



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/24/3233

Re: 64/4, Granton Crescent, Edinburgh, EH5 1EH ("the Property")

Parties:

Douglas Gold, Macbiehill, West Linton, EH46 7AZ ('the Applicant')

Charlotte Gray, Professional Property Letting, 200 Gorgie Road, Edinburgh, EH11 2NX ('the Applicant's Representative')

Robert Minto and Stacy Minto residing at 64/4 Granton Crescent, Edinburgh, EH5 1EH ('the Respondent')

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

Tribunal Member: Jacqui Taylor (Legal Member) Nicholas Allan (Ordinary Member)

1. Background.

The Applicant 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 12th July 2024. The application states: 'Rule 66- Landlord Selling.'

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2. Documents lodged with the Tribunal were:-

2.1 The Short Assured Tenancy Agreement dated 25th March 2015.

2.2 An email from the Landlord's Representative to the Tribunal dated 8th October 2024 advising that the Landlord cannot find the AT5. However, they refer to clause 27 of the lease which states that the parties acknowledge that the Tenant was served

with form AT 5 before the commencement of the tenancy and the lease is a short assured tenancy.

2.3 A copy of the Notice to Quit dated 17th January 2024 giving the Tenant formal notice to quit the Property by 12th April 2024.

2.4 A copy of the Section 33 Notice to the Tenant dated 17th January 2024 advising her that the Landlord requires vacant possession on or before 12th April 2024.

2.5 A copy of the Royal Mail proof of delivery receipt confirming delivery on 19th January 2024.

2.6 Section 11 Notice addressed to Edinburgh Council.

2.7 A copy of the email to Edinburgh Council sending the section 11 notice.

2.8 A copy of the letter from Warners solicitors dated 8th April 2024 confirming that the Appellant intends to instruct them to act in connection with the estate agency and legal work required for the sale of the Property.

3. By Notice of Acceptance by Ruth O'Hare, Convener of the Tribunal, dated 9th November 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 12th July 2024 and 8th October 2024) to a Tribunal.

4. The Respondent did not provide any written representations.

5. The Applicant's Additional Representations.

The Applicants' Representatives sent the Tribunal an email dated 21st July 2025 which states that the rent arrears as at 21st July 2025 amount to £3495.49 and the rent of £840 will be due on 12th August 2025.

6. Case Management Discussion.

5.1 This case called for a conference call Case management Discussion (CMD) at 10.00 on 11th August 2025.

The Applicant's Representative Charlotte Gray attended

The Respondents did not attend and were not represented. The Respondents had been sent a letter advising them of the CMD by email dated 27th June 2025. The

Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

5.2 Oral Submissions by Mrs Gray.

5.2.1 The Applicant has owned the Property for a number of years. He is 80 years of age and has recently undergone cancer treatment and wishes to sell the Property.

5.2.2 The Respondents have leased the Property since 2015.

5.2.3 The Applicant and his wife own two other leased properties.

5.2.4 Professional Property Letting took over the management of the Property in 2021. The Applicants had prepared the lease paperwork themselves. The Applicant could not find a copy of the AT5. She had asked the Tenants if they held a copy. They could not find a copy but had confirmed that they had received one. This is confirmed in clause 27 of the lease.

5.2.5 The Tenants have applied to be rehoused by the Local Authority.

5.2.6 The Property is a three bedroom first floor flat. The Respondents live in the Property with their six children. The childrens' ages are between approximately 18 months and 15. Mrs Minto is pregnant with their seventh child. The Property is over crowded.

5.2.7 The Property is not in a good condition internally.

5.2.8 The Property is no longer suitable for this family unit due to its size and the way the Tenants live in the Property.

6. The Tribunal made the following findings in fact:

6.1 The Applicant is Landlord of the Property. He is owner of the Property and his title is registered in the Land Register of Scotland under title number MID74735.

6.2 The Respondents are Tenants of the Property in terms of the Tenancy between the parties.

6.3 The Tenancy is a Short Assured Tenancy.

6.4 The Short Assured Tenancy Agreement is dated 25th March 2015.

6.5 The term of the Tenancy was from 12th March 2015 to 12th September 2016 and if the tenancy was not brought to an end by either party on the end date it continued on a monthly basis until ended by either party.

6.6 The Notice to Quit was served on the Respondent on 19th January 2024.

6.7 The ish date of the tenancy was 12th April 2024.

6.8 Following service of the Notice to Quit dated the contractual tenancy ended on 12th April 2024.

6.9 There is no ongoing contractual tenancy in place.

6.10 The section 33 notice dated 17th January 2024 was served on the Respondent on 19th January 2024.

6.11 The Property is a three bedroom first floor flat.

6.12 The Respondents reside in the Property with their six children.

6.13 The Applicant is 80 years of age and has under gone cancer treatment and intends to sell the Property.

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 Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenants.

(b) The Tribunal confirmed that the following 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 tenants under section 33(1)(d) of the 1988 Act.
- (iv) The notice to quit served by the Landlord on the Tenant.
- (v) The required notice giving Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

The Tribunal acknowledged that the AT5 notice that the tenancy is a short assured tenancy has not been produced but as clause 27 of the lease acknowledged that the AT5 had been provided they did not consider the lack of the AT5 to be material.

(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 12th March 2015 and end on 12th September 2016 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 had been served on the Tenant on 19th January 2024. The Notice to Quit required the Tenant to vacate the Property on 12th April 2024, being the ish of the tenancy. The required period of forty days clear notice had been given for service of the Notice to Quit.

8.3 The section 33 Notice dated 17th January 2024 was served on the Respondent on 19th January 2024 and gave the Respondents 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 Landlord intends to sell the Property due to his age and the fact that he is under going cancer treatment.

8.4.2.2 The Property is a three bedroom flat and is over crowded for two adults and six children.

8.4.2.3 It is reasonable to assume that the Local Authority will not process the Respondents' application until the eviction order is granted and

8.4.2.4 The Respondents have not lodged any written representations 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 ish.
- (ii) That tacit relocation is not operating.
- (iii) That the Landlord has given to the Tenants 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.

11th August 2025

Legal Member