



**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 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/25/0140

Re: Property at 6/46 Wharton Square, Edinburgh, EH3 9FJ (“the Property”)

Parties:

Hillcrest Enterprises Limited, 1 Explorer Road, Dundee, DD2 1EG (“the Applicant”)

Mr Alan Dickson, 6/46 Wharton Square, Edinburgh, EH3 9FJ (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicant.

Background

1. An application was received from the Applicant’s solicitor on behalf of the Applicant on 13 January 2025 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of possession of the property upon termination of a short assured tenancy by the Applicant against the Respondent.
2. Attached to the application form were:
 - (i) Copy short-assured tenancy agreement between the Applicant and the Respondent and Evgeniya Dickson which commenced on 16 June 2017.
 - (ii) Copy form AT5 relating to the tenancy dated 16 June 2017.

- (iii) Copy notice required under section 33 of the 1988 Act ('the section 33 notice') dated 11 September 2024.
 - (iv) Copy Notice to Quit dated 11 September 2024 requiring the Respondent to remove from the property on or before 17 November 2024.
 - (v) Copy certificate of service certifying that the Notice to Quit and section 33 notice had been served on the Respondent by sheriff officer on 11 September 2024.
 - (vi) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 addressed to the City of Edinburgh Council, together with covering email dated 13 January 2025.
 - (vii) Copy head lease relating to the property between Hillcrest Homes (Scotland) Limited and Hillcrest Enterprises Ltd.
 - (viii) Copy letters from the Applicant to the Respondent regarding subletting of the property.
 - (ix) Various screenshots from the Airbnb and Theatre Digs websites.
3. Following a request from the tribunal administration, further information was received from the Applicant's solicitor on 18 February 2025.
 4. The application was accepted on or around 22 March 2025.
 5. Notice of the case management discussion (CMD) scheduled for 9 July 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 3 June 2025.
 6. No written representations were received from the Respondent prior to the case management discussion (CMD).
 7. Further information was received from the Applicant's solicitor on 16 July 2026.

The case management discussion

8. A CMD was held by teleconference call on 19 July 2025. Mrs Sarah Wilde was present on behalf of the Applicant, as was the Applicant's solicitor, Miss Kirstie Donnelly of TC Young solicitors. The Respondent was not present or represented. The tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. He did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from him.
9. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The Tribunal therefore proceeded with the CMD in the absence of the Respondent, in terms of rule 29 of the 2017 rules.

Submissions on behalf of the Applicant

10. Miss Donnelly told the Tribunal that the Applicant was seeking an eviction order because the short assured tenancy between the parties had come to an end at the ish date of 17 November 2024.
11. Miss Donnelly submitted that it as reasonable to terminate the tenancy in the circumstances. The Respondent had been found to be sub-letting a bedroom in the property on an ongoing basis without permission, which was in breach of his tenancy agreement. This was not a one-off incident, as evidenced by the screenshots from the Airbnb and Theatre Digs short term rental websites which had been submitted. These included photographs of the Respondent, who was described as a 'superhost' on Airbnb, and reviews referring to a host named Alan. The Respondent had initially denied that he had been sub-letting a room.
12. The Applicant had first become aware of the Respondent's activity on Airbnb in 2022. It had issued the Respondent with a written warning letter on 19 October 2022, advising him that the subletting was in breach of his tenancy agreement. The letter stated that if he was found to be advertising his property for sub-let again, or taking in a lodger, without permission, he would be served with a notice to leave and his tenancy would be at risk.
13. Mrs Wilde said that the Applicant had not been made aware of any continued subletting after the written warning letter until a further incident in 2024. On the basis of the substantial evidence which has now been identified, however, the Applicant believes that the Respondent continued to sub-let the room between 2022-2024.
14. During a home visit to the property by a member of the Applicant's staff in 2024, the door was answered by a lodger, who told them she had sublet the property through the Theatre Digs website for two months at the rate of £800 per month. The Applicant had tried unsuccessfully to contact the Respondent following this visit, having attempted several visits and left voicemail messages for him.
15. The Applicant sent a final written warning to the Respondent on 9 September 2024, which advised that he would be served with a notice to leave without further notice.
16. There had been little recent contact with the Respondent. He had requested permission to take in a lodger for 6 months in March 2025. This was refused, given his persistent breaches of his tenancy agreement and the ongoing tribunal

process. The Applicant had been attempting to contact the Respondent recently regarding access for the installation of utility meters, but there had been no response. A home visit had been carried out by the Applicant on 16 July 2025, during which a key safe had been observed outside the door of the property. Photographs of this had been submitted to the tribunal. This tended to indicate that ongoing subletting activity was taking place. Mrs Wilde confirmed that she had no reason to believe that the Respondent was no longer living at the property,

17. The Applicant is a subsidiary of a social landlord, Hillcrest Homes. Its purpose is to provide affordable accommodation at mid-market rents for those who need it. The Applicant is bound to abide by the terms of its sub leases and grant conditions. The block within which the property is situated is subject to a grant, and sub-letting of the property is a breach of the grant conditions. The way the Respondent has been using the property is not in keeping with the purpose of affordable housing.
18. When asked by the tribunal, Mrs Wilde confirmed that there had been no complaints from neighbours regarding noise or any other issues arising from the sub-let, but that the property was quite secluded within the building.
19. Mrs Wilde said that the Applicant must be strict in allocating its properties given the demand for housing. This was particularly acute in Edinburgh given the housing situation and number of short term lets. The Respondent had lied about the sub-letting, having admitted it only when a lodger was found to be in his property by the Applicant. He had made a lot of money from the sub-letting for his own gain, which was against the purpose of the Applicant's housing. He had been given several chances, but had continued with the sub-letting.
20. If the Applicant did not take eviction action in cases like this, it could send out a message to other tenants that it was acceptable to sub-let their properties without permission and make a profit.
21. In the absence of any written representations from the Respondent, the tribunal had little information about his personal circumstances. Mrs Wilde confirmed that the Respondent was believed to be in his later forties and to live alone at the property. The Respondent's former partner and joint tenant Ms Evgeniya Dickson no longer resides at the property, as evidenced in the Applicant's submissions.

Findings in fact

22. The Tribunal made the following findings in fact:
 - i. The Applicant is a subsidiary of Hillcrest Housing Limited, a registered social landlord, which owns the property. The development within which the property

is situated is subject to a lease by Hillcrest Homes (Scotland) Ltd and the Applicant.

- ii. Hillcrest Homes is the registered landlord for the property. The Applicant is registered as the landlord's agent.
- iii. There is a short assured tenancy in place between the parties.
- iv. The original tenancy commenced on 16 June 2017 and ended on 17 December 2017. It has continued by tacit relocation on a month to month basis since that date.
- v. There were two tenants under the tenancy agreement. The other joint tenant, Ms Evgeniya Dickson, left the property on or before 4 July 2021.
- vi. The Respondent has been subletting a room in the property without permission since 2022. This is in breach of clauses 2.1 and 22 of his tenancy agreement.
- vii. The Respondent was given a formal written warning by the Applicant regarding the sub-letting on 19 October 2022. He continued to sub-let a room in the property after receiving this warning.
- viii. The form AT5 dated 16 June 2017 was in the prescribed format and the short-assured tenancy agreement between the parties was validly constituted.
- ix. The Notice to Quit and section 33 notice dated 11 September 2024 stated that the Applicant required vacant possession of the property on or before 17 November 2024. These provided more than two months' notice of vacant possession.
- x. The notices were validly served on the Respondent by sheriff officer on 11 September 2024.
- xi. The Respondent lives in the property alone.
- xii. The rent which has been payable under the tenancy is currently £952.73 per month.
- xiii. The tenancy reached its end on 17 November 2024.

Reasons for decision

23. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

24. The tribunal noted that section 33 (1) of the 1988 Act as amended states:

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating;

(c).

(d)that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e)that it is reasonable to make an order for possession.

25. The tribunal was satisfied that the short-assured tenancy agreement between the parties had been validly constituted. It was also satisfied that the short-assured tenancy had reached its end; that tacit relocation was not operating; and that the Notice to Quit and section 33 notice had been validly served on the Respondent, for the reasons set out above.
26. The tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
27. The tribunal noted that there was clear evidence that the Respondent had sub-let a room in the property without the Applicant's permission. This was in breach of his tenancy agreement. Despite having been given a formal written warning about this by the Applicant, he continued to advertise and sub-let the room. The tribunal also took into account the arguments put forward on behalf of the Applicant with regard to its purpose, the fact that the sub-letting was contrary to this purpose, and that it could impact the terms of the Applicant's lease and grant conditions for the development within which the property was situated. The tribunal noted that the Respondent's sub-letting activity did not appear to have led to any complaints about any direct impact on other tenants within the building. It took into account the Applicant's argument about the wider implications should it allow the Respondent to remain in the property and continue to sub-let the room.
28. The tribunal was also aware that at the start of the short assured tenancy, given the rules that were in place at that time, the Applicant might have expected to be granted an eviction order automatically, were the tribunal satisfied that it had followed the correct rules in terms of creating the tenancy and serving the notices correctly.
29. In the absence of any written representations from the Respondent, the tribunal had limited information about his circumstances. He had not indicated, however, that he wished to oppose the application.
30. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that it was reasonable to grant an eviction order. It gave particular weight to: 1) the fact that the Respondent had been persistently in breach of his tenancy agreement by sub-letting a room in the

property, despite being warned about this by the Applicant and 2) the lack of any opposition to the application from the Respondent.

Decision

- 31.** The tribunal granted an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

Sarah O'Neill

29 July 2025

Legal Member/Chair

Date