



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/25/0462

Re: 7 Isla Gardens, Carnoustie, DD7 6GJ ("the Property")

Parties:

Daniel Wicks and Pauline Wicks residing at 5 Troon Avenue, Dundee, DD2 3FP ('the Applicants')

Miss Jacqueline McAinsh, Direct lettings Scotland Ltd, 5-6 Melville Place, Edinburgh, EH3 7PR ('the Applicants' Representative')

Margarita Aija residing at 7 Isla Gardens, Carnoustie, DD7 6GJ ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member) Sandra Brydon (Ordinary Member)

1. Background.

The Applicants applied to the Tribunal for eviction/ possession of the Rented Property under section 33 of the Housing (Scotland) Act 1988, in terms of Rule 66 of the Procedure Rules. The application was dated 30th January 2025 and section 5 detailed the grounds of appeal in the following terms: 'Rule 66.'

2. Documents lodged with the Tribunal were:-

2.1 The Short Assured Tenancy Agreement between the parties dated 29th May 2017.

2.2 AT 5 dated 29th May 2017.

2.3 A copy of the Notice to Quit dated 19th November 2024 giving the Tenant formal notice to quit the Property by 29th January 2025.

2.4 A copy of the Section 33 Notice to the Tenant dated 19th November 2024 advising her that the Landlord requires vacant possession on or before 29th January 2025.

2.5 Certificate of service by Alan Moulds, Sheriff Officer dated 22nd November 2024 confirming that he served the notice to quit and section 33 notice on the Respondent on 22nd November 2024.

2.6 A copy of the online completed Section 11 Notice.

2.7 A copy of the email from Pauline Wicks to Direct Lettings Scotland Limited dated 6th January 2025 advising them that the Applicants need to gain the Property back due to their separation.

3. By Notice of Acceptance by Josephine Bonnar, Convener of the Tribunal, dated 4th March 2025 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 4th February 2025 and 14th February 2025) to a Tribunal.

4. The Respondent sent written representations dated 4th August 2025 in the following terms:

'My name is Margarita Aija, and I am writing to you regarding my upcoming court hearing scheduled for the 15th of August 2025 at 10:00. Due to pressing familial circumstances, I am unfortunately unable to attend. I am fully aware of the seriousness of the situation and have been making every possible effort to resolve the matter. However, my circumstances are particularly challenging due to having a child with special needs. This has made it extremely difficult to secure suitable accommodation. Many of the properties available on the market are either too expensive (exceeding £2000 for three-bedroom homes) or do not meet the safety and health requirements necessary for my child's well-being. I have been in contact with the local Angus Council Housing Department, and they have informed me that they cannot provide any assistance until a court decision has been made, effectively leaving me homeless. Only then will they be able to intervene and help me secure housing for my family. At this moment, I am unable to vacate my current residence as I have no viable alternative accommodation. I fully understand the inconvenience this situation has caused the property owners, and I truly regret it. However, I have been doing everything in my power to expedite the process and vacate the property as soon as

possible. Given my inability to attend the court hearing on the scheduled date, I do not wish to delay the decision further, as obtaining a court ruling will allow me to approach Angus Council and begin the housing process. The only request I humbly make is for additional time to remain in the property until the council can allocate appropriate housing for my family. Thank you for your understanding and consideration in this matter.'

5. Case Management Discussion.

5.1 This case called for a conference call Case management Discussion (CMD) at 10.00 on 15th August 2025.

The Applicants' Representative Jacqueline McAinsh attended.

The Respondent did not attend and was not represented. The Respondent had been served with a letter advising her of the CMD by Roger Ewen, Sheriff Officer on 8th July 2025. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

5.2 Miss McAinsh made the following oral submissions to the Tribunal:

5.2.1 The Applicants are divorcing and they need to sell the Property. The Property is a three bedroom house. The Applicants have been unable to gain access to the Property and consequently have been unable to arrange a valuation. However, based on the sales of other properties in the street the Property is probably valued at £250,000. As a rule of thumb if the Property was sold with the tenant in situ the value would reduce by 30%, which would amount to approximately £75,000.

5.2.2 The Tenant resides in the Property with her son and her husband. She does not know how old the son is but he is under 18 and is not a baby. She believes that he may be autistic.

5.2.3 The Applicants are sympathetic to the position of the Respondent and would be happy to grant her the period of two months to vacate the Property.

5.2.4 There is a small amount of rent arrears of £118 but the Applicants are not concerned about this. The Tenant usually pays any arrears that have accrued.

6. The Tribunal made the following findings in fact:

6.1 The Applicants are Landlords of the Property. They are owners of the Property and their title is registered in the Land Register of Scotland under title number ANG47293.

6.2 The Respondent is Tenant of the Property in terms of the Tenancy between the parties.

6.3 The Tenancy is a Short Assured Tenancy. A copy of the required AT5 has been produced.

6.4 The Short Assured Tenancy Agreement is dated 29th May 2017.

6.5 The term of the Tenancy was from 29th May 2017 to 28th May 2018. Clause 37 of the tenancy agreement states that in the event that neither party terminates the agreement it will continue on a rolling monthly basis.

6.6 The Notice to Quit was served on the Respondent on 22nd November 2024.

6.7 The ish date of the tenancy was 28th January 2025.

6.8 Following service of the Notice to Quit dated the contractual tenancy ended on 28th January 2025.

6.9 There is no ongoing contractual tenancy in place.

6.10 The section 33 notice dated 19th November 2024 was served on the Respondent on 22nd November 2024.

6.11 The Tenant resides in the Property with husband and son.

6.12 The Property is a three bedroom dwelling.

7. Requirements of Section 66 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 66 of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenant.

(b) The Tribunal confirmed that the documents specified in Section 66(b) of the Procedure Rules have been produced, namely:

- (i) The Tenancy Agreement.
- (ii) The Notice that the tenancy is a short assured tenancy.
- (iii) The notice given to the tenant under section 33(1)(d) of the 1988 Act.
- (iv) The notice to quit.
- (v) The required notice giving Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord's Representative, as required by Section 66(c) of the Procedure Rules.

8.Requirements of Section 33 of the Housing (Scotland) Act 1988

8.1 The tenancy agreement states that the tenancy will commence on 29th May 2017 and end on 28th May 2018 and if it is not brought to an end on the end date it will continue on a monthly basis thereafter until ended by either party.

8.2 The Notice to Quit dated 19th November 2024 had been served on the Tenant on 22nd November 2024. The Notice to Quit required the Tenant to vacate the Property on 29th January 2025. The Tribunal acknowledged that the date 29th January 2025 is not the ish date. The initial term of the tenancy was from 29th May 2017 to 28th May 2018 and the tenancy thereafter continued by tacit relocation. The ish date was 28th January 2025. The Landlord gave the Tenant an additional one days notice. The Tribunal were satisfied that the additional one days notice did not invalidate the Notice to Quit. The required minimum period of forty days clear notice had been given for service of the Notice to Quit.

8.3 The section 33 Notice dated 19th November 2024 was served on the Respondent on 22nd November 2024 and gave the Respondent more than the required period of two months notice.

8.4 Section 33(1)(e) of the Housing (Scotland) Act 1988 requires the Tribunal to be satisfied that it is reasonable to grant the Order for Possession.

8.4.1 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

8.4.2 The Tribunal found that it was reasonable for the eviction order to be granted for the following reasons:

8.4.2.1. The Tribunal accepted Miss McAinsh's position that the sale price of the Property sold with the Tenant in situ would be approximately 30% less than if the Property was sold on the open market and this reduction would amount to approximately £75,000. They determined that it would be unreasonable to expect the Applicants to sell the Property subject to the tenancy.

8.4.2.2 The Applicants are agreeable to giving the Tenant the period of two months to vacate the Property.

8.4.2.3 The Local Authority will not process the Respondent's application until the eviction order is granted and

8.4.2.4 The Respondent is not opposing the eviction application.

8.5 The Tribunal were satisfied that the requirements of section 33 have been met, namely that:

- (i) The Short assured Tenancy has reached its end.
- (ii) That tacit relocation is not operating.
- (iii) That the Landlords have given to the Tenant notice stating that they require possession of the Property. In terms of section 33(2) the period of notice is two months. And
- (iv) That it is reasonable to make an order for possession.

9. Decision

9.1 The Tribunal determined that the requirements of section 33(1) of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.

9.2 The decision of the Tribunal was unanimous.

10. 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.

J Taylor


Legal Member

Date: 15 August 2025