

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/24/5651

Re: Property at 19 Cardell Road, Paisley, PA2 9AG (“the Property”)

Parties:

Mr David Kesson, Flat 6, 20 Kensington Road, Glasgow, G12 9NX (“the Applicant”)

Ms Janet McIntosh, 19 Cardell Road, Paisley, PA2 9AG (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for possession relying on section 33 of the Housing (Scotland) Act 1988

Background

1. By application dated 7 December 2024 the applicant seeks an order for eviction relying on section 33 of the Housing (Scotland) Act 1988.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Copy form AT5
 - Copy Notice to quit
 - Copy section 33 notice
 - Proof of service of notice to quit and section 33 notice
 - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2001 with proof of delivery

3. A case management discussion (“cmd”) was scheduled to take place by teleconference on 30 July 2025.

Case management discussion (“cmd”) – teleconference- 30 July 2025

4. The applicant was represented by Mr Lind, Lind Letting Ltd. The respondent was not present or represented. The respondent had been served with papers by Sheriff Officers on 5 June 2025. The Tribunal was satisfied that the respondent had been properly notified of the cmd in terms of rule 24.1 and proceeded with the cmd in her absence in terms of rule 29.
5. Mr Lind sought an order for eviction. He referred to the documents that had been submitted which complied with the requirements of section 33. In relation to reasonableness he stated that the applicant intended to sell the property as the respondent’s conduct had been problematic for the past 2 years. The respondent had refused access to the property for any inspections or checks for the past 2 years. Mr Lind stated that the gas safety certificate and Electrical Installation Condition Report were out of date due to the respondent’s failure to permit access. He stated that the respondent was 48 years old. Universal credit was being paid to cover the cost of the rent. The respondent had been unresponsive to the letting agents attempts to communicate with her for an extended period of time. Mr Lind stated that the respondent did still reside in the property. The applicant had raised concerns over damage to the front door and the respondent’s failure to maintain the garden. Mr Lind stated that he had sought to establish if there were any welfare concerns regarding the respondent due to her lack of contact and had been advised by her relative that there were no issues. Mr Lind stated that the applicant had no other rental properties and had made the decision that he no longer wished to be a landlord. Mr Lind confirmed that as far as he was aware the respondent resided alone in the property.

Findings in fact and law

6. The parties entered into a short assured tenancy agreement with a commencement date of 7 October 2014. An AT5 was served on the respondent prior to the commencement of the tenancy.
7. Parties entered into a further short assured tenancy agreement with a commencement date of 29 November 2015.
8. A valid notice to quit and section 33 notice dated 14 October 2024 were served on the respondent.
9. The respondent is 48 years old.
10. The respondent has failed to communicate with the applicant's letting agents for approximately 2 years and has failed to allow access for gas safety checks and other maintenance checks.
11. The applicant has complied with the requirements of section 33 of the Housing (Scotland) Act 1988
12. The respondent has not submitted any opposition to the present application and failed to attend the cmd.
13. The applicant intends to sell the property.
14. It is reasonable to grant an order for eviction.

Reasons for the decision

15. Rule 17 (4) states:

The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

16. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) *Subject to paragraph (2), the First-tier Tribunal—*

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

17. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

18. Section 33 of the Housing (Scotland) Act 1988 states:

33 (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.

19. In the present application the applicant has satisfied the requirements of section 33 (a), (b) and (d). The Tribunal is satisfied that a short assured tenancy was created when the respondent moved into the property. A second tenancy commenced on 29 November 2016. This tenancy was also a short assured tenancy. A notice to quit and notice in terms of section 33 were served on 14 October 2024. The notice to quit had the effect of preventing tacit relocation from operating. The section 33 notice provided the tenant with notice that the applicant required possession of the house.

20. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against.

21. The Tribunal took into account the oral and written submissions on behalf of the applicant.

22. The Tribunal gave significant weight to the fact that the respondent did not oppose the order for eviction being granted and made no objection to the reasonableness of the order being granted. The Tribunal also gave weight to the Mr Lind's submissions that the respondent had failed to engage with the letting agents to arrange gas safety/maintenance checks. The Tribunal took into account that the respondent had sought to engage with the respondent including speaking to her relative however the respondent had not responded to any communication. The Tribunal also gave weight to the applicant's intention to sell the property as he no longer wished to be a landlord.
23. The Tribunal gave weight to the length of time the respondent had resided in the property and the fact that rent was being paid however in the absence of any opposition to the application the Tribunal determined that in the circumstances it was reasonable to grant an order for eviction.

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.

Mary-Claire Kelly

Legal Member/Chair

— 30 July 2025
Date