



**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/22/2830**

**Re: Property at 55 Tamarack Crescent, Uddingston, G71 5LQ (“the Property”)**

**Parties:**

**Mr Gordon McKay, 52 Muirfield Terrace, Gullane, EH31 2HW (“the Applicant”)**

**Mr Brian McCue, 55 Tamarack Crescent, Uddingston, G71 5LQ (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted against the respondent**

**Introduction**

1. This application is under rule 66 and section 33 of the Housing (Scotland) Act 1988. The application seeks an eviction order.
2. The applicant was represented by Ms Samantha Fraser of Lothian Homes. The respondent failed to participate in the hearing.
3. Sheriff officers have certified service upon the respondent on 22 November 2022. The respondent wrote to the tribunal on 5 December 2022 and advised that he was aware of the proceedings and referenced the tribunal case reference. He made no formal submissions in opposition.

## Findings and Reasons

4. The property is 55 Tamarack Crescent, Uddingston, G71 5LQ.
5. The applicant is Mr Gordon McKay. He is the heritable proprietor and registered landlord of the property. The respondent is Mr Brian McCue who is the tenant.
6. The parties entered into a short assured tenancy which first commenced on 9 November 2011. The respondent did have a joint tenant, his wife, who is now deceased. An AT5 Notice under section 32 of the 1988 Act was served on the respondent prior to the creation of the tenancy.
7. On 6 June 2022 the applicant served upon the respondent a Notice to Quit. In the terms of the said Notice to Quit, the applicant gave notice to the respondent that he would require to remove from the property on or before 9 August 2022. Further, on 6 June 2022 the applicant served upon the respondent Notice under Section 33(1)(d) of the Housing (Scotland) 1988 stating that possession was required of the property as at 9 August 2022. A recorded delivery slip evidences the posting of these documents and the respondent's son acknowledged receipt of the items on 7 June 2022. Sufficient notice was given of the applicant's intention to recover the property.
8. The short assured tenancy between the parties has reached its end. Tacit relocation is not operating. No further contractual tenancy is in existence. The applicant has complied with the terms of Section 33(1)(d) of the Housing (Scotland) Act 1988.
9. The Tribunal also requires to consider the reasonableness of the eviction order being granted.
10. The applicant seeks to evict the respondent on the grounds that he intends to sell the let property. He acquired the property in 2009 when the respondent and his wife owned the property, whose interests were subject to a trust deed. The applicant, through an insolvency practitioner, agreed to purchase the property and let the property back to the respondent and his wife to enable them to continue to reside in their family home. They also had the option to repurchase but this never happened. He never had any intention to own the property on a long term basis and wishes to sell it now. The respondent has struggled financially to maintain the rent and is content that he now leaves the property. He currently shares this with his adult son who can support him. The respondent is not opposed to the eviction application.
11. A section 11 Notice under the Homelessness etc (Scotland) Act 2003 has been issued to North Lanarkshire Council. In the event of an eviction order being made the local authority is under a statutory duty to make suitable alternative accommodation available.
12. The Tribunal concluded that it was reasonable 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.



6 January 2023

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Legal Member/Chair

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Date