



**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/22/1747**

**Re: Property at 37/2 Market Street, Haddington, East Lothian, EH41 3JE (“the  
Property”)**

**Parties:**

**Mrs April Cruickshank, 10 John Brown Court, Haddington, East Lothian, EH41  
3JB (“the Applicant”)**

**Mr Lee McClung, 37/2 Market Street, Haddington, East Lothian, EH41 3JE (“the  
Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member) and Sandra Brydon (Ordinary  
Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the order for recovery of possession be granted.**

**A Background:**

[1] The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was received by the First - tier Tribunal (FTT) on 7 June 2022 and dated 2 June 2022.

[2] The following documents were lodged by the Applicant prior to the date of the Case Management Discussion (CMD):

1. Copy Tenancy Agreement commencing 30 November 2017
2. AT5 document for with receipt confirmed dated 10 November 2017
3. Notice to Quit dated 17 November 2021 with date of removal of stated as 1 June 2022.

4. S 33 Notice dated 17 November 2021 with date of vacating premises of 1 June 2022
5. Recorded delivery slip and track and trace confirmation of service of the Notices to Quit and S 33 Notice on 20 November 2021
6. S 11 Notice to the Local Authority
7. Letter from Anderson Strathearn dated 20 April 2022 regarding sale of the property.

The documents are referred to for their terms and held to be incorporated herein.

[3] A Case Management Discussion (CMD) had been fixed for 2 September 2022 and the notification served on the Respondent on 26 July 2022 by Sheriff Officers

### **B The Case Management Discussion:**

[4] The CMD took place on 2 September 2022. The CMD took place by teleconference and both the Applicant and the Respondent took part. Also in attendance was Mr Alistair Cruickshank, the Applicant's husband, whom the Applicant had asked to speak on her behalf. The legal member explained the purpose of the Case Management Discussion.

[5] Mr McClung stated they had not sent in any correspondence but he wished to put his position to the Tribunal at the CMD. He stated that there was no opposition to the application and there were no specific matters he wished to raise regarding reasonableness. He had already registered with the Local Authority and local housing associations as well as mid market rental associations and had been advised that without an eviction order granted there was little they could do for him. He was advised by the local authority that if he moved out without an order having been granted he would be classed as having made himself homeless. He understood that the owner needs the property back. He confirmed he was a single man with no dependents living with him and did not have any specific health or other issues.

[6] Mr Cruickshank on behalf of the Applicant referred to the application and moved for the order and explained that the property is in the Applicant's sole name. He has recently retired and they are seeking to sell the property to raise funds for their retirement.

### **C Findings in Fact:**

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 30 November 2017 for an initial period to 1 June 2018 and continued thereafter from month to month (clause 1).
2. Document AT5 was received by the Respondent on 10 November 2017.
3. The notice period stated in clause 9.2 for termination of the contractual tenancy by the landlord is 2 months.
4. Notice to Quit dated 17 November 2021 was served on the Respondent by recorded delivery on 20 November 2021 advising of the termination of the tenancy on the termination date of 1 June 2022.
5. Tacit relocation is not operating due to the Notice to Quit.

6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by recorded delivery on 20 November 2021 advising of the intention to repossess the premises on 1 June 2022.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continues to occupy the property at the date of the CMD on 2 September 2022.
9. The Respondent lives at the property without any dependents.
10. There are no specific health or access issues for the Respondent with regard to identifying alternative accommodation.
11. The Applicants seek to sell the property to raise funds for her retirement,
12. The Applicant is reasonably entitled to use the process under S 33 to gain repossession of her property in these circumstances.
13. The Respondent has been actively looking for alternative accommodation and has been advised in order to obtain further assistance he requires to show that an order has been granted.

#### **D Reasons for the Decision:**

[7] The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
  - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
  - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
  - (i) correcting; or

(ii) reviewing on a point of law,  
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

[8] The Tribunal concluded it was not necessary to fix a hearing as the Respondent did not oppose the order being granted and the documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at the CMD on behalf of the Applicant and by the Respondent.

[9] The legal test for an eviction order is set out in S 33 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020. The Coronavirus (Scotland) Act 2020 applies to this case as the Notices were served after 7 April 2020 when the Act came into force.

S 33 in the version applicable where the notice to quit and S 33 notices were served between 3 October 2020 and before 30 March 2022 stated:

***33 Recovery of possession on termination of a short assured tenancy.***

(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; and

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that time shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

In short, in terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its end
2. That tacit relocation is not operating
3. That there is no further contractual tenancy in existence
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. That it is reasonable in all the circumstances to grant the order.

[10] The facts of the case are not in dispute. Fair notice of all aspects of the Applicant's case had been provided to the Respondent. The Respondent did not oppose the granting of the order. The dates and documents served as stated above were not in dispute.

The Tribunal was satisfied on the basis of the documents lodged that that all formal requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

[11] The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its end. The Respondent had been served a notice to quit with the required notice period. Tacit relocation does not operate. The landlord had served on the Respondent a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 6 months notice period. The Notice to Quit ended the contractual tenancy at an end date and thus the tenancy became a statutory assured tenancy in terms of S 16 of the Housing (Scotland) Act 1988.

[12] Even if the formal tests of S 33 (1) of the Housing (Scotland) Act 1988 are met, the FTT still has to consider whether it is reasonable in all the circumstances to grant the eviction order. In this case the FTT notes that the reason given by the Respondent for not moving was that he was in the process of finding alternative accommodation and had been advised that he required to evidence an order for recovery of possession to receive further assistance from the local authority and to increase his chances of obtaining accommodation via a housing association or midmarket rent association as they currently would not class him as high priority because he currently has accommodation. He has no problems with the Applicant wishing to sell the property. There was no opposition to the application and the Respondent did not put forward any reasons why it would not be reasonable to grant the order. The Applicant has a legitimate purpose in wishing to sell the property.

[13] The Tribunal thus considered that on balance and taking into account all the information available it is reasonable to grant the order.

**Decision:**

The Tribunal grants the order for recovery of possession. The decision was unanimous.

**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.

**Petra Hennig McFatridge**  
Legal Member/Chair

**2 September 2022**  
Date