



**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/24/5544

Re: Property at 9 Northfield East, Tranent, EH33 1JU (“the Property”)

Parties:

Mr James Bell, 1 Waverley Gardens, Darnick, Melrose, TD6 9AF (“the Applicant”)

**Ms Janet Conway, Mr Allan Leith, Ms Nicola Leith, 9 Northfield East, Tranent,
EH33 1JU (“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondents from the property but that enforcement of the order should be suspended for a period of two months from the date of the decision.

1. By application dated 2 December 2024 the Applicants’ representative, Cullen Kilshaw LLP, Solicitors Galashiels applied to the Tribunal for an order for possession of the property and removal of the Respondents from the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representatives submitted a copy of a tenancy agreement, Form AT5, Notice to Quit and Section 33 Notice with execution of service and a Section 11 Notice with proof of intimation in support of the application.

2. By Notice of Acceptance dated 30 December 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 4 April 2025.

The Case Management Discussion

4. A CMD was held by teleconference on 3 July 2025. The Applicant did not attend but was represented by Mr John Rodger from the Applicant's representatives. Miss Nicola Leith attended on behalf of the Respondents and was supported by her mother Mrs Janet Conway or Leith.
5. After explaining to the parties the purpose of a CMD the Tribunal noted from the documents submitted with the application that the parties commenced a Short Assured tenancy of the property on 25 February 2017 that had endured for a period of six months and then continued from month to month thereafter. The Tribunal also noted that the Respondents had been served with Notices to Quit and Section 33 Notices by recorded delivery post on 15 August 2024 and that East Lothian Council had been given notice of the proceedings by way of a Section 11 Notice by email on 2 December 2024. The Respondent advised the Tribunal that she did not take issue with any of the documents and explained that she would not receive assistance from the local authority for housing unless and until the Tribunal granted an order for possession of the property. The Tribunal explained that before it could grant an order for possession it had to be satisfied that it was reasonable to grant the order sought.
6. For the Applicant Mr Rodger advised the Tribunal that it was the Applicant's intention in the near future to sell the property in order to generate funds. Mr Rodger said that the Applicant who was in his forties had a large portfolio of properties and wanted to raise capital from the sale of the property but had no further information as regards the Applicant's reasons for this.
7. The Respondent explained that she was now residing in the property on her own with her five-year-old daughter as her mother and father had been rehoused by the local authority about a year previously due to her father's failing health. The Respondent went on to say that she was living in a three-bedroom house but was only entitled to housing benefit and Universal Credit for a two-bedroom house and could not afford the rent. The Respondent said she had reached an agreement with the Applicant that he would accept rent for a two-bedroom property pending the application to the Tribunal being determined. The Respondent also explained that the property was too large for her needs and that she had her own health problems as she suffered from COPD and did not wish to remain in the property. The Respondent acknowledged in a response to

a query from the Tribunal that she may be placed in temporary accommodation in the event of an order for possession being granted.

8. In response to a query from the Tribunal Mr Rodger thought that one of the reasons for the Applicant wishing to sell the property had been that he had been through the eviction process previously and the Respondent's situation had prompted his decision to sell the property.

Findings in Fact

9. The Respondents commenced a Short Assured Tenancy of the property on 25 February 2017 that endured until 26 August 2017 and from month to month thereafter.
10. A Notice to Quit and Section 33 Notice under Section 33 of the 1988 Act was served on the Respondents on 15 August 2024.
11. A Section 11 Notice was sent to East Lothian Council on 2 December 2024.
12. The Applicant intends to sell the property.
13. The Respondents Janet Conway or Leith and Allan Leith have moved out of the property and been rehoused.
14. The Respondent Nicola Leith lives in the property with her 5-year-old daughter.
15. The Respondent Nicola Leith suffers from COPD and is unemployed and in receipt of benefits.
16. The Respondent Nicola Leith's benefits only meet the rent for a two-bedroom property.
17. The property is a three-bedroom property.
18. The property is too large for the Respondent Nicola Leith's needs.
19. The Respondent has been told that she will not receive any priority to be rehoused by the local authority unless and until an order for her eviction is granted.

Reasons for Decision

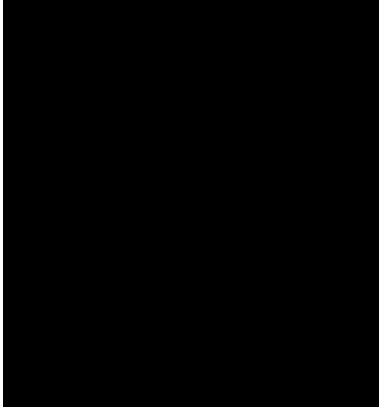
20. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Short Assured tenancy that commenced on 25 February 2017. The Tribunal was also satisfied that valid Notices to Quit and Section 33 Notices had been served on the Respondent under Section 33 of the 1988 Act and that proper intimation of the proceedings had been given to East Lothian Council by way of a Section 11 Notice.
21. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. On the one hand there was the Applicant who was receiving less rent for the property than it could make due to the Respondent Nicola Leith's benefit situation and prompting his wish to obtain possession and sell the property to realise funds. On the other hand, the Tribunal also had to take account of the needs of the Respondent who had to care for her 5-year-old daughter and who had her own health issues. Significantly however two of the Respondents had already moved out of the property and Ms Leith did not wish to remain in the property as it was too large for her needs and she could not afford the full rent for the property. The Tribunal also took into account the fact that the Respondent had been told that she would only be given priority for housing if an order for eviction was granted.
22. After carefully considering the circumstances of both parties the Tribunal was persuaded that it was reasonable to grant the order. However, in order to give the local authority some additional time to find suitable alternative accommodation for Ms Leith and her daughter the Tribunal determined that enforcement of the order should be suspended for a period of two months

Decision

23. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for possession of the property and the removal of the Respondent from the property with enforcement of the order suspended for a period of two months from the date of the decision.

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.



3 July 2025
Date