



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”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/25/1346

Re: Property at 4 Strathmartine Road, Flat 7, Dundee, DD3 7RJ (“the Property”)

Parties:

Earlish Services Limited, Murrayacre, Glencarse, Perth, PH2 7NJ (“the Applicant”)

Mr Malcolm McDonald, 7A Hilltown Court, Dundee, DD3 7AX (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.

Background

1. The application submitted on 28 March 2025 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice, Section 11 Notice to the local authority, some photographs of the inside of a property and some further background information. The Short Assured Tenancy had commenced on 1 June 2009. It was alleged by the Applicant that the Respondent lived elsewhere but had failed to remove his belongings from the Property and that they had safety concerns arising from this, as it had prevented the Applicant carrying out the required property

compliance checks. A conjoined application seeking an order requiring the Respondent to remove his belongings from the Property, failing which payment of damages was lodged at the same time and both applications proceeded together through the Tribunal process to Case Management Discussion (CMD), at which the conjoined application was withdrawn on behalf of the Applicant.

2. This application was accepted by the Tribunal by Notice of Acceptance dated 16 April 2025 and a CMD was fixed to take place on 2 October 2025 at 10am.
3. Notification of the application and details of the date and other arrangements for the CMD were served on the Respondent by Sheriff Officer on 22 August 2025 at his new address (as above). He was invited to lodge any written representations in respect of the application, but none were lodged.

Case Management Discussion

4. The CMD took place by telephone conference call on 2 October 2025, commencing at 10am. In attendance were Ms Coleman of Struan Baptie Property Management Ltd, on behalf of the Applicant and the Respondent, Mr Malcolm McDonald.
5. Following introductions and introductory comments by the Legal Member, the purpose of the CMD was explained and there was then detailed discussion regarding the application.
6. The Respondent, Mr McDonald was asked to confirm his position in relation to the eviction application. He confirmed that he could not oppose it and also that he had secured another tenancy from the local authority at 7A Hilltown Court, Dundee around a year ago. The Tribunal noted that he had been served with the Tribunal papers by Sheriff Officer at that address. He explained that he had moved some of his belongings into his new tenancy but had not yet managed to remove all his belongings. He denied that the photographs lodged by the Applicant showed the inside of the Property or that the condition of the Property was as bad as was being said. He confirmed that he stays between the two properties, though most of the time at this Property, and that he is paying the rent for both. He stated that he does not receive state benefits and that he is working, both as a cleaner and in security. Mr McDonald's explanation for his failure to fully move out of the Property was that he does not have much time as he working during the day. He confirmed that he will need to get some assistance with moving the rest of his belongings and would like some more time. Mr McDonald stated that he had not sought advice or help from the local authority with moving his belongings. Mr McDonald said that he has met Mr Baptie several times and discussed things with him. He said that Mr Baptie had stated that he could have more time. Mr McDonald considered that a delay on the eviction until March 2026 would be a reasonable timeframe for him to fully vacate the Property.
7. Ms Coleman stated that Mr Baptie had been very accommodating towards Mr McDonald but that the situation has gone on too long and that this was why the

eviction order was sought. They were told by the local authority that Mr McDonald had been given his new tenancy property in March 2024 and that Mr McDonald has been saying since then that he is in the process of moving out. Their concern is that the Property is not habitable and that there are also safety concerns regarding not just this Property, but also neighbouring properties in the same block. She conceded that the photographs lodged were provided to them by another letting agent who let out a neighbouring property and had been investigating a leak. She had understood the photographs to be of this Property but could not be certain as they had not taken them and did not know when exactly they had been taken. However, they had a plumber out at the Property in September 2024 and he described the inside of the Property to them. He had stated that there were belongings piled up everywhere and in places, just a 'walkway' left through the rooms. The plumber did not consider there was a useable kitchen or bedroom. This was the last time they were able to get anyone in to see the Property. Although, with the assistance of the local authority, they had been able to get smoke alarms installed a few years ago, Ms Coleman stated that they had not been able to get the necessary electrical checks done, as access was not possible due to the number of belongings everywhere. They think that the lack of electrical checks and the number of belongings in the Property present a real fire risk. Ms Coleman said that they had raised the issue with the local authority previously but they had said that they could only become involved if Mr McDonald approached them direct for assistance. Ms Coleman stated that, ideally, an eviction order granted with the usual timescales, would be granted, due to the safety concerns mentioned. However, if they could see progress being made with the Property being cleared, she was sure that they would be able to work with Mr McDonald to perhaps give him some more time. Her concern was that, given the background and the length of time that has already passed, there was no guarantee that progress would be made by Mr McDonald if a lengthy delay on the eviction date was granted.

8. Mr McDonald maintained his position that the condition of the Property has improved since the plumber was there in September 2024, denied that the kitchen and bedroom are not useable and dismissed the suggestion by Ms Coleman that the Property was not habitable or raised safety concerns.
9. The Tribunal Members adjourned to consider the application in private and, on re-convening, confirmed that the Tribunal was persuaded to grant the eviction order today and to grant it with the usual timescale for eviction, which was normally about 6 weeks from now. It was explained that it was open to the Applicant to voluntarily give the Respondent more time before the eviction order was enforced but that the Tribunal hoped that the Respondent had taken cognisance of what Ms Coleman had said today and that it was likely that the Applicant would first require to see some steps being taken by the Respondent to move his belongings from the Property. The Respondent was urged to seek some assistance with vacating this Property and fully moving into his new tenancy. Parties were thanked for their attendance and participation in the CMD.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which had commenced on 1 June 2009.
3. The Respondent has also been the tenant of another property, understood to be owned by the local authority, at 7A Hilltown Court, Dundee, since on around March 2024.
4. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated 4 October 2024 and served by Sheriff Officer on 7 October 2024 on the Respondent, both at the Property address and at the other address at which he was understood to be residing.
5. The end of the notice period specified in both notices was 1 January 2025, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent.
6. The Respondent remained in possession of the Property following expiry of the notice period.
7. This application was lodged with the Tribunal on 28 March 2025, following expiry of the notice period.
8. The Property is a flat within a block of flats.
9. The Respondent resides between this Property and his new tenancy property and pays rent in respect of both.
10. The Respondent has not vacated the Property and it still contains a lot of his furniture and personal belongings.
11. The Applicant has not had access to the Property since September 2024 when a plumber attended at the Property on their behalf.
12. The Applicant's plumber reported to them that the property was in poor condition and very cluttered.
13. The Applicant has not been able to attend to the required electrical safety checks on the Property, due to the condition of the Property and lack of access.
14. The Applicant wishes to recover possession of the Property due to concerns that the Property is not habitable due to its condition and may pose safety and fire risks, including to neighbouring properties in the block.

15. The Respondent did not oppose the application but sought an extension on the execution date of the eviction to allow him more time to fully remove from the Property.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation and the oral information and submissions provided on behalf of the Applicant and by the Respondent at the CMD.
2. The Tribunal was satisfied that the pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application.
3. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
4. As to reasonableness, the Tribunal considered the background circumstances leading to the application, both parties' positions in the matter and, in particular, that the Respondent was not opposing the eviction order being granted. The Tribunal noted that the Respondent confirmed the Applicant's claim that he no longer occupied the Property as his primary residence as he had secured another tenancy through the local authority during 2024 and admitted staying there some of the time and having moved some of his belongings into his new property. Although he denied that the condition of the Property was as bad as had been stated on behalf of the Applicant, the Respondent did confirm that he still had a number of belongings there and that he had not managed to complete the process of moving out due to having a lack of time, due to his work commitments. The Tribunal decided not to have regard to the photographs lodged on behalf of the Applicant, given what Ms Coleman had conceded about the uncertainty surrounding these photographs and when they had been taken and the Respondent's denial that these were photographs of the Property. The Tribunal did, however, have regard to the information Ms Coleman had provided about their difficulties accessing the Property and what their plumber had reported the condition as being in September 2024. The Respondent had suggested a reasonable timeframe for completing the clearance would be March 2026 ie. a further 6 month period. However, the Tribunal was of the view that the Respondent had already had more than sufficient time to vacate the Property, given that he had secured his other tenancy, according to the Applicant, around 18 months ago. The Tribunal considered that, as Ms Coleman had stated, the Applicant had been quite reasonable and patient in the matter and allowed the Respondent around 6 months to fully remove into his new tenancy property before initiating these proceedings by serving the

formal notices. It appeared to the Tribunal from what both parties stated, that, despite this, not much progress had been made by the Respondent in the further 9 month period since the notices expired at the start of January 2025. Given this background, the Tribunal determined that it was reasonable, in all the circumstances, to grant the eviction order sought and not to delay execution of the eviction order beyond the normal timescale which would apply. The Tribunal considered it unlikely that extending the eviction timescale by another several months would be beneficial to either party and that it was in both parties' interests to have a definite timescale to work towards and for the tenancy to be brought to an end sooner rather than later. This would allow the Applicant to recover the Property, properly assess its condition and alleviate their safety concerns for both the Respondent and neighbouring residents. It would end the Respondent's liability for maintaining the rent payments in respect of this Property and hopefully encourage him to improve his current living arrangements by moving properly into his new tenancy property. It was hoped that the Respondent would seek assistance in respect of the removal, if required. It appeared to the Tribunal that he had the financial means, from his earnings, to pay for removal or house clearing assistance and that there may be other supports available to him through the local authority or other organisations.

5. The Tribunal's decision 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.

N Weir

Legal Member/Chair

2 October 2025
Date