

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 36 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/PR/25/0464

Re: Property at 61A Main Street, Colinsburgh, KY9 1LS (“the Property”)

Parties:

Fay Gooding, Glen Morris, 13 Main Street, Kilconquhar, KY9 1LF (“the Applicant”)

Vanessa Robertson, 6 Inzievar Courtyard, Dunfermline, KY12 8HB (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application.

- 1) This was an application by the Applicant under rule 69 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”) for damages for unlawful eviction.
- 2) The application was dated 3 February 2025 and lodged on 4 February 2025. The application set out a number of costs that the Applicant said she had incurred further to moving out of the Property and into a new home. No total was provided as to the amount sought however. The application merely said that the Applicant sought “costs and accountability”.
- 3) The application was accompanied by voluminous papers, of which further papers and responses were lodged by both parties in advance of the case management conference (“CMD”) (though some of the papers were in connection with a conjoined application for repayment of alleged overpaid rent under reference CV/25/0404). Within these papers were the following:

- a. Within both parties' papers, the Short Assured Tenancy between the parties. The Tenancy Agreement was dated 27 January 2017 with a start date of 27 January 2017, running until 26 July 2017 and thereafter on the basis that it "shall continue on a monthly basis" ("the Tenancy"). (The Respondent's papers also included a copy of a Form AT5 relating to the Tenancy.)
- b. Within both parties' papers, a section 33 notice by the Respondent to the Applicant dated 24 April 2024 and giving 27 July 2024 as the date for removal.
- c. Within the Respondent's papers, a Notice to Quit (but without evidence of the supporting information paragraphs) dated 24 April 2024 and terminating the Tenancy as at 27 July 2024.

The Hearing

- 4) On 17 September 2025 at 14:00, at CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, I was addressed by both parties.
- 5) I noted the application, response, and further papers from both parties. I sought further oral submissions. The Applicant confirmed that she left the Property on 27 July 2024 herself, without the Respondent taking steps to remove her, change the locks, or adversely affect her occupancy (other than seeking to bring the Tenancy to an end). Between her application and oral submissions, I noted these points in support of her application:
 - a) She received only the section 33 notice. She did not receive the Notice to Quit.
 - b) She received nothing that advised her to seek independent advice.
 - c) She received communication from the Respondent's letting agents, Martin & Co, that the Respondent sought to sell the Property. (She had as part of communications with Martin & Co sought to negotiate to stay at the Property at a higher rent, or to purchase the Property, but neither had been agreed.)
 - d) She sought a homelessness application from Fife Council and, within the correspondence with them, was informed that the Respondent had told the Council that she wanted to sell, that she was not willing to extend the Tenancy, and that she would proceed to "court" if the Applicant did not move out.
 - e) That the section 33 notice misspelled her middle name as "Elizabeth" instead of "Elisabeth". She noted that the copy Notice to Quit lodged by the Respondent contained the same mistake.

The Applicant's position was that these matters combined led to her voluntary removal from the Property being a form of unlawful eviction, especially in the context that the Respondent had not sold the Property and instead had relet it at a higher rent.
- 6) I sought the Applicant's position on how much reliance she placed on the fact that the Property had not been sold, and had instead been relet. I asked the Applicant what her position would have been if everything had been the same but for her not being told that the Respondent wished to sell, and instead she was told that the Respondent wished to have new tenants and to seek to relet at

a higher monthly rent. The Applicant said that, in the circumstances, she would have acted the same and moved out of the Property as she had received notice to do so.

- 7) I asked the Applicant if she had sought any independent advice prior to moving out. She said that she had not. At the time she was caring for her husband who had recently suffered a major medical issue, and that matters were “frantic”. She said that they only received alternative accommodation close to the date they vacated.
- 8) In reply, the Respondent said that Martin & Co had told her that a Notice to Quit had been provided to the Applicant and that it would have been sent in the same envelope. She had been provided with copies of both notices by Martin & Co (though she did not have a copy of the Notice to Quit that contained the information paragraphs for tenants, such as the paragraph indicating sources of advice).
- 9) The Respondent’s submissions and documents contained voluminous references to the condition of the Property after it had been vacated. I sought an explanation for this documentation. She explained that she was not able to market the Property to sell immediately as work was needed and, once it was completed, it was too late in the year to market as the local market was very seasonal. She explained that the documentation was lodged in support of that point. The Respondent further explained that she was waiting to market the Property in Spring 2025 and, during the period when the work was complete but the Property empty and not marketed for sale, she found out that her friend’s daughter and husband were house hunting and she agreed to let to them, believing it would be short term (though they still remain tenants).
- 10) Though the Respondent was keen to explain why the Property was not yet marketed for sale, and why it was relet, the Respondent’s principal submission was that she was not required to give a reason to evict under section 33 of the Housing (Scotland) Act 1988 but agreed to doing so as she thought it would “be polite” to give a reason to the Applicant. She was adamant that she genuinely intended to sell at the time of seeking repossession. She accepted the current tenants were paying a higher rent.
- 11) In response to this, the Applicant accepted that it was reasonable for the Respondent to have wanted to undertake some refurbishment work to the Property before marketing for sale, but she disputed the extent of the Respondent’s complaints about the condition at the date of vacating.
- 12) In regard to further procedure, the Applicant proposed that a decision be made at the CMD without a further continuation or witness evidence. The Respondent agreed subject to the question of whether evidence may be needed from Martin & Co on whether they sent the Notice to Quit. The Respondent submitted that if I did not think such evidence would be relevant, I should make a decision at the CMD.
- 13) No motion was made for expenses by either party.

Findings in Fact

- 14) By written lease dated 27 January 2017, the Respondent let the Property to the Applicant by lease with a start date of 27 January 2017, running until 26 July 2017 and then on the basis that it “shall continue on a monthly basis” (“the Tenancy”).
- 15) In or around Spring 2024, the Respondent decided to bring the Tenancy to an end and instructed her agents, Martin & Co, to issue the appropriate notices.
- 16) On 24 April 2024, a section 33 notice was issued on behalf of the Respondent to the Applicant giving 27 July 2024 as the date for removal.
- 17) Following receipt of the section 33 notice, the Applicant sought to negotiate a longer period in the Property, either as tenant or purchaser. The Respondent declined to agree any such terms.
- 18) The Applicant left the Property on or about 27 July 2024, cognisant of that being the date given in the section 33 notice.
- 19) Prior to the Applicant vacating the Property, no steps were taken by or on behalf of the Respondent to interfere with the Applicant’s occupation in any way so as:
 - a) to unlawfully deprive the Applicant of her occupation of any part of the Property; or
 - b) to undertake any conduct that was likely to cause the Applicant to give up her occupation of any part of the Property, or to refrain from exercising any right or pursuing any remedy in respect of any part of the Property, so as to interfere with the peace or comfort of the Applicant or members of her household; or
 - c) persistently to withdraw or withhold services reasonably required for the occupation of the Property as a residence;so as to result in the Applicant giving up her occupation of the Property.

Reasons for Decision

- 20) I was obliged to the parties for the detailed submissions and documentation. I considered that further evidence from Martin & Co was not required before making a decision.
- 21) In regard to damages for unlawful eviction, the relevant provision is at section 36 of the 2008 Act:
 - (1) *This section applies if, at any time after 3rd December 1987, a landlord or any person acting on his behalf unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.*

- (2) *This section also applies if, at any time after 6th July 1988, a landlord or any person acting on his behalf—*
- (a) *attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises; or*
 - (b) *knowingly or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises—*
 - (i) *to give up his occupation of the premises or any part thereof; or*
 - (ii) *to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof,*
does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence,
and, as a result, the residential occupier gives up his occupation of the premises as a residence.
- (3) *Subject to the following provisions of this section, where this section applies, the landlord shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 37 below.*

- ...
- (8) *In this section—*
- (a) *“residential occupier”, in relation to any premises, means a person occupying the premises as a residence whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises;*
 - (b) *“the right to occupy”, in relation to a residential occupier, includes any restriction on the right of another person to recover possession of the premises in question;*
 - (c) *“former residential occupier”, in relation to any premises, means the person who was the residential occupier until he was deprived of or gave up his occupation as mentioned in subsection (1) or subsection (2) above (and, in relation to a former residential occupier, “the right to occupy” and “landlord” shall be construed accordingly).*

- 22) Section 36 does not apply to the circumstances of the application, even taking the Applicant's position at its highest. Even if:
- a) The Respondent falsely stated that she intended to sell, with the intention of finding a new tenant at a higher rent once the Applicant left (which the Respondent denies); and
 - b) Failed to issue a Notice to Quit (which the Respondent disputes); and
 - c) Failed to issue a valid section 33 notice due to it containing material errors (which, as I say below, I do not believe it did);

this would not result in a damages claim because the Applicant left of her own volition. I note that the Applicant decided to seek advice or challenge the validity of the eviction documentation. Sources of advice are plentiful and the Applicant did not seek them out. No undue pressure of the type referred to or contemplated by section 36 was placed upon the Applicant, and she was not “deprived” of the Property. Instead, the Applicant received intimation that she was being asked to leave by 27 July 2024 and she left voluntarily by that date. There is no conceivable claim under section 36.

- 23) In the circumstances, I decline to make findings on any of the disputed issues, such as whether the Notice to Quit was issued or the circumstances why the Respondent did not market the Property for sale. Further, as I do not need to consider whether the Tenancy was a Short Assured Tenancy nor whether the notices were valid, I also decline to consider those points in full.
- 24) I would however note that I do not see a basis for arguing that a section 33 notice, or a Notice to Quit, would be invalid due to the tenant’s middle name “Elisabeth” being spelled as “Elizabeth”. Further, I note that paragraph 22 overstates the Applicant’s position. She candidly accepted that she would have left even if the reason provided as to the Respondent’s motives was that the Respondent wished a higher paying tenant.
- 25) Finally, even with the current requirement for a section 33 eviction to satisfy the test for “reasonableness”, I do not see a basis for a claim for damages for unlawful eviction flowing if a landlord’s reasonableness justification is subsequently found to be false. Misleading information may be a basis for wrongful termination damages under a PRT, but section 36 of the 1988 Act focuses on acts and deeds (or omission of acts).

Decision

- 26) In all the circumstances, I refuse the order for unlawful eviction on the grounds that section 36 does not apply in the current circumstances.

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.

Joel Conn

17 September 2025

Legal Member/Chair

Date