

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 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/24/3380

Re: Property at 25 Herd Green, Livingston, EH54 8PU (“the Property”)

Parties:

Mr Niel Friis-Jorgensen, residing at 132 St. Stephen’s Street, Edinburgh, EH3 5AA (“the Applicant”) and

Lindsays LLP, Caledonian Exchange, 19A Canning Street, Edinburgh, EH3 8HE (“the Applicant’s Representative”) and

Ms Joanna Cholewa, residing at 25 Herd Green, Livingston, EH54 8PU (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

A. Moore - Ordinary Member

Decision:

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

Background and Case Management Discussion on 25th March 2025

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 Mr Friis-Jorgensen’s Representative had provided the Tribunal, in the Application, with copies of the parties’ short assured tenancy agreement, Form AT5, Notice to Quit (“NTQ”) 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. Sheriff Officers had effectively served copies of the Application papers, Guidance Notes and notification of the CMD on the Respondent Ms Cholewa.
4. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call at 2.00pm on 25th March 2025. The Applicant's Representative's Mr J. Siwela and the Respondent Ms Cholewa attended. The Respondent's son, Mr S. Komisarz also attended and assisted Ms Cholewa by interpreting for her.
5. Mr Siwela referred to the Application, and Mr Friis-Jorgensen's Affidavit which had been lodged in support of the Application, and stated that, for financial reasons, Mr Friis-Jorgensen wishes to recover possession of the Property and sell it. He stated that he understands that Ms Cholewa has applied for to her local authority, West Lothian Council, for a tenancy. Mr Siwela also stated that Ms Cholewa's rent payments are up to date.
6. Ms Cholewa, through her son Mr Komisarz, stated that she has applied to West Lothian Council for a tenancy and has been told that her application will be given priority when an eviction order has been granted. She said that she and her son each have health conditions and wish to move to a local authority tenancy as soon as possible. Ms Cholewa stated that her rent payments have always been made on time.

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 end;
- (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 available evidence and the submissions of Mr Siwela and Ms Cholewa. The Tribunal found in fact that all of the documentation regarding termination of the parties' tenancy agreement had been validly served on Ms Cholewa. They found that Ms Cholewa is actively seeking to move out of the Property. The Tribunal further found in fact that both Mr Friis-Jorgensen and Ms Cholewa wish an eviction order to be granted. Having made such findings in fact the Tribunal found in law that the parties' tenancy agreement has been lawfully brought to an end in terms of the relevant legislation and that it is reasonable to grant an eviction order. The Tribunal also decided that it is reasonable to grant an eviction order with a deferred enforcement date of 30th June 2025. In reaching the latter decision

the Tribunal placed reliance on Ms Cholewa's history of being a good tenant, with her rent being paid timeously, and the Tribunal's knowledge that local authorities are very busy dealing with applications for social housing.

Decision

9. The Tribunal granted an order for possession of the Property as sought in the Application, with a deferred enforcement date of 30th June 2025.
10. As the Tribunal stated when confirming their decision to the parties, Ms Cholewa and her son, Mr Komisarz, may wish to obtain specialist housing law advice from West Lothian Council's Advice Team, or their local Citizens Advice Bureau, if they are unclear regarding this decision and the accompanying eviction order, and, also, in respect of Ms Cholewa's application for a social housing tenancy.

Observation

11. Ms Cholewa's son, Sebastian Komisarz, told the Tribunal, at the start of the CMD, that he was 17 years of age. He communicated with the Tribunal, on behalf of his Mum Ms Cholewa, in an intelligent, straightforward and dignified manner. The Tribunal wish to commend him for this.

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

25th March 2025

Legal Member

Date