

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 (Act)

Chamber Ref: FTS/HPC/EV/23/4285

Re: Property at 5/5 Hawthornden Place, Edinburgh, EH7 4RG (“the Property”)

Parties:

Mrs Kathleen Robertson, 15 Broomyknowe, Edinburgh, EH14 1JZ (“the Applicant”)

David Stewart, Paul Stewart, 5/5 Hawthornden Place, Edinburgh, EH7 4RG (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

This is an application under section 33 of the Act and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (**Regulations**) in respect of the termination of a Short-Assured Tenancy (**SAT**).

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 30 November 2023;
2. AT5 and SAT commencing 27 May 2006;
3. Notice to Quit dated 7 September 2023;
4. Section 33 Notice dated 7 September 2023;
5. Royal Mail track and trace receipts dated 8 September 2023;
6. Section 11 Notice and email serving on local authority dated 30 November 2023;
7. Sheriff Officer certificate of service of CMD Notification on 1 February 2024.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 19 March 2024. The Applicant participated and represented herself. The Respondents participated and represented themselves.

The Respondents did not object to the application. They had been in weekly contact with the local authority over the last 3 years to try and obtain alternative accommodation. The local authority were aware of the CMD today and the Respondents were to report the outcome to them.

The Respondents informed the Tribunal that they lived in the Property alone and had no dependents. They were on Universal Credit. They had tried to get assistance from other avenues such as Shelter but no one would help them until an eviction order was granted.

The Applicant intended to sell the Property in order to realise the capital as part of her retirement. The Applicant and her husband are both retired (aged 64 and 75 respectively) and this is her only rental Property. The Respondents have been aware since the outset of their tenancy that the Applicant intended to sell the Property when she retired.

The Applicant had to use her pension lump sum to pay off the mortgage on the Property and now needs access to the capital on the Property to fund her retirement and that of her husband's.

Decision and Reasons

The Tribunal considered the oral and documentary evidence from the Parties. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a SAT commencing 27 May 2006;
2. An AT5 had been served prior to commencement of the SAT;
3. Notice to Quit and Section 33 Notice had been served 8 September 2023;
4. Section 11 Notice had been served on the local authority on 30 November 2023;
5. The SAT had reached its end and had been terminated;
6. Tacit relocation was no longer operating;
7. No further contractual tenancy was in existence;
8. The Applicant had given the Respondents notice that she required possession;
9. The Applicant required to recover possession of the Property to sell it and realise the capital for her retirement and that of her husband;
10. The Respondents did not oppose the eviction order and were in contact with the local authority regarding the provision of suitable alternative accommodation for them;
11. The Respondents were aware that the Applicant would be seeking to recover possession and sell the Property on her retirement.

The Tribunal considered all of the evidence and submissions.

The Tribunal were satisfied that Rule 66 had been complied with.

The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal determined that it would be reasonable to grant the order sought in the circumstances.

The Respondents did not oppose the order and were aware of the Applicant's intention to recover the Property and sell it on her retirement. They had been in regular contact with the local authority over the last 3 years regarding provision of alternative accommodation and understood that the grant of the order would give them priority.

The Applicant needed to sell the Property to fund her retirement and that of her husband. That had always been her intention.

The Tribunal granted the application for eviction and recovery of possession.

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.

A. Strain

19 March 2024

Legal Member/Chair

Date