

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/25/0142

Re: Property at 107 Aboyne Avenue, Dundee, DD4 7TG (“the Property”)

Parties:

**Miss Tracey Watt McFee, 5 St. Fort Place, Wormit, Newport-On-Tay, DD6 8NT
 (“the Applicant”)**

Miss Erika Low, 107 Aboyne Avenue, Dundee, DD4 7TG (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be granted in respect of the property in favour of the Applicant and against the Respondent, it being reasonable to grant such an order.

Background

1.This application for an eviction order was first lodged with the Tribunal on 13th January 2025 and accepted by the Tribunal on 14th February 2025.A case management discussion was fixed for 17th July 2025 at 2pm.

The Case Management Discussion

2.The Applicant did not attend the Case Management Discussion but was represented by Mr Gardiner Solicitor of Lindsays solicitors together with a Ms Valentine from the firm who was observing. The Respondent attended with her mother in support and was represented by Mr Gibson trainee solicitor of Dundee Law Centre.

3.The Tribunal had sight of the Application, a paper apart, a tenancy agreement, a Form AT5, a notice in terms of section 33 of the Housing (Scotland) Act 1988, a Notice to Quit, postal tracking information and proof of delivery regarding the posting of these notices, along with a notice in terms of the Homelessness etc (Scotland) Act 2003 sent to the local authority by e mail on 13th January 2025.

4.The Respondent's representative had also made written submissions to the Tribunal regarding the tenancy and the Respondent's circumstances and had submitted a letter from her GP and local authority housing information.

5.The Applicant's position was that the Applicant wished to sell the property and was seeking a possession order on that basis. The tenancy it was said had originally been an assured tenancy but by agreement had become a short, assured tenancy and the short assured tenancy had been signed by the parties on 1st September 2015 and an AT5 form had been given to the Respondent. Mr Gardiner submitted that it was competent to change the type of tenancy in this way and referred to the Upper Tribunal decision of McCallum v Wright 2023 UT 25 at paragraph 11 of the judgment.

6.Mr Gibson for the Respondent took no issue with the notices served and did not suggest that the tenancy was not a short, assured tenancy and parties appeared to agree that this tenancy had commenced between them on 1st August 2015.

7.Mr Gibson had made representations in writing to the Tribunal regarding the Respondent's circumstances. She had lived at the property with her 3 dependent children for 11 years and her children went to school nearby. Her mother lived nearby and gave her support on a daily basis. The Respondent has certain physical and mental health conditions and has limited mobility and is in receipt of adult disability payment and other benefits. She had applied for social housing and was on a council waiting list. She had recently been offered a flat but had not accepted this offer. Her GP was of the view in April 2025 that moving her to a flat would be inconsistent with her needs at that time.

8.Despite this Mr Gibson advised that he had had direct discussions with the Applicant's solicitor Mr Gardiner and the Respondent did not oppose an eviction order being granted if the Tribunal was prepared to delay the enforcement of any order.

9.Mr Gardiner indicated that he had been in discussion with Mr Gibson and he accepted that the Respondent might not be rehoused quickly and concurred with the suggestion that any order granted be subject to a delay in enforcement.

10.The Tribunal also had sight of a Notice in terms of section 33 of the Housing (Scotland) Act 1988 and Notice to Quit giving notice that the Applicant required the property back by 2nd January 2025 and requiring the Respondent to quit the property by that date.

11.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Relevant Legislation

Section 33 Housing (Scotland) Act 1988

(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; ..

(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.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Findings in Fact

12. The Respondent was originally a tenant at the property by virtue of an assured tenancy agreement.

13. By agreement the parties entered into a short, assured tenancy at the termination of the assured tenancy and this took effect from 1st of August 2015.

14. The short, assured tenancy was for 6 months and continued thereafter on a month-to-month basis.

15. The tenancy between the parties was a short, assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

16. On 4th October 2024 agents for the Applicant sent to the Respondent a notice in terms of section 33 of the Housing (Scotland) Act 1988 stating that the landlord required the property back by 2nd January 2025. A Notice to Quit was also sent to the Respondent which sought to terminate the tenancy as of 2nd January 2025 and this Notice to Quit was in the prescribed form.

17. The Notice to Quit terminated the tenancy with effect from 2nd January 2025 which is a valid end date for the tenancy.

18. Tacit relocation is not in operation in relation to the tenancy.

19. A notice in terms of section 11 of the homelessness etc (Scotland) Act 2003 was sent to Dundee City Council on 13th January 2025 in relation to this application,

20. The Respondent does not oppose an eviction order but requests additional time to vacate the property given that she is disabled and requires time to obtain suitable alternative property for her and her children.

21. The Respondent has approached the local authority to obtain suitable social housing for her and her family and is on a waiting list.

22. The Applicant seeks a possession order to allow the property to be sold with vacant possession.

Reasons for Decision

23. The Tribunal was satisfied that the notice in terms of section 33 and the Notice to Quit were in proper form and gave the Respondent appropriate notice. The Tribunal was satisfied that having regard to the Upper Tribunal case of McCallum v Wright 2023 UT 25 the parties can create a short, assured tenancy by agreement when an assured tenancy has terminated. The Respondent does not oppose an eviction order but simply sought a delay in enforcement of the order to allow her to obtain suitable accommodation from the local authority. It was not suggested by her that it would be unreasonable to grant the application for a possession order. The Applicant wishes to sell the let property with vacant possession. Taking all factors into account, the tribunal considered that it was reasonable to grant the order with a 2-month delay in enforcement of the order to allow the Respondent to obtain alternative accommodation.

Decision

The Tribunal determined that a possession order be granted in respect of the Property in favour of the Applicant and against the Respondent it being Reasonable to grant an order.

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.

Valerie Bremner

17/7/25

Legal Member/Chair

Date