

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 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/25/5341

Re: Property at 1 Philips Wynd, Wellhall Grange, Hamilton, ML3 8PA (“the Property”)

Parties:

Ms Karina Aitchison, 19, Flat 7, Union Street, Hamilton, ML3 6PA (“the Applicant”)

Miss Vonnie Sweeney, 1 Philips Wynd, Wellhall Grange, Hamilton, ML3 8PA (“the Respondent”)

Tribunal Members:

Serena Weir (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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. By application dated 08 December 2025 the Applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“**the Act**”) and in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“**the procedure rules**”). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice, proof of service of the Notice to Quit and Section 33 Notice, two rent increase notices, a rent statement for the period 10 April 2023 to 10 December 2025 showing arrears of £2,859.43 and the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 together with proof of service of same.
2. On 23 February 2026 the application was accepted by the Tribunal and referred for determination by the Tribunal.
3. A Case Management Discussion (“**CMD**”) was set to take place on 23 July 2026 and appropriate intimation of that hearing was given to all parties. The application, supporting papers and details of the CMD were served on the

Respondent by Sheriff Officer on 23 June 2026. In terms of said notification, the Respondent was given an opportunity to lodge written representations. None were lodged prior to the CMD.

The Case Management Discussion

4. The CMD took place on 23 July 2026 at 10am via telephone case conference. The Tribunal delayed commencement of the CMD for 5 minutes to give the Respondent an opportunity to join late but she did not do so. The Applicant was in attendance. The Respondent did not take part.
5. Following introductions and introductory remarks by the Legal Member, the Tribunal explained the purpose of the CMD and the powers available to the Tribunal to determine matters.
6. The Tribunal asked various questions of the Applicant with regard to the application.
7. The Applicant was the landlord and the Respondent the tenant of a Short Assured Tenancy over the Property dated 13 September 2016 with a start dated of 10 September 2016. The tenancy continued until 10 March 2017 and on a month to month basis thereafter. The terms of the tenancy require two months' notice by either party to end the tenancy.
8. An AT5 notice under section 32 of the Act was served on the Respondent prior to the creation of the tenancy.
9. The Respondent was served with a valid Notice to Quit by posting on 05 September 2025. In the said Notice to Quit, the Applicant gave notice to the Respondent that she would require to remove from the Property on or before 09 November 2025.
10. Further, on the same date, the Applicant served upon the Respondent notice under Section 33(1)(d) of the Act stating that possession was required of the Property as at 09 November 2025.
11. The tenancy has come to an end.
12. Tacit relocation is not occurring.
13. Notification was provided by the Applicant to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
14. The Applicant explained that she had gone through a period of ill health in 2023. Whilst she had previously considered selling the Property, this period of ill health finally made her decide to move forward with the sale of the Property. The Applicant also explained that the recent issues regarding the Respondent failing to pay her rent in full also meant that she simply could not sustain being a landlord of the Property any longer. The Applicant had given consideration to having an agent appointed to manage the Property but the rent arrears meant that no agent would take this on. Similarly, the Applicant has considered selling the Property with the Respondent in place but the rent arrears meant that this was not an option.
15. The Applicant confirmed that the Respondent is believed to be in receipt of benefits. Any payments received by the Applicant for rent have been from Universal Credit. The Applicant does not know whether the Respondent is presently working.
16. The Applicant does not have any information about any health or vulnerability concerns on the part of the Respondent. Similarly, the Applicant does not have any information about what, if any, steps which have been taken by the Respondent to find alternative accommodation.

17. It was believed by the Applicant that the Respondent has two children, one older child and one who was at primary school stage. It was not clear whether either were living at the Property.
18. The Applicant explained that in early July 2026, she had received email correspondence from the factors of the Property. Neighbours were concerned that the windows to the Property were being left open when no one was in the Property. Neighbours believed that the Respondent had left the Property. One neighbour had been able to gain access to the Property and confirmed that it has been left in a mess.
19. The Respondent's failure to pay rent has financially impacted on the Applicant. There is a mortgage over the Property. The arrears were now £4,131.91. The Applicant does not know why the Respondent has stopped paying rent. The situation was very stressful for the Applicant. The Respondent does not respond to communications from her.
20. The Tribunal Members adjourned to consider the application and, on re convening, confirmed that the Tribunal was satisfied that the eviction application was in order and that it was reasonable for the order sought to be granted today.

Findings in Fact

21. The Applicant is the registered owner of the Property.
22. The Applicant and the Respondent are respectively the landlord and tenant of the Property by virtue of a Short Assured Tenancy in terms of the Act dated 13 September 2016 with a start date of 10 September 2016. The tenancy continued until 10 March 2017 and from month to month thereafter. The terms of the tenancy require two months' notice by either party to end the tenancy.
23. An AT5 notice under section 32 of the Act was served on the Respondent prior to the creation of the tenancy.
24. The Respondent was served with a valid Notice to Quit by posting on 05 September 2025. In the said Notice to Quit, the Applicant gave notice to the Respondent that she would require to remove from the Property on or before 09 November 2025.
25. Further, on the same date, the Applicant served upon the Respondent notice under Section 33(1)(d) of the Act stating that possession was required of the Property as at 09 November 2025.
26. The tenancy has come to an end.
27. Tacit relocation is not occurring.
28. Notification was provided by the Applicant to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
29. The Applicant wishes to sell the Property.
30. The Respondent lives at the Property. The Respondent is believed to have two children, one older child and one who was at primary school stage. It was not clear whether either were living at the Property.
31. The Respondent is in receipt of Universal Credit.
32. The Respondent is in arrears of rent in the sum of £4,131.91. The Applicant does not know what the Respondent has failed to pay the full rent when due. The Respondent's failure to pay the full rent has had a financial impact on the Applicant. The Applicant requires to pay a mortgage on the Property.
33. It is not known that the Respondent has any health conditions or vulnerability.
34. It is not known what steps the Respondent has taken to find alternative accommodation.

35. The Respondent is not responding to correspondence from the Applicant.

Reasons for Decision

36. The application proceeds upon Section 33 of the Act which states:-

“Recovery of possession on termination of a short assured tenancy.

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 ish;

(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.”

37. The Tribunal considered that the procedure had been fair. The Tribunal was satisfied that it has sufficient information before it to make a final order at a CMD within rule 17 of the procedure rules.

38. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 notice in terms of the Act had been properly and timeously carried out by the Applicant in connection with this application.

39. The Tribunal considered the Notice to Quit and Section 33 notice provided and the terms of the tenancy agreement. The tenancy was brought to an end by the combination of the Section 33 notice and Notice to Quit served on the Respondent by posting on 05 September 2025 where the notice to quit had an ish of 10 November 2025.

40. 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.

41. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in a frequently quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

42. As to reasonableness, the Tribunal considered the background to the application, the supporting documentation lodged by the Applicant and the oral submissions on behalf of the Applicant at the CMD.
43. The Tribunal accepted the unchallenged evidence that the Applicant is entitled to sell the Property and wishes to do so. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of a landlord over the occupancy rights of the tenant, or vice versa.
44. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent.
45. Accordingly, the ground for eviction was accordingly established and the Tribunal was satisfied that it was reasonable in all of the circumstances to grant the eviction order.

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. Weir

23rd July 2026

Legal Member/Chair

Date