

Housing and Property Chamber

First-tier Tribunal for Scotland



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/23/3213

Re: Property at 10/4 Ettrickdale Place, Edinburgh, EH3 5JN (“the Property”)

Parties:

Mrs Cadien Reid, 2/1 Eyre Place, Edinburgh, EH3 5EP (“the Applicant”), and

T.C. Young LLP, Merchants House, 7 West George Street, Glasgow, G2 1BA (“the Applicant’s Representative”) and

Mr Kevin Hamilton residing at 10/4 Ettrickdale Place, Edinburgh, EH3 5JN (“the First Respondent”) and

Mr Kevin Peacock, residing at 10/4 Ettrickdale Place, Edinburgh, EH3 5JN (“the Second Respondent”)

Tribunal Members:

G McWilliams- Legal Member

A Khan - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

Background

1. This is an Application brought in terms of Rule 66 (Application for order for possession upon termination of a short-assured tenancy) of The First-tier

Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”).

2. The Applicant, Mrs Reid, and her Representative, had provided the Tribunal, in the Application, with copies of the parties’ short assured tenancy agreement, Form AT5, Notice to Quit and Sections 33 and 11 Notices with relevant Executions of Service. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988 (“the 1988 Act”), and the procedures set out in the Act had been correctly followed and applied.
3. The Respondents, Mr Hamilton and Mr Peacock, had been validly served by Sheriff Officers with the Application papers, Guidance Notes and Notification of the CMD from the Tribunal on 15th November and the Certificates of Service were produced.

Case Management Discussion on 11th January 2024

4. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10.00am on 11th January 2024. Mrs Reid and her Representative’s Ms K. Donnelly attended. The Second Respondent Mr Peacock also attended. The First Respondent Mr Hamilton did not attend and was not represented.
5. Ms Donnelly stated that Mrs Reid is 78 years of age and unfortunately suffered the loss of her husband in the last year, and both of her children in the last 10 years. She said that Mrs Reid wishes to organise her financial affairs and requires to recover possession of the Property and sell it to provide her with monies for her living expenses. Mrs Reid stated that she had one other rental property which she was going to continue to rent at the moment until she has managed to sell the Property. She said that she could not cope with having to sell both properties at the same time. Ms Donnelly said that she had no information regarding Mr Hamilton’s personal or occupational circumstances. She submitted that as all of the papers in connection with the Application had been validly prepared and intimated, and the Application properly proceeded with, it was reasonable that the order for Mrs Reid’s recovery of possession of her Property be granted.
6. Mr Peacock candidly stated that he considers that it is reasonable that Mrs Reid be granted an order to recover possession of her Property. He said that he was actively looking for alternative accommodation. Mr Peacock stated that he has been recovering from a major medical operation but is now much better. He said that he did not know what Mr Hamilton’s position was regarding the Application as they are flatmates but have little communication.

Statement of Reasons

7. In terms of Section 33 of the 1988 Act, the Tribunal shall make an order for possession of a house let on a tenancy if:
 - (a) the short assured tenancy has reached its ish;

- (b) tacit relocation is not operating;
 - (c) no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
 - (d) the landlord has given to the tenant notice stating that he requires possession of the house.
8. The Tribunal considered all of the Application papers, including the parties' short assured tenancy agreement and the Forms AT5 and Notices to Quit, which had been served on Mr Peacock and Mr Hamilton, as well as the submissions of Ms Donnelly and Mr Peacock.
 9. Mr Hamilton had not lodged representations with the Tribunal regarding the Application and, in particular, the reasonableness of the grant of an eviction order. He had not attended the CMD to provide any evidence, and/or make any submission, to oppose and contradict the basis for the order sought by Mrs Reid. Mr Peacock had attended the CMD and stated that he considers that it is reasonable for the order sought in the Application to be granted.
 10. Having considered the available documentary evidence and the submissions of Ms Donnelly and Mr Peacock the Tribunal finds in fact that the parties' tenancy agreement has been terminated and Mrs Reid has given appropriate notice to the tenants, Mr Peacock and Mr Hamilton, that she requires to recover possession of the Property as a result of her service of the appropriate documentation on them. The Tribunal finds in law that the criteria in Section 33 of the 1988 Act have been satisfied and determines that it is reasonable that an eviction order be granted
 11. Accordingly, the Tribunal grants an eviction order.
 12. Given the provisions of the Cost of Living (Protection for Tenants) (Scotland) Act 2022 the eviction order cannot be enforced for a period of 6 months from today's date unless the provisions in that Act are suspended before then. The provisions may be suspended on 31st March 2024. The Tribunal suggest that Mr Hamilton and Mr Peacock obtain advice from a specialist housing law organisation regarding these provisions.
 13. At the conclusion of the CMD Mr Peacock and Mrs Reid exchanged warm wishes and the Tribunal commend them for doing so.

Decision

14. In the circumstances, the Tribunal makes an order for possession of the Property as sought in this 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.



Legal Member

11th January 2024

Date