

Housing and Property Chamber

First-tier Tribunal for Scotland



Decisions with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/23/3302

Re: Flat 15, 7 East Pilton Farm Crescent, Edinburgh, EH5 2GF (“the Property”)

Parties:

Siberite Mortgages Limited, The Pavillions, Bridgwater Road, Bristol, BS13 8AE (“the Applicant”); and

TLT LLP, 41 West Campbell Street, Glasgow, G2 6SE (“the Applicant’s Representative”); and

Mr Ambrose Yuk Tung, residing at Flat 15, 7 East Pilton Farm Crescent, Edinburgh, EH5 2GF (“the Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
G Darroch - Ordinary Member**

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant the Application.

Background and Case Management Discussion on 10th January 2024

1. This Application has been brought in terms of Rule 65 (Application for an order for possession in relation to assured tenancies) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

2. The Respondent Mr Tung entered into a short-assured tenancy agreement with Mr Roy Fever in 2008. Mr Fever defaulted in his mortgage payments to the Applicant, Siberite Mortgages Limited (“Siberite Mortgages”), in 2019. Siberite Mortgages obtained a Decree to enter into possession of the Property, and sell it, at Edinburgh Sheriff Court on 16th June 2022. Siberite Mortgages served a Notice to Quit the Property as well as a Notice in respect of their intention to raise proceedings for possession of the Property, based on Mr Fever’s mortgage default, on Mr Tung on 30th June 2023. Through their Representative they submitted this Application to the Tribunal in September 2023.
3. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call, at 10.00am on 10th January 2024. The Representative’s Ms J Neep attended as did the Respondent Mr Tung.
4. Ms Neep submitted that neither she nor Siberite Mortgages had previously received any communications from Mr Tung or anyone acting on his behalf. She stated that as the mortgage default occurred in 2019, a Court Decree was granted in June 2022, and that appropriate Notices were served on Mr Tung in June 2023 he has had sufficient time to make arrangements to obtain alternative accommodation. She stated that, in addition to the principal mortgage amount, outstanding arrears in the sum of £80,000.00 have arisen since 2019. Ms Neep submitted that, in the circumstances, it was reasonable that an eviction order be granted by the Tribunal.
5. Mr Tung stated that he resided in the Property with his brother and mother, aged 70. He stated that his mum was retired and she has chest and blood pressure health problems. Mr Tung said that he had obtained advice from a Law Agency and they had ultimately said to him that an eviction order will be granted. He said that he and his family accepted the position and were making plans to move out. He stated that they require some more time to “say goodbye” to the Property in which they have resided since 2009 and, in particular, to mark their late father’s anniversary in March 2024. Mr Tung stated that both he and his brother are in employment and have the means to pay for alternative accommodation. Mr Tung said that he is a controller working for Edinburgh Trams and that his brother works with TSB Bank plc. Mr Tung acknowledged that he and his family had resided in the Property without paying rent for a considerable period of time, and certainly since before the Court Decree was granted in June 2022. He could not be specific as to the last time that he had paid rent but stated that he and other tenants of Mr Fever had been advised by an MP to withhold rent at a meeting some years ago.

Findings in Fact and Law

6. Siberite Mortgages are entitled to recover possession of the Property, and to sell it, as a result of the mortgage default of Mr Roy Fever, and in terms of a Court Decree dated June 2022.
7. Mr Tung and his family have not paid rent for the Property for some two years or more. They are making plans to move to alternative accommodation and require

an appropriate period of time to arrange to move out of the Property, in which they have resided since 2009, and into a new home.

8. The ground upon which the Application proceeds, namely Ground 2 in Schedule 5 to the 1988 Act, is satisfied. It is reasonable that an Order for Possession is granted.
9. It is also reasonable that the Order is not enforced before 1st April 2024 given Mr Tung's family's circumstances, their length of time staying at the Property, and the time needed for them to move out of the Property and into new accommodation.

Reasons for Decision

10. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

11. Accordingly, the Tribunal now has jurisdiction in relation to claims by applicants, such as Siberite Mortgages, against tenants such as Mr Tung, for possession of properties which have been subject to tenancy agreements, such as the tenancy agreement between Mr Tung and Mr Fever.

12. In terms of Section 18 of the 1988 Act the Tribunal shall not make an order for possession of a house let on a tenancy except on one or more of the grounds set out in Schedule 5 to the 1988 Act.

13. Ground 2 in Schedule 5 to the 1988 Act provides that it is an eviction ground that a property is subject to a heritable security granted before the creation of the tenancy, as a result of a default by the security debtor the creditor is entitled to sell the house and requires vacant possession to exercise that entitlement and it is reasonable to dispense with the requirement of notice having been given to the tenant of the property, not later than the date of commencement of the tenancy, that possession might be recovered on that Ground..

14. The Tribunal considered all of the available evidence and oral submissions.

15. Having considered and weighed the available evidence, and taken account of Ms Neep and Mr Tung's submissions, the Tribunal found in fact, on a balance of probabilities, that Mr Fever is in mortgage default. The Tribunal further found on,

a balance of probabilities, that Mr Tung and his family are planning to move to other accommodation and have the means to do so. The Tribunal also found that given that Mr Tung and his family have resided in the Property for some 15 years, and as his mum is elderly with health problems, it is necessary, and appropriate, that they be granted a period of time, until 31st March 2024, to obtain other accommodation and move out of the Property to a new home.

16. Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision. Having made the above findings in fact, the Tribunal found in law that Ground 2 in Schedule 5 to the 1988 Act was met and that it is reasonable that Siberite Mortgage are granted an order to recover the Property and sell it after a suitable period of time, until 31st March 2024, has been given to Mr Tung and his family to move out of the Property to alternative accommodation.

Decision

17. The Tribunal grants the Application.

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.

G McWilliams

10th January 2024

Legal Member

Date