

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 66 of the Rules

Chamber Ref: FTS/HPC/EV/24/3876

Re: Property at 31 Broomhouse Place South, Edinburgh, EH11 3TU (“the Property”)

Parties:

Mrs Joan Rosselle, 140 Main Street, Neilston, Glasgow, G78 3JX (“the Applicant”)

Ms Kerry Karim, 31 Broomhouse Place South, Edinburgh, EH11 3TU (“the Respondent”) per her agents, CHAI (Community Help and Advice Initiative), 28, Westfield Avenue, Edinburgh EH11 2QH (the Respondent’s Agents”)

Tribunal Members:

Karen Moore (Legal Member) and Melanie Booth (Ordinary Member)

Decision

First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between 22 August 2024 and 9 December 2024 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Section 33 of the 1988 Act.
2. The Application comprised the following:
 - i) Copy short assured tenancy agreement between the Parties;
 - ii) Copy valid Notice to Quit terminating the tenancy at an ish date with sufficient proof of service on the Respondent;
 - iii) Copy valid AT6 Notice in terms of the 1988 Act with sufficient proof of service on the Respondent;
 - iv) Copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Edinburgh City Council being the relevant local authority; and
 - v) Copy text messages between the Parties.
3. Although not requiring to prove a statutory ground for termination, the Application explained that recovery of possession was required in order to sell the Property to address financial commitments.
4. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 11 July 2025 at 10.00 by telephone conference. The CMD was intimated to both Parties.
5. Prior to the CMD that Respondent’s Agents advised the Tribunal by email that the Respondent did not oppose the Application but requested that the Tribunal exercise a discretion and suspend the effective date of the Order to allow the Respondent additional time to secure suitable accommodation. In response,

the Applicant advised the Tribunal by email that she opposed a suspension of the effective date of the Order.

CMD

6. The CMD took place on 11 July 2025 at 10.00 by telephone. The Applicant, Mrs. Rosselle, was present and was not represented. The Respondent, Mrs. Karim, was not present and was represented by Mr. Donegan of the Respondent's Agents.
7. The Tribunal explained to those present that it had to be satisfied that the statutory procedure had been carried out properly and that it was reasonable on those facts to grant the Order, regardless of whether the Application was unopposed. The Tribunal advised that it was satisfied in respect of the statutory procedure but required further information in respect of the circumstances of the Parties to determine if it was reasonable to grant the Order.
8. The Tribunal asked Mr. Donegan to confirm Mrs. Karim's position and to provide background information. Mr. Donegan advised that Mrs. Karim no longer requested the effective date of the Order be suspended but would appreciate it if the Tribunal did so. He stated that Mrs. Karim had two school age children and that, as she had been unsuccessful in securing private rented accommodation, she is seeking local authority accommodation. He estimated that this might take two months in respect of temporary accommodation and six months in respect of permanent accommodation. His understanding was that Mrs. Karim suffers from mental health issues exacerbated by the uncertainty of her housing situation.
9. Mrs. Rosselle advised the Tribunal that she considered that Mrs. Karim had had sufficient time to secure accommodation but accepted both that Mrs. Karim was entitled by law to remain in the Property until an eviction order is granted, and, that the local authority would not provide housing assistance until an order is granted. Mrs. Rosselle advised the Tribunal that the monthly mortgage costs

for the Property are £769.00 and that, as Mrs. Karim has fallen into arrears having made only five rent payments since the proceedings began, she is under additional financial pressure. Mrs. Rosselle stated that she had had a portfolio of nine properties, that she is disposing of the portfolio and that she has sold five of properties, with two being marketed at present. Mrs. Rosselle stated that she is a teacher and that an Order granted on the usual terms would allow her to market the Property before the new school term begins. As far as she understood, Mrs. Karim was in receipt of housing benefit paid directly to her as those payments had not been made to Mrs. Rosselle since February 2024.

10. With regard to unpaid rent, as far as Mr. Donegan was aware, Mrs. Karim is now in receipt of Universal Credit but could not add anything further. He was not aware that delays in benefits contributed to the unpaid rent.

Issues for the Tribunal

11. The Application not being opposed, the issues for the Tribunal was whether or not it should grant an Order for eviction as set out in the Application and if it should suspend the effective date of the Order.

Findings in Fact

12. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a short assured tenancy of the Property between the Parties commencing on or around 18 April 2014;
 - ii) A valid Notice to Quit and a valid AT6 were issued by the Applicant to the Respondent;
 - iii) The Applicant is disposing of her rental portfolio for financial reasons;
 - iv) The Applicant evidenced an intention to sell the Property;
 - v) The Applicant has a mortgage on the Property at a monthly cost of £769.00;
 - vi) The Respondent has failed to maintain regular payment of rent since the eviction proceedings began;

- vii) The Respondent remains residing in the Property with her two school age children;
- viii) The Respondent is in receipt of state benefits;
- ix) The Respondent cannot vacate the Property until she secures suitable alternative accommodation;
- x) The Respondent is on a local authority housing waiting list;
- xi) The Respondent has been advised by the local authority that she is unlikely to secure alternative accommodation unless an Order is granted.

Decision and Reasons for Decision

13. The Tribunal had regard to all the information before it and to its Findings in Fact.
14. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*” . The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
15. The statutory procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
16. The Tribunal then had regard to the circumstances of the Parties.
17. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

18. The Tribunal then looked to balance the rights and interests of both parties.
19. The Tribunal accepted that Mrs. Rosselle has pressing financial reasons to sell the Property and that Mrs. Karim's continuing failure to pay rent has contributed to Mrs. Rosselle's financial situation.
20. The Tribunal accepted that Mrs. Karim wishes to remove from the Property but cannot do so until she has alternative accommodation. The Tribunal, from its own professional knowledge had regard to the statutory position that, if she and her children are evicted and made homeless, they will have protection in terms of Part II of the Housing (Scotland) Act 1987 and so are able to access advice and assistance on homelessness.
21. Accordingly, the Tribunal took the view that continuing the tenancy was not tenable or in the interests of either Party, and so, was satisfied that it is reasonable to issue an eviction order.
22. With regard to suspending the effective date of the Order, the Tribunal took the view that, as Mrs. Karim has effectively stopped paying rent and that this impacts on Mrs. Rosselle's ability to meet her mortgage commitments, it is not reasonable to delay the effective date of the Order. In any event, an Order which comes into effect during the school holiday period is more beneficial to both Parties in practical terms. Accordingly, the Tribunal declined to suspend the effective date of the Order beyond the regulatory thirty day period.
23. This decision is 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.

K.Moore

11 July 2025

Legal Member/Chair

Date