



**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/24/5682

Re: Property at 19 Dunvegan Avenue, Kirkcaldy, KY2 5SG (“the Property”)

Parties:

Mr Bijan Habibollahi, 41 Balwearie Road, Kirkcaldy, KY2 5LT (“the Applicant”)

**Mrs Carrie O'Neill, 19 Dunvegan Avenue, Kirkcaldy, KY2 5SG (“the
Respondent”)**

Tribunal Members:

Sarah O'Neill (Legal Member) and Jane Heppenstall (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 3 December 2025.

Background

1. An application was received from the Applicant's late former solicitor on 11 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 Bijan Habibollahi and Nazanin Saffarian-Toussi and the Respondent and Ryan O'Neill which commenced on 1 December 2008.
 - (ii) Copy notice required under section 33 of the 1988 Act ('the section 33 notice') dated 18 January 2024 addressed to the Respondent.

- (iii) Copy Notice to Quit dated 18 January 2024 addressed to the Respondent, requiring her to remove from the property on or before 30 November 2024.
 - (iv) Certificate of posting for the notice to quit and section 33 notice dated 18 January 2024.
 - (v) WhatsApp message dated 25 January 2024 from Kane O'Neill to the Applicant confirming receipt of the notice to quit.
 - (vi) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 addressed to Fife Council, together with covering email dated 11 December 2024.
3. Following requests from the Tribunal administration, further information was received from the Applicant's late former solicitor on 27 January, 7 March and 14 April 2025.
4. The application was accepted on 12 May 2025.
5. Notice of the case management discussion (CMD) scheduled for 1 October 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the Tribunal on 22 August 2025. The Respondent was invited to submit written representations to the Tribunal by 11 September 2025.
6. An email was received on 22 August 2025 from the firm of solicitors which had formerly represented the Applicant, advising that they had withdrawn from acting for the Applicant following the sudden death of his solicitor.
7. No written representations were received from the Respondent prior to the CMD.

The case management discussion

8. A CMD was held by teleconference call on 1 October 2025. The Applicant was represented by his new solicitor, Mrs Laura McLaughlin of McLaughlin and Co. The Respondent was not present on the call and was represented by her daughter, Miss Katelynn O'Neill.

Preliminary issues

9. The Tribunal noted that there were several preliminary issues to be addressed which had been identified during the sifting process.
10. Firstly, the short-assured tenancy agreement named both the Respondent and Ryan O'Neill as tenants, but the application had been brought against the

Respondent only. Miss O'Neill confirmed that her parents, i.e. her father Ryan O'Neill and the Respondent, had separated and that Mr O'Neill had moved out of the property in July 2022.

11. The Tribunal noted that the Applicant's late former solicitor had stated in his written submissions of 7 March 2025 that Mr O'Neill had advised the Applicant's father that the Respondent wished to continue residing in the property as sole tenant, and was arranging for her benefits to be varied so that she could pay the rent herself. The Respondent had confirmed this to the Applicant's father, who had suggested that it would be appropriate to issue a new lease to the Respondent in her sole name. The Respondent had indicated that she was not prepared to agree to that. It appeared that the Respondent was receiving housing benefit in her sole name at the same rate as before.
12. The Applicant's late former solicitor was therefore submitted that the original short assured tenancy had remained in place, but was subject to an agreed variation (albeit not formally recorded in writing) whereby the Respondent became the sole tenant.
13. In light of this, and the evidence of Miss O'Neill, the Tribunal accepted that, while the tenant agreement had not been formally varied in writing, the Respondent was now the sole tenant of the property.
14. Secondly, no form AT5 relating to the short-assured tenancy agreement had been produced by the Applicant. Mrs McLaughlin confirmed that the Applicant's late former solicitor had contacted the solicitor for the Applicant's parents, who were the previous landlords, to try to locate this, but they had been unable to provide this. She herself had spoken to the Applicant's father, who had told her that he believed all of the paperwork had been completed correctly at the start of the tenancy, which was now almost 17 years ago. She submitted that if the Respondent accepted that there had been a short assured tenancy in place, this should be accepted by the Tribunal. Miss O'Neill confirmed that it was the Respondent's understanding that there had been a short assured tenancy in place, and that she did not wish to challenge its validity.
15. In the circumstances, the Tribunal confirmed that there was a validly constituted short assured tenancy agreement between the parties.
16. Thirdly, no proof of delivery of the Notice to Quit and section 33 notice had been submitted with the application. A certificate of posting by recorded delivery dated 18 January 2025 had been produced in respect of the notices, but the Applicant's late former solicitor had confirmed that there was no proof of delivery available on the Royal Mail website. The Applicant had also submitted a WhatsApp message dated 25 January 2024 from the Respondent's son, Kane O'Neill, to the Applicant confirming receipt of the notice to quit.

17. Miss O'Neill confirmed that the Respondent had received both of the notices dated 18 January 2024, saying that she had these in front of her during the CMD.
18. The Tribunal therefore accepted that the notices had been delivered to the Respondent.

The Applicant's submissions

19. Mrs McLaughlin told the Tribunal that since the Notice to Quit was issued, the Applicant's circumstances had changed. He now intended to move into the property himself. He had completed his master's degree but his mental health had declined. He was currently living with his parents at the age of 29 and was looking for a fresh start. He had been unable to obtain employment and was unable to afford another rental property.
20. The Applicant also wished to carry out essential maintenance to the property, which had not been maintained in recent years.

The Respondent's submissions

21. Miss O'Neill told the Tribunal that she was living in the property with her mother and had now become her mother's carer. Her mother suffers from both physical and mental disabilities. She is unable to work and is in receipt of disability benefits. At the start of the tenancy, the property was the family home for her mother, her father (who had been her mother's carer since 2007, before the family had moved into the property) and Miss O'Neill and her siblings. Her father and her siblings had moved out in around July 2022.
22. Miss O'Neill said that her mother did not wish to oppose the application. The property was no longer suitable for her needs. It has four floors, and the Respondent is unable to get up and down the stairs. Miss O'Neill had been in contact with a housing officer at Fife Council on her mother's behalf to try to secure a more suitable property which is all on one floor and has an accessible shower. The Council was trying to find her a property which was suitable for her needs, and she had recently been awarded more points in connection with her housing application. Miss O'Neill did not know how long it would take to find somewhere suitable for the Respondent to live.
23. Fife Council had told Miss O'Neill that if it were to re-house the Respondent, she would need to obtain an eviction order from the Tribunal.

Findings in fact

24. The Tribunal made the following findings in fact:

- i. The Applicant has owned the property since 14 February 2020 and is the registered landlord for the property.
- ii. The property was previously owned by the Applicant's parents. Mr Bijan Habibollahi and Ms Nazanin Saffarian-Toussi, who were the original landlords under the short assured tenancy agreement.
- iii. The Applicant intends to move into the property once it is vacant.
- iv. Mr Ryan O'Neill, the other joint tenant under the short assured tenancy moved out of the property in July 2022. There had been an informal agreement between the Applicant's father (and former landlord) and the Respondent that she would continue as the sole tenant after that date
- v. There is a short assured tenancy in place between the parties which commenced on 18 January 2008 and was initially for a period of 12 months until 30 November 2009. It had then continued by tacit relocation on a 12-monthly basis after the end of the initial term.
- vi. While there was no form AT5 before the Tribunal, the parties were in agreement that the short-assured tenancy agreement had been validly constituted.
- vii. The Notice to Quit and the section 33 notice dated 18 January 2024 stated that the Applicant required vacant possession of the property on or before 30 November 2024. These provided more than two months' notice of vacant possession.
- viii. The notices dated 30 November 2024 were validly served on the Respondent by recorded delivery post on or around 19 January 2024.
- ix. The tenancy reached its end on 30 November 2024.
- x. The Respondent is resident in the property with her daughter, Miss O'Neill.
- xi. Miss O'Neill is in full-time employment and is the Respondent's carer.

Reasons for decision

25. 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.

26. The Tribunal was satisfied that the Applicant was now the landlord of the property following the transfer of the title to the property into his name, noting that in terms of section 55 of the 1988 Act, “landlord” includes any person from time to time deriving title from the original landlord.

27. 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.

28. The Tribunal was satisfied, for the reasons stated above, under the heading “preliminary issues”, that the short-assured tenancy agreement between the parties had been validly constituted.

29. The Tribunal was 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 18 January 2024 had been validly served on the Respondent, for the reasons set out above.

Reasonableness

30. 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.

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

32. The Notice to Quit had been served on the Respondent more than a year and nine months ago. She had therefore been aware for some time that the Applicant sought to repossess the property.
33. The Tribunal took into account the Applicant's current circumstances and his desire to move into the property himself.
34. The Tribunal was aware that the Respondent and her family had been living in the property for almost 17 years. She was facing the loss of her home through no fault of her own.
35. The Tribunal took into account the fact that the Respondent did not wish to oppose the application, and required to find alternative accommodation which was more suitable for her current needs.
36. 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 did not wish to oppose the application and that she required to find a property which was more suitable for her, given her health needs. The Tribunal was also aware that the Respondent had been advised that an eviction order was required in order for the Council to find her more suitable accommodation.
37. 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 suitable alternative accommodation.
38. Miss O'Neill said that, while it was difficult to know exactly when the Respondent would be offered a suitable property, it would be helpful if the time for the eviction to take place could be extended, to allow her more time to find somewhere. She suggested that an additional month would be helpful and that she was hopeful the Council would be able to find somewhere suitable soon.
39. Mrs McLaughlin said that the Applicant understood that the Respondent had been in the property for a long time and that there was a lot of property to be moved out, as well as several pets. She indicated that the Appellant would not be opposed to an extension to the timescale for the eviction order.
40. Having weighed up the views of the parties on delaying execution of the order, the Tribunal considered that it would be reasonable in all the circumstances to delay execution of the order for one month until 3 December 2025.

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 3 December 2025.

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.

S.O'Neill

1 October 2025

Legal Member/Chair

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Date