



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/25/5033

Property at 29 Earn Road, Kirkcaldy, KY1 3JU (“the Property”)

Parties:

Mr David Mutch, 4 Tyrie Court, Kirkcaldy, KY1 1GE (“the Applicant”)

Mr Arnold Tomasz Herba, 29 Earn Road, Kirkcaldy, KY1 3JU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

- 1.** The Applicant seeks an order for possession of the property in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, and Section 11 Notice were lodged with the application.
- 2.** A copy of the application was served on the Respondent by Sheriff Officer. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 10 June 2026 at 10am and that they were required to participate.
- 3.** The CMD took place on 10 June 2026. Both the Applicant and the Respondent participated.

The Case Management Discussion

4. Mr Mutch told the Tribunal that he retired two years ago and needs to sell the property to help fund his retirement. It is his only rental property. He said that the Respondent has been an excellent tenant and that he first told him that the property would have to be sold in 2021. They discussed the possibility that the Respondent would buy it. However, the property is now too small for the Respondent's family and although he has delayed as long as possible, the Council have not provided alternative accommodation, and the property needs to be sold.
5. Mr Herba told the Tribunal that he does not oppose the application. He wants to move on and requires a bigger house for his family as he and his partner are living in a two bedroom property with three children aged 3, 7 and 14. However, he has nowhere else to go and is dependant on the Council providing them with a new home. He said that he has been on the Council waiting list for 6 years but has been told that he will not be housed until an eviction order is granted. In response to questions from the Tribunal, he said that he was not looking for additional time beyond the usual timescales for an eviction order. He is anxious to get the process started as it is very stressful to be in this situation.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 6 September 2025.
9. The Applicant wants to recover possession of the property in order to sell it to help fund his retirement.
10. The Respondent does not oppose the application and has applied to the Local Authority for re-housing.
11. The Respondent currently occupies the property with his partner and three children. As the property only has two bedrooms it is no longer suitable for the family's needs.

Reasons for Decision

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 18 May 2013 to 17 November 2013 with a provision that it would continue on a month to month basis after the initial term.

13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of six months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit on the Respondent on 6 September 2025. The Notice to Quit called upon the Respondent to vacate the property on 17 November 2025, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated.
16. The Tribunal is also satisfied that the Applicant served a Section 33 notice on the Respondent, also on 6 September 2025. This states that the Applicant requires possession of the property on 17 November 2025.
17. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
18. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) 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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also

been served on the Respondent, giving at least two months' notice that the Applicant required possession of the property.

19. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

20. The Tribunal had regard to the following: -

(a) The Respondent does not oppose the application and has applied to the Local Authority for housing. Although he has been on a waiting list for several years, he has been told that he will only be provided with accommodation when he becomes homeless and after an eviction order is granted.

(b) The property is no longer suitable for the Respondent's needs as it only has two bedrooms, and the Respondent lives there with his partner and three children.

(c) The Applicant intends to sell the property to help fund his retirement. It is his only rental property.

21. For the reasons outlined, the Tribunal is satisfied that it would be reasonable to grant the order for eviction.

Decision

22. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

J. Bonnar

10 June 2026