



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/24/4209**

**Property at 28B Atholl Street, Perth, PH1 5NP (“the Property”)**

**Parties:**

**Mrs Rhona McLaren, Mr Andrew McLaren, Wester Keillour Farm, Methven, Perth, PH1 3RA (“the Applicant”)**

**Mr Neil Robertson, Mrs Cara Brown, 28B Atholl Street, Perth, PH1 5NP (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondents in favour of the Applicant. The Tribunal also ordered a delay in execution of the order until 22 August 2025 in terms of Rule 16A(d) of the Tribunal Procedure Rules 2017.**

**Background**

- 1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, and Section 11 Notice were lodged with the application.**
- 2. A copy of the application was served on the Respondents by Sheriff Officer. All parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 14 May 2025 at 2pm and that they were required to participate.**

3. The CMD took place on 14 May 2025. The First Applicant and both Respondents participated.

### **The Case Management Discussion**

4. Ms Brown told the Tribunal that the application is not opposed. They are waiting to be re-housed by the Local Authority as they require more suitable accommodation for their son, who has autism. They have already been offered a couple of properties which were not suitable.
5. Mrs McLaren told the Tribunal that they have wanted to sell the property for a few years but did not want to evict the Respondents as they have been good tenants. However, when she discovered that they want to move to more suitable accommodation she started the process. They are planning to sell all their rental properties as they become vacant because they want to move out of the rental market. Some have already been sold and there are 7 which are still occupied by tenants. These will all be sold in due course.
6. Ms Brown advised the Tribunal that the Council has accepted that they need to move. Their son is 8 years of age and requires a house which is secure, and which has a secure front door and garden. The property is a first floor flat. The communal garden is poorly maintained and is not secure. The front door to the building is often damaged. It is unlikely that their son will have to move school as he was placed in his present school by the Council and transport is provided.
7. In relation to the question of whether the Tribunal should order a delay in execution of the order, Mrs McLaren said that this might just delay an offer from the Council. Mr Robertson and Ms Brown told the Tribunal that they would prefer to avoid the school holidays as their son needs full time care and attention when not at school. This would make it difficult for them to pack up, move and carry out any work at their new home which might be required. Mrs McLaren said that she had no objection to mid-August, after the schools go back, if that is easier for the Respondents.

### **Findings in Fact**

8. The Applicant is the owner and landlord of the property.
9. The Respondents are the tenants of the property in terms of a short assured tenancy agreement which started in 2012.
10. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 21 May 2024.
11. The Applicants want to recover possession of the property in order to sell it. They are in the process of selling all their rental properties.

12. The Respondents have a son with autism. The property is no longer suitable for their son's needs.
13. The Respondents do not oppose the application and expect to be re-housed by the Local Authority.

### **Reasons for Decision**

14. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 6 months from 1 April 2012 with a provision that it would continue on a month to month basis after the initial term.
15. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
16. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of six months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
17. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondents on 21 May 2024. The Notice to Quit called upon the Respondents to vacate the property on 31 July 2024, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 21 May 2024 and gave the Respondents 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
18. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months’ notice that the Applicant required possession of the property.

19. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

20. The Tribunal had regard to the following: -

(a) The Respondents do not oppose the application.

(b) The Applicants intend to sell the property and are in the process of selling all their rental properties.

(c) The property is no longer suitable for the Respondents and their son. They have been in contact with the Local Authority and are on a waiting list for housing. They hope to be offered more suitable accommodation.

21. For the reasons outlined, the Tribunal is satisfied that it would be reasonable to grant the order for eviction.

22. The Tribunal is also satisfied that a delay in execution is appropriate. The Respondents would find it difficult to pack and move from the property while looking after their son. A delay until after the schools return in August would make this process much easier. The Applicant confirmed that she did not oppose a delay until mid-August.

## **Decision**

23. The Tribunal determines that an order for possession of the property should be granted against the Respondents and orders a delay in execution to the 22 August 2025.

## **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.**

**J Bonnar**

**Legal Member**

**Date: 14 May 2025**