



**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 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/24/5774**

**Re: Property at 403 Calder Road, Edinburgh, EH11 4AL (“the Property”)**

**Parties:**

**Mrs Joan Rosselle, 140 Main Street, Neilston, Glasgow, G78 3JX (“the Applicant”)**

**Ms Diane Burnett, 403 Calder Road, Edinburgh, EH11 4AL (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicant. The Tribunal delayed execution of the order until 15 January 2026.**

**Background**

1. An application was received from the Applicant on 17 December 2024 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of possession of the property under a short assured tenancy by the Applicant against the Respondent.
2. Attached to the application form were:
  - (i) Copy short-assured tenancy agreement between the parties which commenced on 1 April 2017.
  - (ii) Form AT5 relating to the tenancy signed by the parties on 1 April 2017.

- (iii) Copy notice required under section 33 of the 1988 Act ('the section 33 notice') dated 15 September 2024 addressed to the Respondent.
  - (iv) Copy Notice to Quit dated 15 September 2024 addressed to the Respondent, requiring her to remove from the property on or before 2 December 2024.
  - (v) Certificate of posting for the notice to quit and section 33 notice dated 17 September 2024 and proof of delivery on the Respondent dated 19 September 2024.
  - (vi) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 addressed to the City of Edinburgh Council, together with certificate of posting dated 9 September 2024 and proof of delivery dated 10 September 2024 .
3. Following requests from the Tribunal administration, further information was received from the Applicant on 25 January and 13, 14 and 24 March 2025.
  4. The application was accepted on 9 April 2025.
  5. Notice of the case management discussion scheduled for 23 September 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the Tribunal on 20 August 2025. The Respondent was invited to submit written representations to the Tribunal by 5 September 2025.
  6. The Tribunal issued a direction to the Applicant on 27 August 2025, directing her to provide further information about the monthly payments currently payable in respect of the mortgage secured over the property by 16 September 2025.
  7. Written representations, including a postponement request, were received from the Respondent on 27 August 2025. A written response opposing the postponement request was received from the Respondent on 2 September 2025.
  8. The Tribunal decided to refuse the Respondent's postponement request, but agreed to extend the timescale for the Respondent to submit written representations as requested, until 16 September 2025.
  9. Further written representations were received from the Respondent's newly appointed representative, Councillor Ross McKenzie, on 3 September 2025.

### **The case management discussion**

10. A case management discussion (CMD) was held by teleconference call on 23 September 2025. The Applicant was present on the teleconference call and

represented herself. The Respondent was present on the call and was represented by Mr McKenzie.

### **The Applicant's submissions**

11. The Applicant told the Tribunal that she had made the application because she wished to sell the property as soon as possible. The property was one of a portfolio of nine rental properties which she had owned jointly with her former husband. They had entered into a separation agreement, which she had submitted to the Tribunal, under which all of the properties were to be transferred into her sole name, and she was required to pay him a sum of money. Both this specific property and the overall property business were no longer profitable, given the increase in her mortgage and other costs, including tax. She was no longer able to support the business on her teacher's salary.
12. In order to pay her former husband the amount he was due, she would need to sell all of the rental properties. Five of the properties had been sold, and one was in the process of being sold. Two others were on the market, and this property would be the last one, to be sold. There was roughly £10,000 equity after costs in each property, and she needed to sell them all to pay back to her former husband the amount which had been agreed under their separation agreement.
13. The Applicant said that she had left this property until last because she was aware of the Respondent's circumstances. She had approached the City of Edinburgh Council to ask if it would consider buying the property back, to allow the Respondent to stay there, and had been disappointed that the Council had not been willing to explore this further. She said that she would not be selling the property if she did not need to, but that her former husband was keen to receive the money he was due as soon as possible. The Respondent had been aware that she intended to sell the property for well over a year, and it had now been a year since she had been sent the Notice to Quit.
14. The Applicant is a single parent with four children, two of whom have now left home. The two younger children, who are both at university, live with her. She works full-time as a teacher. Her former husband now lives in France.

### **The Respondent's submissions**

15. Mr McKenzie told the Tribunal that the Respondent and her partner, Mr Barry Lee, were kinship carers for the Respondent's young niece and nephew, who are aged 9 and 10. They had been in their care since May 2024 as their closest relatives, following their father's death. Their mother was unable to look after them given her health issues. The children had recently started at a local primary school and had settled in well there. The Respondent had submitted a

letter from the depute head teacher at the school, stating that they needed security and consistency in their new home life.

16. Mr McKenzie had also submitted a letter from the children's social worker, which stated that the children had experienced significant trauma, and now had support and stability for the first time in their lives. The letter confirmed that the children had settled in well at their new primary school, and stated that it was imperative to their emotional wellbeing and repair from their past trauma that they are able to stay there, rather than face a change of primary school again. It stated that any sudden changes that are not carefully planned could be seriously detrimental to them.
17. Mr McKenzie confirmed that the Respondent did not wish to stay in the property long term, and understood that the Respondent needed to sell the property. but that she needed more time to allow her and her family to find a suitable home within the school catchment area. It was important that there was no unnecessary additional disruption for the children.
18. Mr McKenzie said that he had only become aware of the Respondent's situation less than a month ago. Some progress had been made with the Council, but the Respondent needed further time to engage with them. The Respondent also has two children of her own who are aged 18 and 13, and also live in the property. Her 13 year old son attends a local secondary school, and her 18 year old daughter is employed at a local nursery. The family require a 4 bedroom property within the local area.
19. Mr McKenzie was unsure as to how long it would take for the family to find a suitable home, but he believed that there had been increased engagement with the Council more recently, and a clear recognition that a 'managed move' was needed for the sake of the children. The Council had a responsibility towards such care experienced children.
20. The Council had offered the family a three bedroom property earlier in the month. While this was not suitable for them, the Council were looking for a suitable property on a weekly basis.

### **Findings in fact**

21. The Tribunal made the following findings in fact:
  - i. The Applicant owns the property jointly with her former husband, Mr Vincent Rosselle. The Applicant is the registered landlord for the property.
  - ii. The property is one of a portfolio of 9 rental properties owned jointly by the Applicant and Mr Rosselle.

- iii. The Applicant and Mr Rosselle entered into a minute of agreement which was registered in the Books of Council and Session on 19 April 2023. In terms of the minute of agreement, the Applicant and Mr Rosselle agreed that 8 rental properties (it having been agreed that one would be sold to the City of Edinburgh Council) would be transferred into the Applicant's sole name. They also agreed that the Applicant would pay to Mr Rosselle the sum of £67,608, less half the costs of sale of one of the rental properties.
- iv. The Applicant intends to sell the property once it is vacant.
- v. Mr Rosselle was aware of the eviction application and had confirmed to the Tribunal in a letter dated 3 March 2025 that he was aware of and consented to the eviction proceedings in order that the property could be sold.
- vi. The current tenancy between the parties commenced on 1 April 2017 and was initially for a period of 6 months until 2 October 2017. It had then continued by tacit relocation on a monthly basis after the end of the initial term.
- vii. There had been a previous tenancy (likely to have also been a short assured tenancy) between the parties in relation to the property which started on or around 30 November 2012. The original tenancy agreement had been lost and neither party had a copy of it.
- viii. The form AT5 was in the prescribed format and the short-assured tenancy agreement between the parties was validly constituted.
- ix. The Notice to Quit and the section 33 notice dated 15 September 2024 stated that the Applicant required vacant possession of the property on or before 2 December 2024. These provided more than two months' notice of vacant possession.
- x. The notices dated 15 September 2024 were validly served on the Respondent by recorded delivery post on 19 September 2024.
- xi. The tenancy reached its end on 2 December 2024.
- xii. The current rent for the property is £1500 per month.
- xiii. The monthly mortgage payments on the property are £815.12.
- xiv. The Respondent is resident in the property with her partner and two children aged 13 and 18, as well as her niece and nephew, aged 9 and 10 respectively, for whom she is a kinship carer.

- xv. The Respondent's niece and nephew have experienced significant trauma. They have recently settled into a local primary school.

### **Reasons for decision**

22. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

23. The Tribunal noted that section 33 (1) of the 1988 Act as amended states:

*(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.*

24. The Tribunal was satisfied that the short-assured tenancy agreement between the parties had been validly constituted. It was also satisfied that the short-assured tenancy had reached its ish; that tacit relocation was not operating; and that the Notice to Quit and section 33 notice both dated 15 September 2024 had been validly served on the Respondent, for the reasons set out above. Mr McKenzie confirmed that there was no challenge to this from the Respondent.

25. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.

26. The Tribunal noted that at the start of the short assured tenancy, given the rules that were in place at that time, the Applicant might have expected to be granted an eviction order automatically, were the Tribunal satisfied that she had followed the correct rules in terms of creating the tenancy and serving the various notices correctly. The Notice to Quit had been served on the

Respondent more than a year ago. She had therefore been aware for some time that the Applicant sought to repossess the property.

27. The Tribunal also noted the Applicant's position that given her financial situation, she needed to sell all of the rental properties, including this one, in order to pay her former husband the sum that she was required to pay him under the minute of agreement. The Applicant had made efforts to sell the property back to the Council so that the Respondent and her family could remain there. She had prioritised the recovery of other properties before making this application, in order to give the Respondent more time, because she was aware of the Respondent's circumstances regarding the kinship care of her niece and nephew.
28. The Tribunal was aware that the Respondent and her family had been living in the property for almost 13 years. It also noted the difficult circumstances in which the Respondent and her family found themselves. They were facing the loss of their home through no fault of their own. The Tribunal was particularly conscious of the acute needs of her niece and nephew, as well as those of her own children.
29. The Tribunal took into account the fact that the Respondent did not wish to remain in the property, but simply sought more time in order to secure suitable alternative accommodation for herself and her family.
30. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance, it was reasonable to grant an eviction order. It gave particular weight to the fact that the Respondent had not opposed the application.
31. Before deciding to grant the order, the Tribunal had sought the views of both parties on the possibility of delaying execution of the eviction order in terms of rule 16A of the 2017 rules, in order to give the Respondent more time to find alternative accommodation for herself and her family. It was clear from the submissions made by the Respondent and Mr McKenzie that what they were really looking for was more time to secure alternative council accommodation.
32. The Applicant said that her mortgage will come to an end in 12 months' time. If she was unable to sell the property before then, the property could be repossessed and the Respondent evicted anyway. Once she got the property back, she would need to spend time and money doing work on it before putting it on the market. She was therefore keen to get an eviction order as soon as possible. She said that she could probably wait until Christmas if necessary, but no longer than that.

33. Mr McKenzie said that, while it was difficult to know exactly when the Respondent would be offered a suitable property, she and her family would like to have as much breathing space as possible. In the event that a property became available in the near future, the Respondent would move out as early as possible. Her main objective was to avoid the need for her and her family to be placed into temporary homeless accommodation. He asked for the timescale for any eviction order to be as long as possible, pointing out that three months from the date of the CMD was around Christmas time.

34. The Tribunal determined that an order for recovery of possession should be granted in favour of the Applicant. Having weighed up the views of the parties on delaying execution of the order, and taking into account the desirability of avoiding any eviction over the Christmas period, the Tribunal considered that it would be reasonable in all the circumstances to delay execution of the order until 15 January 2026.

### **Decision**

The Tribunal granted an order in favour of the Applicant against the Respondent for recovery of possession of the property. The Tribunal delayed execution of the order until 15 January 2026.

### **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.**

# Sarah O'Neill

23 September 2025

---

**Legal Member/Chair**

---

**Date**