



**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/22/0344**

**Re: Property at 63 Gilmour Wynd, Stevenston, North Ayrshire, KA20 4DA (“the  
Property”)**

**Parties:**

**Mr Sean Lennon, 105 Ballylough Road, Castlewellan, County Down, BT31 9JG  
 (“the Applicant”)**

**Miss Brenda McDermott, 63 Gilmour Wynd, Stevenston, North Ayrshire, KA20  
4DA (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

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

**Background**

On 6<sup>th</sup> February 2022 the Applicants lodged an application with the Tribunal in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking an order for eviction of the Respondent in terms of section 33 of the Housing (Scotland) Act 1988.

Lodged with the Application were:

1. Copy Tenancy Agreement dated 27th February 2015 with a date of entry of 3rd March 2015 and an expiry of 4<sup>th</sup> September 2015
2. AT5 signed by the Respondent on 27th February 2015
3. Notice to Quit dated 20th July 2021 with leave date of 4<sup>th</sup> February 2022
4. Section 33 Notice dated 20th July 2021 with leave date of 4<sup>th</sup> February 2022
5. Sheriff Officer’s Execution of Service for items 3 and 4

## 6. Section 11 notice

The papers were served on the Respondents by Sheriff Officer on 22<sup>nd</sup> April 2022.

### **Case Management Discussion**

A Case Management Discussion (“CMD”) took place by teleconference on 6<sup>th</sup> June 2022.

The Applicant was represented by Mr Hall of Homesure Portfolio Management. The Respondent represented herself.

The Chairperson explained the purpose of a CMD in terms of Rule 17.

The Chairperson asked the Respondent if she was opposing the application and she said that she was not. The local authority have offered her a property and she is waiting to view it. Having an eviction order against her will not harm her application as the local authority are aware of the circumstances. She made it clear that she was not opposing the application in any way.

Mr Hall said that his clients were having to exit the Buy To let market. He was not privy to the reason why. He moved for the order to be granted.

### **Findings In Fact**

1. The parties entered in to a Short Assured Tenancy Agreement with an initial term of 3<sup>rd</sup> March 2015 to 4<sup>th</sup> September 2015 and monthly thereafter, with an AT5 having been served;
2. Notice to Quit and section 33 Notice were served on the Respondent correctly and timeously;
3. The Applicants were having to exit the buy to let market;
4. The Respondent had been offered other accommodation and was not opposed to the order being granted.

### **Reasons For Decision**

The Tribunal were satisfied from the information put forward that the ground of eviction had been established.

Granting an application for eviction based on section 18 of the Housing (Scotland) Act 1988 provided that the notices are correct and have been served correctly, is normally mandatory. However, in terms of Section 2 and Schedule 1,

Paragraph 3 of the Coronavirus (Scotland) Act 2020 makes the ground discretionary and the Tribunal has to consider reasonableness. The section is as follows:

*3(1)The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph.*

*(2)Section 18 (orders for possession) has effect as if—*

*(a)subsections (3) and (3A) were repealed,*

*(b)in subsection (4), for “Part II” there were substituted “Part I or Part II”,*

*(c)in subsection (4A), after the word “possession” there were inserted “on Ground 8 in Part I of Schedule 5 to this Act or”.*

*(3)Section 20 has effect as if subsection (6) (no discretion where landlord entitled to possession) were repealed.*

*(4)Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if in subsection (1)—*

*(a)in the opening words, for the word “shall” there were substituted “may”,*

*(b)after paragraph (b), the word “and” were repealed,*

*(c)after paragraph (d) there were inserted “, and*

*(e)that it is reasonable to make an order for possession.”.*

*(5)Schedule 5 (grounds for possession of houses let on assured tenancies) has effect as if for the heading of Part I there were substituted “Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act 2020”.*

The Tribunal has to consider all the circumstances relevant when deciding on reasonableness. However in this case the Respondent had been offered other accommodation and was not opposed to the action, therefor the Tribunal considered it reasonable to grant the eviction.

## **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.

# A Kelly

7 June 2022

---

Legal Member/Chair

---

Date