



**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/24/5750

Re: Property at 41 Lochlea Drive, Ayr, KA7 3DR (“the Property”)

Parties:

Dr Libuse Mullin, 19 Lothian Road, Ayr, KA7 3BU (“the Applicant”)

Ms Samantha Cook, 41 Lochlea Drive, Ayr, KA7 3DR (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 66 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”). The Applicant sought an order to evict the Respondent from the Property.
2. A case management discussion (“CMD”) took place on 30 June 2025. The Tribunal issued a note summarising that discussion along with a notice of direction.
3. The Tribunal received written representations from the Applicant and her representative on 29 August, 1 September, 22 October, 23 October, 28 October and 11 November 2025.
4. On 12 November 2025, the Tribunal received an email from the Applicant’s representative, intimating his withdrawal from acting on behalf of the Applicant.

On the same day, the Tribunal received an email from the Applicant advising that she wished the hearing to proceed and that she would represent herself.

5. The Tribunal received written representations from the Respondent's representative on 7 October and 6 November 2025.

The hearing – 13 November 2025

6. The hearing proceeded by conference call. Both parties participated in the hearing. The Applicant confirmed that she wished to proceed with the hearing and was representing herself. The Respondent took part in the hearing and was represented by Mr Gerard Tierney of Ayr Housing Aid Centre. The Tribunal explained the purpose of the hearing. The Applicant gave evidence herself. The Respondent gave evidence and she called one witness, namely Katie Pollock. The evidence given by the parties and the Respondent's witness is summarised below. The summary is not a verbatim account of what was said at the hearing but rather an outline of the matters relevant to the Tribunal's consideration of the application. At the conclusion of the evidence, the Tribunal adjourned the hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to them.

Summary of evidence

The Applicant – Dr. Libuse Mullin

5. The Applicant is 79 years of age. She is a retired doctor, having retired in 2009. She used her pension lump sum to fund the purchase of the Property. The Property was purchased for her daughter to move into. That did not come to pass, so she and her husband decided to let the Property out. Her husband dealt with the management of the property. Since her husband passed away 5 years ago, she has been dealing with the management of it but is finding it increasingly difficult. She did not increase the rent for a period of 10 years. The main reason she wants to recover the Property and sell it is that she wishes to reduce the burden on her of dealing with the Property and the Respondent. She has a pension but she has a financial need and wishes to realise the capital of the Property. She has given the Respondent plenty of notice of her intention to sell the Property. Since giving notice, the relationship between the parties has broken down.
6. She owns another property in Mossgiel Road which was let out in 2018 and it remains tenanted. She considers that this is better than the Property and she intends to retain Mossgiel Road for her daughter to live in when she returns from abroad. Although title to that property is in her name, her daughter has helped to pay the mortgage on that property. That mortgage account has been paid in full. Her daughter helps her with the management of that property.

7. At the outset of the tenancy, the Respondent lived in the Property with her daughter and son. Her daughter moved out of the Property a while ago, but she has recently learned that the Respondent's daughter is living in the Property again with her baby. She learned about this development following an inspection which her letting agent arranged in October 2025. She could not recall any earlier discussion or notification that the Respondent's daughter and grandchild would be moving into the Property.
8. She suffers from high blood pressure and vertigo. She is finding the difficulties in recovering possession of the Property have caused her stress. She has doubled her medication. She looks after her 13 year old grandson and she finds the situation regarding this Property overwhelming.
9. She is aware that there are other properties in the area which would be suitable for the Respondent. She tried to inform the Respondent about these, but the Respondent reported her to the police.
10. Her registration as a landlord was due to expire on 17 December 2025 and she has renewed this for 3 years.
11. The Respondent has always been a good tenant and they had a good relationship until the notice to quit and section 33 notice were served. Payment of rent has been up to date, although the Respondent did not pay the increased rent as a result of advice she was given by her representative.
12. She received a copy of a letter the Respondent submitted from Kyle Academy dated 11 September 2025. She does not believe that the author of that letter is qualified to provide the information she did. She contacted the author of the letter and also the head teacher of Kyle Academy. She believes that the information contained in the letter is untrue and unreliable.

Samantha Cook

13. She has lived in the Property for 10 ½ years. She has enjoyed living there and would like to continue living there. She would like to remain living in that area in particular because of the location of her son's school. He attends his local secondary school which is Kyle Academy, having enrolled there in August 2025. He has a friendship group close by and the school is within walking distance. He was diagnosed with dyslexia in primary 4 and Kyle Academy provides much needed support. He has a special education needs record. If the family had to move from the area, he would be able to continue attending Kyle Academy, although he would potentially have to travel further. She started a full time job at Kyle Academy as a clerical assistant. They could travel together to Kyle Academy if they lived further away.
14. Her daughter, Katie, moved out of the Property approximately 2 years ago and moved to Carlisle. She suffered from anxiety during her pregnancy and required family support. She moved back into the Property in May 2025. She notified the Applicant's letting agent about that. The living arrangements are

such that her son has one bedroom, her daughter and grandchild have another bedroom and the third bedroom is primarily used for storage, containing clothes, drawers and has a pull out mattress where she sleeps.

15. When she took the tenancy for the Property, she understood that she had a short assured tenancy and that the tenancy would continue on a rolling basis unless there was a problem for one of the parties. She understood that the tenancy could be brought to an end. Although the Applicant intimated increases in rent, she rejected these having received advice that valid rent increase notices had not been served.
16. Since she received the section 33 notice and notice to quit, she decided that all communication between the parties would be better done through a third party, namely her representative.
17. She has been making efforts to find alternative properties. She started that within hours of being told by the Applicant that she intended to sell the Property. She contacted letting agents and friends and family who let out property. She contacted the Applicant's letting agent and asked them for a reference because she had the chance of other accommodation. Initially they refused to supply a reference and by the time they did supply a reference, she was told that she had missed out on the other accommodation. It is very different applying for a privately let property now compared to when she was looking for privately let property in 2015. Rent is very much higher and it is difficult even to arrange a viewing because the demand is so high. She contacted the local authority and applied for homeless accommodation. She was told that the demand for local authority housing outstrips supply. She is applying for any alternative accommodation that she can. Now that she is in full-time employment she feels that should help her search for alternative housing. She has received many rejection emails. She has arranged to view a property tomorrow. In the last year, she estimates that she has applied for 50 to 60 properties and has been rejected.
18. In late summer 2025, she received an offer of permanent accommodation from the local authority. She rejected that offer because it was in an area which she felt was not safe. This was not a decision she took lightly. At that time, she was working as a store assistant and there was a certain number of the customers who caused trouble for staff and made threats against them. A number of those customers lived in the area where she had been offered a property. She did not feel that it was a safe area for her and her family to live. She appealed against the offer of housing and that appeal was refused in or around September 2025. Her status as a homeless person was discharged. She was told that she would be put to the bottom of the housing list. She could not recall whether she took any advice about judicially reviewing the decision of the local authority. She is now on the general list for re-housing and has not received any other offers of accommodation. She is still making efforts to find other accommodation. She applied for a private let for a property across the road from her but was rejected for that.

19. Although it was put to her many times in cross examination that she had not applied for other properties, she maintained that she has been continuing to look for other rental properties, without success. She has not been given any reasons why her applications have been unsuccessful. She has money set aside for a deposit. Until 5 weeks ago, she did not have a full time contract of employment. Her father is the guarantor for her current tenancy and he is prepared to be guarantor in respect of any other tenancy she secures, if required.
20. Her daughter has registered as homeless and has been looking for alternative accommodation. When her daughter moved back into the Property, the intention was not that this would be a long term arrangement. Her daughter is doing well and is hopeful that she will obtain her own tenancy.

Katie Pollock

21. She is the daughter of the Respondent. She was living with her mother when the tenancy at the Property began. She moved out in November 2023 and moved back in May 2025. She was suffering from anxiety and required the support of her mother. She had no friends or family living nearby her in Carlisle. Her child was born on 7 September 2025 and is doing well.
22. She intends to return to work in April 2026. She has been applying for alternative accommodation. She has an appointment arranged with the local authority homeless team. She also has a viewing arranged for a property in Belmont. There is no guarantee that her application for a tenancy will be successful and she is in competition with other viewers. If she was offered a tenancy for that property, she would accept it.

Submissions

23. The Applicant submitted that it is reasonable for her to recover possession of the Property. Given her age, health and financial situation, she considers that she should be permitted to recover possession and sell the Property. She is finding it difficult to cope with the present situation. The Respondent's continued occupation of the Property is causing her unnecessary stress.
24. The Respondent's representative invited the Tribunal to take account of the Respondent's circumstances which were described by the Respondent and her daughter. There is evidence about the Respondent's son being anxious. The Respondent's daughter and grandchild are living with the Respondent and that is not a new development. The Applicant's landlord registration has been renewed for another period of 3 years. The Applicant's other property is still tenanted and whilst the Applicant says she wants to retire as a landlord, she will continue to let out the other property. The Tribunal was invited to take account of that apparent conflict in the Applicant's evidence. The Respondent's *esto* position was that if the Tribunal considers that it is reasonable to grant an order for eviction, it should exercise its discretion in terms of Rule 16A and delay

the execution of an eviction for up to 3 months. The Respondent generally accepts that she will have to move from the Property. She does not like being in this situation. It would be a fair and just outcome to give both parties certainty. In the event that the Respondent or her daughter secures alternative accommodation, an undertaking was given to inform the Applicant.

Findings in Fact

26. The Applicant is the heritable proprietor and landlord of the Property at 41 Lochlea Drive, Ayr, KA7 3DR.
27. The Respondent is the tenant of the Property.
28. The parties entered into a short assured tenancy which commenced 1 May 2015. The Initial Term of the tenancy was from 1 May 2015 to 1 November 2015, both dates inclusive.
29. The tenancy has continued on a month to month basis following the expiry of the Initial Term.
30. The Applicant served a notice in terms of section 33 of the Housing (Scotland) Act 1988 and a notice to quit by recorded delivery post on 22 August 2024.
31. On 16 December 2024 the Applicant applied to the Tribunal for an order for possession based on the operation of section 33 of the Housing (Scotland) Act 1988.
32. The short assured tenancy had reached its ish.
33. Tacit relocation was not operating.
34. No further contractual tenancy was operating.

Reason for Decision

35. The application proceeded on the basis of section 33 of the Housing (Scotland) Act 1988. The Applicant served a notice to quit and a notice in terms of section 33 of the Housing (Scotland) Act 1988. The Respondent did not take issue with the service of the notices. The conditions of section 33 had been satisfied in respect that the tenancy had reached its ish, tacit relocation was not operating and no further contractual tenancy was in operation. The issue to be determined by the Tribunal was whether it was reasonable for the Tribunal to grant an order for eviction.
36. The Respondent accepted that when she moved into the Property, she was aware that the tenancy could have been brought to an end. The tenancy has operated for 10 years. The Applicant is now 79 and wishes to reduce her

responsibilities as a landlord and to realise the capital from the Property. Although the Respondent's representative highlighted an apparent inconsistency in the Applicant's evidence, she explained why she wishes to retain ownership of her other rental property and that she receives assistance from her daughter in the management of that property. The Tribunal did not agree that the Applicant's evidence was inconsistent, given her explanation. It is however apparent that the Applicant will continue to be a landlord, regardless of the outcome of the present application. The Tribunal found the Applicant was a credible witness. In light of her circumstances, it was understandable that she may wish to sell the Property. She gave the Respondent notice of her intention to sell the Property 15 months ago.

37. In relation to the circumstances of the Respondent and her family, the Respondent relied on the location of her son's school as one of the factors to be taken account of. However, the Respondent explained in her evidence that her son has been allocated a place at the school and will be permitted to remain there even if the family move from the catchment area. The Respondent now works at the school her son attends, so she and her son can travel together to school in the event that the family move from the catchment area. The Tribunal was not persuaded that the location of the Respondent's son's school was a significant factor to be considered in determining the issue of reasonableness. The Respondent gave evidence about the efforts made by her to secure alternative accommodation. The Tribunal observed that, despite a notice of direction requiring the Respondent to lodge documentation evidencing her efforts, no such documentation was produced. The Respondent had been offered alternative accommodation by the local authority and had refused that offer. Whilst the Respondent gave a reason as to why she refused the offer, she did not produce any documentation to show why the local authority had refused her appeal. If there had been such significant issues of safety, one might have expected that the decision of the local authority may have commented on that issue when refusing the Respondent's appeal. The Respondent is now in full time employment and on her own evidence, she expects that her employment status should help her to secure accommodation.
38. Weighing the parties' respective positions, the Tribunal was persuaded that it is reasonable for an order for eviction to be granted.
39. Having decided that it is reasonable for an order for eviction to be granted, the Tribunal considered delaying the execution of an eviction. The Tribunal agreed with the Respondent's *esto* position. It would give both parties certainty as to when an eviction can take place, but also affords the Respondent slightly longer to find alternative accommodation. In terms of section 216(4) of the Bankruptcy and Diligence etc Scotland Act 2007, the Tribunal varied the period of charge by extending it for 3 months.

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.

Nicola Irvine

Legal Member/Chair

Date: 13th November 2025