

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/23/2876**

**Re: Property at 20 Muirhouse Green, Edinburgh, EH4 4QY (“the Property”)**

**Parties:**

**Karen MacInnes, Peter Dobson, 14 Soyaux Avenue, Dundee, DD5 4HE (“the Applicant”)**

**Jakub Kobus, 20 Muirhouse Green, Edinburgh, EH4 4QY (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicants for an order for possession on termination of a short assured tenancy in terms of rule 66 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicants to the Respondent commencing on 1 February 2017.
2. The application was dated 22 August 2023 and was lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Quit and notice in terms of section 33 of the *Housing (Scotland) Act 1988*, both dated 9 May 2023, providing the Respondent with notice (respectively) that the Applicants sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 2

August 2023. Evidence of service by posting of the said notices by recorded delivery on 10 May 2023 was included with the application.

4. Evidence of a section 11 notice dated 22 August 2023 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon City of Edinburgh Council was provided with the application.

### **Procedural history**

5. On 8 January 2024 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicants’ agent, Martin Urquhart, Client Relationship Manager, DJ Alexander, and by the Respondent himself. Reference is made to a brief note of the CMD discussions regarding procedural issues, but this Decision records the majority of the relevant discussion and submissions at the CMD.
6. The Respondent had a good, though not fluent, command of English and at times we asked him to clarify or confirm matters. We sought clarification from the Respondent as to whether the application was opposed. He explained that he did not wish to stand in the way of the Applicants recovering the Property but at the time he was not in a position to move out due to lacking the financial means to pay for a new private tenancy and not having been offered any public housing. He confirmed that he had been in contact with the local authority’s housing department in regard to homelessness and rehousing but they had told him to return to them when he had an eviction order. We carefully discussed these matters with the Respondent and satisfied ourselves: that he took no issue with the validity of any of the documents served upon him; that he fully understood the position he found himself in; and that he was hopeful that support would be available to him to seek rehousing but that he was concerned about whether something suitable would be provided for him and his family in time. Ultimately, however, he liked the Property and would have preferred to stay if he could. This was, however, all balanced by the Respondent clearly expressing a view that, if he could have, he would have moved out by now as he accepted that the Applicants wished to recover the Property.
7. In the circumstances, it was clear to us that the material issue for consideration was reasonableness and we sought further information from both parties. The Applicants’ position was materially set out in an “impact statement” lodged with the application papers but it was augmented by oral submissions from their agent. We noted:
  - a. The Property was the Applicants’ former family home. They had inherited on the passing of their mother and had rented it out for over a decade.
  - b. The rental income had provided additional income to the families of both of the Applicants. During this period, the second Applicant had spent much of his time working offshore. The obligations of being a landlord had been acceptable to the Applicants during that time.
  - c. Both Applicants were now looking to retire. The first Applicant was semi-retired and her spouse was looking to retire, at which point they would both look to retirement. The second Applicant was no longer off-shore and

he and his spouse were looking to retire abroad. Neither of the Applicants wished to continue as landlord of the Property into their retirements.

- d. There had been material refurbishment of the Property in recent years, but the Applicants thought that a new kitchen was needed, and that this work could only be carried out with the Property vacant. They had purchased the kitchen units and equipment but were now needing to pay storage for this, as the Respondent and his family had not yet vacated.
  - e. The Applicants now wished to cease being landlords, install the kitchen, and place the Property on the market so as to use any equity in their retirements.
  - f. There remained a mortgage over the Property (but we were not given details of the amount).
  - g. There were around £1,200 of arrears, but the Respondent had made proposals to pay towards the arrears.
8. In regard to the Respondent's situation:
- a. He lived at the Property with his wife and two children, who were 8 and 13.5. The younger child was at the local primary school. The older was at a nearby high school (but not in the immediate local area).
  - b. He worked as a taxi driver. His wife had part-time work as a cleaner in the local area.
  - c. The Property was a three-bedroom terrace. It was not adapted for their needs but it was suitable for their needs as being a sufficient size, close to the younger son's school, and close to the places where his wife worked. They were settled in the area, using a local medical practice.
  - d. He had financial issues, and found it difficult to budget. He had sought some sessions of counselling to deal with this and related matters, but had found the cost of the counselling to be too high for him to continue with him. He described his finances as him living "from day to day". He had entered a Trust Deed in 2022 and this had affected his credit rating, so he was not in a position to seek a mortgage to purchase a property.
  - e. He estimated that the cost of a new three-bedroom house would be £1,500 a month, so he would require to raise £3,000 for the first month's rent and deposit. He did not currently have such savings and did not think he could start to save any money until February at the earliest (with it then taking some months to save the £3,000 he thought he needed).
  - f. The arrears were around £1,400 and he was trying to pay £100 a month towards them.
  - g. He had a tax bill in January, was trying to pay £100 a month towards arrears, and paid £150 a month into his Trust Deed.
  - h. He had last spoken with the local authority's housing department a few months ago and been told that he had a "silver" level for homelessness and that he should return to them if he received an order for eviction.
9. We considered the submissions. Neither party sought a continuation for further submissions or evidence but the Applicants' agent confirmed that if we felt further information was required, the application should be adjourned to a Hearing. We adjourned briefly to consider the matter.

10. On continuing the CMD, we advised that we regarded the issue of reasonableness as well-balanced between the parties and, if the order was still sought in the standard terms (even subject to the 2022 Act), we would wish to hear further evidence from the Applicants as to the reasons for seeking eviction at this time, as opposed to a future date. We explained that the financial effect of continuing as landlords, and their financial needs and desires regarding their retirement plans, were not fully clear from the submissions and papers provided, but yet there was a clear effect on the Respondent and his family of eviction at this time (even as suspended under the 2022 Act). We confirmed, however, that we would see the reasonableness issues addressed if the order for eviction was suspended until the early Summer, as such a suspension would: allow the Respondent's children to complete their current school years; afford the Respondent with time to try and save funds for a new private tenancy; but also provide the Respondent with an eviction order in the meantime so as to continue discussions with the local authority on being rehoused in public housing.
11. We sought the parties' comments on granting the application subject to a suspension to 12 July 2024. The Respondent had no opposition to such a suspended order, and appreciated a longer period being made available. The Applicants' agent sought a further adjournment to take instructions but then could not obtain these before conclusion of the CMD.
12. In the circumstances, we adjourned to a hearing so we may have witness evidence on the Applicants' arguments regarding reasonableness. We indicated, however, that the Applicants had until 17:00 on 9 January 2024 to confirm to the Tribunal that the proposed suspended order was acceptable to them. We said that if such confirmation was received, we would discharge the Hearing and issue a decision under Rule 18 (without a further hearing). Both parties noted and accepted this approach.
13. By email on 8 January 2024 at 15:32, the Applicants' agent wrote to the Tribunal agreeing to an order for eviction suspended to 12 July 2024.
14. No order for expenses was sought during the CMD nor in the subsequent correspondence.

### **Findings in Fact**

15. By written lease dated 31 January 2017, the Applicants let the Property to the Respondent by lease with a start date of 1 February 2017 until 2 August 2017 to "continue thereafter on a monthly basis until terminated" ("the Tenancy").
16. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicants issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 31 January 2017, prior to commencement of the Tenancy.

17. On 9 May 2023, the Applicant's letting agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicants wished him to quit the Property by 2 August 2023.
18. On 9 May 2023, the Applicant's letting agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicants required possession of the Property by 2 August 2023.
19. 2 August 2023 is an ish date of the Tenancy.
20. On 10 May 2023, the Applicants' letting agent posted each of the notices to the Respondent by recorded delivery post, which notices were served upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicants' intention that the Tenancy was to terminate on 2 August 2023.
21. On or around 22 August 2023, the notice period under the notices having expired, the Applicants raised proceedings for an order for possession with the Tribunal, under rule 66, the grounds of which being: that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicants required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
22. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon City of Edinburgh Council on or around 22 August 2023 on the Applicants' behalf.
23. On 10 November 2023, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 8 January 2024.
24. The Applicants seek to sell the Property to realise equity in the Property for use in their respective retirement plans.
25. The Applicants are both planning their retirements, with the second Applicant intending to live abroad. Neither the Applicants wish to remain as landlords of the Property when they are retired.
26. The Applicants wish to refurbish the kitchen of the Property prior to sale of the Property and believe that work is best undertaken with the Property vacant.
27. The Applicants have purchased the kitchen cabinets and equipment, in anticipation of refurbishing the kitchen and are currently paying monthly storage costs for the items.
28. The Respondent resides with his wife and two children at the Property.
29. The Respondent's wife works as a cleaner at addresses near to the Property.

30. The Respondent's younger son is in a local primary school.
31. The Respondent's older son is at a high school convenient to the Property.
32. The Respondent and his family are registered with a local medical practice.
33. The Respondent has made attempts to be rehoused into public housing but has not yet been rehoused.
34. The Property is a three-bedroom property and the Respondent would seek to be rehoused to a property of similar size.
35. The Respondent is unable to seek alternative private housing at present due to lack of the necessary savings.
36. The Respondent has significant financial commitments during January 2024 and does not expect to be able to start accumulating savings until during February 2024 at the earliest.
37. The Respondent is in arrears of around £1,400 and is seeking to repay these at around £100 a month.
38. The Property is not specially adapted for the use of the Respondent or any member of his family.

### **Reasons for Decision**

39. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice. In any case, the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
40. We require, in terms of the 1988 Act as currently amended, to consider "that it is reasonable to make an order for possession". On this, the Respondent did not offer material opposition but did not consent to the order. He was understandably concerned about whether he would be rehoused by the local authority (as he believed that public housing was his best option, given his lack of savings at the time of the CMD). He was further concerned about whether he would be rehoused in an area convenient to his children's education and his wife's work.
41. We did not take issue with the reasons provided by the Applicants for seeking to terminate the Tenancy. Our concerns were limited to whether those reasons were sufficient to terminate the Tenancy at this time, as opposed to at a later date. There was no information provided to us that explained why the Applicants wished to sell the Property in the near future, as opposed to another

year or so. That information may have been available to us at a hearing, which is why we adjourned to a hearing at the CMD.

42. We did not see the merit in a delay in eviction merely for the sake of delay. The Respondent had two routes to rehousing. The first was to amass sufficient savings (which he estimated as £3,000) so that he may find a new private tenancy. The second was to be rehoused into public housing. Both the private and public options may mean that education of the Respondent's children could be disrupted. A delay into the early Summer would, however, minimise disruption (if it was necessary to change schools) and afford the Respondent with an opportunity to save sufficient funds (so as to allow him to seek a new private tenancy). We were thus satisfied that it was reasonable to grant eviction provided eviction was not to occur before the early Summer and we stated this view at the CMD.
43. Further to the Respondent's confirmation of his position at the CMD, and the Applicants' confirmation of their position by email shortly after, in the circumstances before us, we are thus satisfied that it is reasonable to grant the application subject to a suspension to 12 July 2024. This is in excess of the suspension that would be granted under the 2022 Act, and in the circumstances we need not consider that Act further.
44. We considered whether we required to hold the Hearing, or provide a time for further submissions, before issuing this Decision. In terms of Rule 18:
  - (1) *Subject to paragraph (2), the First-tier Tribunal—*
    - (a) *may make a decision without a hearing if the First-tier Tribunal considers that—*
      - (i) *having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*
      - (ii) *to do so will not be contrary to the interests of the parties; and*
    - (b) *must make a decision without a hearing where the decision relates to—*
      - (i) *correcting; or*
      - (ii) *reviewing on a point of law,*  
*a decision made by the First-tier Tribunal.*
  - (2) *Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

We are satisfied that we fully discussed the matter, and received full submissions, at the CMD. We are therefore satisfied that we can (and to avoid further delay, should) make the decision without a hearing in terms of Rule 18(1)(a).

45. On the basis of all the information held, we are thus satisfied to discharge the Hearing allowed at the CMD (but for which a date is not yet set) and grant an order for eviction at this time but with the earliest date of eviction suspended so that it may not be executed prior to 12 noon on 12 July 2024.

### **Decision**

46. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 suspended as stated above.

### **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 Conn

10 January 2024

Legal Member/Chair

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Date