



**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/22/3172

**Re: Property at 18 McMahon Drive, Newmains, Wishaw, ML2 9BS (“the
Property”)**

Parties:

**Mr Mark Doherty, Mrs Karen Doherty, 26 Danesfort Park, Belfast, BT9 7RG (“the
Applicants”)**

**Ms Susan Park, 18 McMahon Drive, Newmains, Wishaw, ML2 9BS (“the
Respondent”)**

Tribunal Members:

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

Decision

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

Introduction

1. This eviction application is under rule 66 and section 33 of the Housing (Scotland) Act 1988.
2. The applicants were represented by Miss Alexandra Wooley of Messrs Bannatyne Kirkwood France & Co, Solicitors. The respondent joined the hearing personally and represented their own interests. She was supported by Mr Jordan Bird of Hamilton CAB.

Findings and Reasons

3. The property is 18 McMahon Drive, Newmains, Wishaw ML2 9BS.

4. The applicants are Mr Mark Doherty and Mrs Karen Doherty. They are the heritable proprietors and registered landlords of the property. The respondent is Ms Susan Park who is the tenant.
5. The parties entered into a short assured tenancy which commenced on 1 May 2009. An AT5 Notice under section 32 of the 1988 Act was served on the respondent prior to the creation of the tenancy. The tenancy has been extended with the most recent written agreement being entered into in May 2017. Monthly rent was agreed at £450 per month.
6. On 23 May 2022 the applicants served upon the respondent a Notice to Quit. In the terms of the said Notice to Quit, the applicants gave notice to the respondent that she would require to remove from the property on or before 2 August 2022. Further, on 23 May 2022 the applicants 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 2 August 2022.
7. The short assured tenancy between the parties has reached its end. Tacit relocation is not operating. No further contractual tenancy is in existence. The applicants have complied with the terms of Section 33(1)(d) of the Housing (Scotland) Act 1988. Adequate notice has been given to the respondent.
8. The legal basis for recovery of possession has been established and was not the subject of dispute.
9. The tribunal requires to consider the reasonableness of the eviction order being granted.
10. The applicants' position is that they intend to sell the let property as the mortgage payments have increased considerably due to the repeated hikes in interest rates. The property requires repairs, including new windows and doors, which they have costed at £5,900, which they cannot afford.
11. The respondent has found the prospect of leaving the property a shock as she has lived in the property for so many years. She acknowledges however that the applicants do face the financial difficulties claimed. She suffers from anxiety and depression but this was not advanced as a reason as to why she cannot move home.
12. The property does need upgrading and the respondent would benefit from a move to a property which did not have issues of disrepair. She is a good tenant, having always paid her rent and abided by the other terms and conditions of the tenancy agreement.
13. The respondent is single and has no dependents.
14. The applicants have served a valid notice under section 11 of the Homelessness etc. (Scotland) Act 2003. In the event of an eviction order being granted the local authority has a statutory duty to make alternative accommodation available for the respondent.

15. The applicants cannot be compelled to continue to own the property and renovate it at considerable cost if they do not have the means.
16. The tribunal concluded that it was reasonable to grant the eviction order.
17. It was of the a matter of some agreement between the parties that it would be appropriate to extend the period for implementation of the eviction order to a period of two months under regulation 2 of the Scottish Tribunals (Time Limits) Regulations 2016. This is in the interests of justice to do so given the upcoming festive period and the need for the respondent to take the necessary steps to move after so many years.

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.

Richard Mill

16 December 2022

Legal Member/Chair

Date