



**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/24/4813

Re: Property at 62 Glebe Park, Kirkcaldy, Fife, KY1 1BL (“the Property”)

Parties:

Mr John Jarvie, 52 Glebe Park, Kirkcaldy, KY1 1BL (“the Applicant”)

**Mr Christopher Rowan, 62 Glebe Park, Kirkcaldy, Fife, KY1 1BL (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) have been met in this case and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 33 of the 1988 Act.

Background

- 1** This is an application under section 33 of the 1988 Act and Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant sought an eviction order on the basis that the short assured tenancy between the parties had been brought to an end.
- 2** The application was referred to a case management discussion (“CMD”) to take place by teleconference on 20 June 2025. The Tribunal gave notice to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 1 April 2025.

- 3 On 17 April 2025 the Tribunal received written representations from Miss Iona Watson of Frontline Fife on behalf of the Respondent. The Respondent did not oppose the application and had been looking for accommodation, but had so far been unsuccessful. The Respondent had also sought advice from the local authority and intended on making a homelessness application.

The CMD

- 4 The CMD took place on 20 June 2025 at 10am by teleconference. The Applicant joined the call, and was accompanied by his husband as a supporter. Miss Magdalena Johnston of Frontline Fife represented the Respondent.
- 5 The Tribunal had the following documents before it:-
- (i) Form E application form dated 25 November 2024;
 - (ii) Title sheet FFE5349 confirming the Applicant's ownership of the property;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Short assured tenancy agreement between the parties and Form AT5;
 - (v) Section 11 notice to Fife Council and proof of delivery by email;
 - (vi) Notice to quit and notice under section 33(1)(d) of the 1988 Act together with proof of delivery upon the Respondent by recorded delivery mail;
 - (vii) Signed statement by the Applicant; and
 - (viii) The Respondent's written representations.
- 6 The Tribunal heard submissions from the parties on the application. The following is a summary of the key elements of the submissions and does not constitute a verbatim account of the proceedings.
- 7 The Applicant confirmed that he and his husband had returned to Scotland in September 2024 to be with his husband's son, who was terminally ill. They had given notice to Mr Rowan under section 33 of the 1988 Act. The Applicant and the Respondent had both been caught up in the housing legislation. The Applicant was now asking the Tribunal to grant an eviction order so that the matter could be concluded. The Applicant confirmed that the property was a small workmans cottage with a bedroom upstairs, and a second room accessed from the bedroom. The rent was £495 per month. There were no rent arrears.
- 8 Ms Johnston explained that the Respondent did not oppose the application. He had been looking for accommodation, and had registered with Fife Council. He was yet to receive any offers. The Respondent had accepted that he would require to go down the homelessness route. He was 64 years old and lived alone. He had left employment and was currently on universal credit. He suffered with some mental health issues. Fife Council had advised him that he should present as homeless once the eviction order was granted, and he would be provided with accommodation by the local authority.

Findings in fact

- 9** The Applicant is the registered owner of the property. The Applicant is a registered landlord.
- 10** The Applicant is the landlord, and the Respondent is the tenant, of the property in terms of a short assured tenancy agreement dated 27 April 2017.
- 11** The term of the short assured tenancy is from and including 27 April 2017 up to and including 26 October 2017, and monthly thereafter.
- 12** On 26 June 2024 the Applicant sent a notice to quit to the Respondent by recorded delivery mail, terminating the tenancy as at 26 September 2024.
- 13** On 26 June 2024, the Applicant also sent the Respondent a notice under section 33(1)(d) of the 1988 Act stating that he required possession of the property as at 26 September 2024.
- 14** On 15 October 2024 the Applicant sent Fife Council a notice under section 11 of the Homelessness etc (Scotland) Act 2003 by email.
- 15** The Applicant purchased the property on 31st December 2005 as his only and principal home. The Applicant and his husband moved to France in April 2013.
- 16** The son of the Applicant's husband is terminally ill and resides in Edinburgh. The Applicant and his husband have returned to live in Scotland in order to be with his husband's son and his family.
- 17** The Applicant and his husband are currently residing with a friend. The Applicant and his husband wish to return to live in the property.
- 18** The Respondent does not oppose the eviction order. The Respondent has sought advice from the local authority. The Respondent intends on making a homelessness application once the eviction order is granted.
- 19** The Respondent is 64 and lives alone. The Respondent has some issues with his mental health.
- 20** The Respondent has so far been unable to secure alternative accommodation.

Reasons for decision

- 21** The Tribunal considered that it could make relevant findings in fact and reach a decision on the application following the CMD based on the information before it. The Tribunal did not identify any issues to be resolved that would require a hearing and therefore concluded it could determine the application without a hearing in terms of Rule 18 of the Rules as to do so would not be contrary to

the interests of the parties in this case. The Respondent did not dispute any of the substantive facts in this case and did not oppose the application.

- 22** The relevant legislation the Tribunal must have regard to when considering an application under Rule 66 are sections 32 and 33 of the 1988 Act:-

“32 Short assured tenancies.

*(1) A short assured tenancy is an assured tenancy—
(a) which is for a term of not less than six months; and
(b) in respect of which a notice is served as mentioned in subsection (2) below.*

*(2) The notice referred to in subsection (1)(b) above is one which—
(a) is in such form as may be prescribed;
(b) is served before the creation of the assured tenancy;
(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and
(d) states that the assured tenancy to which it relates is to be a short assured tenancy.*

*(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—
(a) it continues by tacit relocation; ...
(b).
the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.”*

“33 Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

*(a) that the short assured tenancy has reached its finish;
(b) that tacit relocation is not operating; ...
(c).
(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and
(e) that it is reasonable to make an order for possession.*

*(2) The period of notice to be given under subsection (1)(d) above shall be—
(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;
(ii) in any other case, two months.*

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.”

- 23** The Tribunal was satisfied based on the documentary evidence before it that the Applicant had complied with the requirements of section 32 of the 1988 Act and the tenancy between the parties was therefore a short assured tenancy.
- 24** The Tribunal was further satisfied that the Applicant had terminated the contractual tenancy between the parties by giving the Respondent a notice to quit, and had also given him notice under section 33(1)(d) of the 1988 Act. The Tribunal accepted that the notices had been sent to the Respondent by recorded delivery mail as evidenced by the postal receipt and tracking information.
- 25** The Tribunal therefore considered whether it would be reasonable to make an eviction order in this case.
- 26** The Tribunal took into account the Applicant's reasons for terminating the tenancy. The Applicant and his husband had returned to Scotland from abroad to be with his husband's son, who was terminally ill. They wanted to return to live in the Applicant's former home whilst they were going through what must be an extremely difficult time for their family. The Tribunal also took into account the Applicant's property rights, which would entitle him to possession of the property, were the tenancy between the parties not in place. He was entitled, on that basis, to live in the property if that was his wish. These were factors to which the Tribunal gave significant weight.
- 27** The Tribunal carefully considered the Respondent's circumstances. Whilst the potential impact of eviction upon the Respondent was a general cause for concern given his age and mental health issues, ultimately he did not oppose the application. He had been actively seeking alternative accommodation, and he was prepared to present as homeless to the local authority once the order was granted by the Tribunal. The local authority had confirmed that he would be provided with accommodation.
- 28** Accordingly, having assessed those factors relevant to reasonableness in this case, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.
- 29** The Tribunal therefore made an eviction order under section 33 of the 1988 Act. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

20 June 2025

Legal Member/Chair

Date