on the landlords not giving better instruction we did not agree that this was fair. We place weight on these factors as reasons for granting the order.

62. We are prepared to accept the landlord's concern regarding their inability to increase the rent. We note the property had previously been rented out for £1,450 per month and is currently being rented out for £1100 per month. We are prepared to accept the landlord's submission that they have not increased the rent due to their belief that the tenants would not be able to meet an increased rental payment, given the ongoing rent arrears for the property. We place weight on this factor as a reason for granting the order.

63. We also place weight on the fact that these landlords have one rental property only, this was the landlord's home, and this property was to be used as an investment for their retirement. Ongoing deterioration of the property, together with the rent not increasing in line with other properties of that size does cause them detriment.

64. Having regard to the inspection reports provided, the property appears to us to show ongoing deterioration internally and externally, while not all of it is the fault of the tenants, on balance we consider that the tenant's failure to properly maintain the property will have an ongoing detrimental impact on the value of the property. We consider that this will have a financial impact on the landlord; this, together with the rent arrears and the inability of the landlords to increase the rent due for the property will lead to a financial detriment. We consider that landlords who rent out one property only will be affected to a greater extent than a landlord who is running a large commercial enterprise. We place weight on these factors as reasons for granting the order.

65. Having regard, therefore to all the factors in this case we consider that the reasons for granting the order outweigh the reasons for refusing it, and it would be reasonable to grant an order for eviction. We will however suspend the period in which the order can be enforced for 30 days in order to assist the respondents with extra time to find other accommodation.

Decision

66. We grant an order in favour of the Applicant against the Respondents for the recovery of possession of the property.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Melanie Barbour

17 June 2025

Legal Member/Chair

Date