



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/EV/24/2160**

**Re: Property at 20 Flat 4 James Street, Edinburgh, EH15 2DR (“the Property”)**

**Parties:**

**Mrs Jacqueline Jackson and Mr Ewan Jackson, 34 Newbattle Gardens, Dalkeith, EH22 3DR (“the Applicants”)**

**Ms Elaine Baxter, 20 Flat 4 James Street, Edinburgh, EH15 2DR (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 20 Flat 4 James Street, Edinburgh, EH15 2DR under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an action for recovery of possession of the Property raised in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a tenancy agreement dated 6 November 2017 between the Applicants and the Respondent, an

AT5 dated 6 November 2017, a Notice to Quit and Section 33 Notice dated 16 February 2024, a Sheriff Officer's Execution of Service dated 20 February 2024, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 with email dated 8 May 2024 to Edinburgh City Council.

3. On 16 July 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 18 October 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 26 November 2024.

### **Case Management Discussion**

5. The Tribunal proceeded with the CMD on 26 November 2024 by way of teleconference. The Applicants were represented by Mrs McAinsh from Direct Lettings (Scotland) Ltd, letting agents. The Applicants were also both in attendance. The Respondent Ms Baxter also appeared on her own behalf.
6. The Tribunal had before it the tenancy agreement and AT5 dated 6 November 6 November 2012 between the Applicants and the Respondent, the Notice to Quit and Section 33 Notice dated 16 February 2024, a Sheriff Officer's Execution of Service dated 20 February 2024, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 with email dated 8 May 2024 to Edinburgh City Council. The Tribunal considered the terms of these documents.
7. Mrs McAinsh confirmed the Applicants were seeking an order for eviction. The Applicants planned to sell the Property. The Respondent had advised them that due to mobility issues she required a ground floor property. Mrs Jackson clarified that they wanted to assist the Respondent to get a ground floor flat. The mortgage over the Property was interest only and because of rising interest rates they were paying more towards the mortgage, property factors fees etc than they were receiving in rent. When the Respondent told them she needed to move they decided to sell the Property to repay the debt on their own home.
8. Ms Baxter explained she had no objection to the order for eviction being granted. She was 70 years of age and her mobility issues were becoming more serious. She struggled to get up the 16 stairs to the Property which is on the first floor. She explained she has been in contact with Edinburgh City Council regarding rehousing to a ground floor property but has been told she needs an order from the Tribunal before the Council can assist her. Ms Baxter advised she lived in the Property alone.

9. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by the parties at the CMD. The Tribunal concluded that the Applicants were entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its ish (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, and that the Applicants had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988.
  
10. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicants to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicants also have to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal gave weight to the Respondent did not oppose the application for eviction due to the fact that she needed to live in a ground floor property. Further the Tribunal gave weight to the Applicants' wish to sell the Property to pay of the mortgage on their own home. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.
  
11. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order. As agreed with the parties the order will be suspended to allow Ms Baxter to secure suitable alternative accommodation.

### **Decision**

12. The Tribunal granted an order for repossession. This will be suspended until 20 January 2025. The decision of the Tribunal was unanimous.

### **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.**

**24 November 2024**

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**Legal Member**

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**Date**