



**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/23/1629**

**Re: Property at 101 Townfoot, Dreghorn, Irvine, KA11 4EJ (“the Property”)**

**Parties:**

**Mr Robert Bennett Adrain Irvine, Mrs Martha Irvine, 25 Gigha Wynd, Irvine, KA11 1DG (“the Applicant”)**

**Mr Martin Mitchellhill, Ms Jade Hume, 101 Townfoot, Dreghorn, Irvine, KA11 4EJ (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Eileen Shand (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.**

**Background**

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession of the property under a short assured tenancy granted by the Applicants to the Respondents.
2. The application contained :-
  - A copy of the tenancy agreement,

- a copy of the AT5,
- a copy of the Section 33 Notice,
- a copy of the Notice to Quit,
- evidence of service, and
- Section 11 Notice.

3. The case had called for a case management discussion on 15 August 2023. Appearing were the Applicants' agent, Ms Donnelly of TC Young (with an observer Miss Brechany, Trainee Solicitor) and agent for the Respondents, Mr Meek from CHAP.

#### Case Management Discussion

4. The Applicants' agent advised that she was moving for an order for eviction today. She advised that the order was not being opposed by the Respondents. She advised that the local authority had agreed that they would assist the Respondents in terms of finding new accommodation. She advised that she understood that there was no point being taken on the validity of the notices or application.
5. In terms of reasonableness she advised that first, the Applicants wanted to confirm that the application to recover the property was not in any way due to the conduct of the tenants, there were no issues with rent arrears or any other difficulties with the tenants. The reasons that they sought recovery of the property was due to the health needs of the applicants. They are 68 and 72 years of age. This house had been their family home. It has a walk-in shower which suits their health needs. Several years ago, they had rented the house out and moved to London to live with their daughter and to look after their grandchildren. Unfortunately, Mrs Irvine's health has deteriorated since then, she has significant arthritis and is recovering from cancer. Given these health issues she is no longer able to live in London in her daughter's house and care for the children. She advised that the Applicants are currently living with Mr Irvine's sister, who is also elderly, and the accommodation is not suitable for

them on a long term basis. They have no other accommodation to live in. They wish to recover the property and they will return there to live in it as their permanent home.

6. The Respondents' agents advised that the Respondents were not opposed to the order being granted. He confirmed that the Respondents had been in touch with the council and they have agreed to assist the Respondents with accommodation if the order is granted. He confirmed that they took no issue with it being reasonable to grant the order for eviction.

### Findings in Fact

7. We found the following facts established:-
8. That there was in place a short assured tenancy.
9. That there was a tenancy agreement between the Applicants and the Respondents in respect of the Property.
10. The tenancy commenced on 3 March 2014 for an initial period of 6 months.
11. The AT5 Form was in the prescribed format and was dated 3 March 2014.
12. The notice to quit and section 33 notices contained the prescribed information, and both were dated 3 November 2022, both sought vacant possession as of 3 March 2023. Both provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices. The notice to quit terminated the tenancy on an *ish* date.
13. There was a section 11 notice addressed to the local authority.
14. The applicants were 68 and 72 years of age. The female applicant had ill-health problems. They required the property to live in as it was more suitable for their health needs. They had no other property to live in. This property had been their

family home before it was rented out. They intended to make it their permanent family home again.

### Reasons for Decision

15. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its term; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenant that they require possession of the house; and where it is reasonable to do so.
16. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondents. We also noted that a section 11 notice has been sent to the local authority.
17. Having regard to the question of reasonableness, the Respondents did not object to the order being granted. They also advised that they considered it would be reasonable to grant the order. We placed weight on the Respondents position in deciding if it is reasonable to grant the order. In addition, we placed weight on the fact that the Applicants' required to return to live in the property due to a change in their circumstances, namely the female applicant's health needs. The property appeared to be suitable for the Applicants to live in. It has a walk-in shower which will suit their needs. This property had been their family home. They intended to live there on a permanent basis. They had nowhere else to live on a long term basis. Given all of this information we consider that it would be reasonable to grant an order for eviction in this case.
18. Accordingly, as we were satisfied that all of the requirements of section 33 had been met and we consider that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

19. We grant an order in favour of the Applicants against the Respondents for recovery of possession of the property.

**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.**

**Melanie Barbour**

**15 August 2023**

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**Legal Member/Chair**

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**Date**