

**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/24/5382

Re: Property at 12 Avonside Drive, Dunipace, Denny, FK6 6QF (“the Property”)

Parties:

Mr Alexander Stewart, 75 Myreton Drive, Bannockburn, Stirling, FK7 8PU (“the Applicant”)

**Mr Marc (or Mark) Lindsay, 12 Avonside Drive, Dunipace, Denny, FK6 6QF
 (“the Respondent”)**

**Tribunal Members: Ruth O’Hare, Legal Member and Elizabeth Williams, 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 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 for an eviction order 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 terminated.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 30 July 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations.

- 3 On 10 June 2025 the Tribunal received written representations from the Respondent, which were copied to the Applicant.

The CMD

- 4 The CMD took place by teleconference on 30 July 2025. The Applicant was represented by Mr Bonnar of Russell Aitken (Falkirk Alloa) Ltd. The Respondent also joined the call.
- 5 The Tribunal had the following documents before it:-
- (i) Form E application form;
 - (ii) Title sheet 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) Notice to quit and notice under section 33(1)(d) of the 1988 Act together with proof of service upon the Respondent;
 - (vi) Section 11 notice and proof of delivery to the local authority; and
 - (vii) 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.
- 7 Mr Bonnar confirmed that the Applicant sought an eviction order. He confirmed that he had been instructed by the Applicant after the Tribunal had highlighted fatal errors in previous notices given to the Respondent. The tenancy between the parties had commenced on 6 May 2012. It was never intended to be long term. In terms of reasonableness, Mr Bonnar explained that the relationship between the parties had broken down. The interest rate on the Applicant's mortgage had increased from 0.5% when the property was first let to the Respondent to 4.25%. The property and mortgage costs were no longer sustainable. The rent had remained the same since the start of the tenancy, at £400 per month. That was approximately the equivalent of £625 today. The Applicant was therefore losing around £271 per month. Furthermore the market rent for the property was around £800 to £850 per month. Mr Bonnar advised that the Applicant had attempted to increase the rent but the Respondent refused the increased amount. The local authority had been notified of the Tribunal application. The Applicant was keeping his options open as to whether to sell the property or re-let to a new tenant. The Applicant was entitled to recover possession of the property under section 33 of the 1988 Act. It was reasonable. If an eviction order was not granted the Applicant would be subsidising the Respondent's occupation of the property. Mr Bonnar confirmed that the Applicant had no other rental properties.
- 8 The Respondent advised that he had been approached by the Applicant in September last year. The Applicant had proposed to increase the rent by 62.5%. This was refused by the Respondent after he sought advice from Shelter. The Respondent made a number of allegations against the Applicant, stating that he

had entered the property without the Respondent's permission, had failed to obtain the relevant gas and electric safety certification, and had harassed the Respondent. The Respondent understood that the Applicant did not require to state any eviction grounds as part of an application under section 33. The Respondent explained that he was the Applicant's brother in law. The Respondent resided on his own. He had spoken with the local authority who had told him that they would provide him with housing if an eviction order was granted. The Respondent had been on the local authority housing list for around 14 months. He had gradually moved up the list and was now in the top three when bidding for properties. He saw rehousing with the local authority as the solution. The let property did not feel like his home anymore. The Respondent explained that he has mental health issues and was previously in the army. He was 50 years old and resides alone.

Findings in fact

- 9 The Applicant is the owner and landlord, and the Respondent is the tenant, of the property in terms of a short assured tenancy agreement which commenced on 6 May 2012.
- 10 The Applicant sent a notice to quit and a notice under section 33(1)(d) of the 1988 to the Respondent on 5 September 2024. The notices were delivered by sheriff officers.
- 11 The notice to quit terminated the tenancy as at 6 November 2024, which is a valid ish date.
- 12 The Applicant's property and mortgage costs have increased. The property is no longer financially viable.
- 13 The Applicant sought to increase the rent prior to terminating the tenancy. The parties were unable to agree on an increased rent for the property.
- 14 The Applicant is the Respondent's brother in law. The Applicant and the Respondent's relationship has broken down.
- 15 The Respondent is aged 50 and resides alone. The Respondent has mental health issues.
- 16 The Respondent has applied for rehousing with the local authority. The local authority have told the Respondent that he will be provided with accommodation if an eviction order is granted.
- 17 The Respondent has been on the local authority's housing list for fourteen months. The Respondent is now close to the top of the list when bidding for properties.
- 18 The Respondent wishes to secure rehousing with the local authority.

Reasons for decision

- 19 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.
- 20 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.

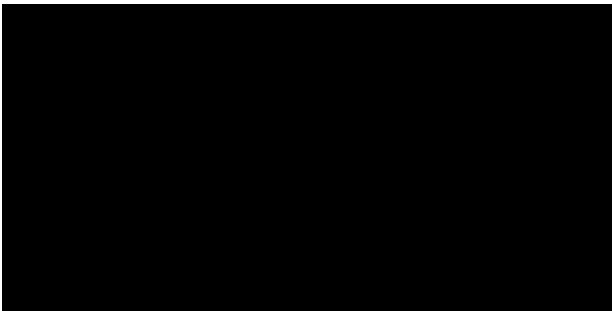
(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.”

- 21 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.
- 22 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 delivered to the Respondent as evidenced by the sheriff officers certificate of service.
- 23 The Tribunal therefore considered whether it would be reasonable to make an eviction order in this case.
- 24 The Tribunal took into account the Applicant's reasons for terminating the tenancy. It was credible that due to an increase in the mortgage and property costs, the tenancy was simply no longer financially viable. The Tribunal also took into account the Applicant's property rights, which entitled him to possession of the property were an assured tenancy not in place.
- 25 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 had confirmed to the Tribunal that he did not wish to stay in the property. He had been actively seeking alternative accommodation, and he was now in a position whereby it was likely that he would shortly be offered permanent housing with the local authority. At the very least, he would be offered housing on a temporary basis if the Tribunal were to make an eviction order. The Tribunal gave this factor the most weight in its assessment of reasonableness in this case. The Tribunal was also conscious from its own specialist knowledge that the making of an eviction order would likely assist the Respondent by prioritising his application for council housing.
- 26 It was also clear that the relationship between the parties has broken down, likely irretrievably. The Tribunal considered that it would benefit both the Applicant and Respondent for matters to be brought to a conclusion, and for the Respondent to have a fresh start in a new tenancy. For the avoidance of doubt, the Tribunal made no findings regarding the remaining allegations made by the Respondent against the Applicant, as it considered that there was sufficient information before it upon which to justly assess the reasonableness of making an eviction order.
- 27 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.

28 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.



Legal Member/Chair

30 July 2025

Date