

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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**

**Chamber Ref: FTS/HPC/EV/19/1322**

**Re: Property at 82 Cardowan Road, Carntyne, Glasgow, G32 6QP (“the Property”)**

**Parties:**

**Mr Stephen McCullagh, 105 Gartcraig Road, Riddrie, Glasgow, G33 2RY (“the Applicant”)**

**Ms Elizabeth Dickson, 82 Cardowan Road, Carntyne, Glasgow, G32 6QP (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application should be dismissed.**

**Background**

The Applicant lodged an application on 1<sup>st</sup> May 2019 under Rule 65 seeking eviction of the Respondent from the property.

Lodged with the Application were:

1. Lease Agreement
2. AT5
3. Notice To Quit
4. Certificate of Posting
5. AT6

The Respondent's Representative, Miss Johnson from the Legal Services Agency, lodged written submissions. These submissions stated that the Tribunal had no jurisdiction to deal with the case, and referred to a judgement issued by the Tribunal on 24<sup>th</sup> May 2019, reference FTS/HPC/RP/18/3266.

The case referred to was between the same parties, but had been raised by the current Respondent against the current Applicant in relation to a repairing standards issue.

In that case the Tribunal held that it did not have jurisdiction to deal with the case. The title deeds disclosed that Miss Dickson had a liferent interest in the property. The Tribunal noted that the title was held in the Land register under title number GLA179132 and in the proprietorship section, Section B, it stated:

- 1. In terms of Disposition to STEPHEN DAVID McCULLAGH, registered 01 AUG 2008, a liferent interest in this Title was conveyed to ELIZABETH DOCKSON residing at 82 Cardowan Road, Glasgow, G33 2RY.*

The Tribunal noted that the Land Certificate went on to say that there had been no application for registration of the liferent interest in the Property and no real right in the liferent therefore exists, but they concluded that that does not mean that a personal right liferent in favour of the Tenant does not exist.

The Tribunal held that they only had jurisdiction to deal with applications in relation to properties which are subject to any tenancy to which the Housing (Scotland) Act 2006 applies. They held that occupation by way of a liferent interest is not a tenancy for the purpose of the 2006 Act. They commented that "a liferenter holds an interest very close to that of a heritable proprietor to the extent that it is a liferenter (not anyone else) who can grant a tenancy for a property (subject to it not enduring past their lifetime)."

The Application was dismissed.

### **Case Management Discussion**

The Applicant represented himself. The Respondent was present, and was represented by Miss Johnson from the Legal Services Agency.

The Chairperson introduced herself and had the parties introduce themselves. She explained the purposes of a Case Management Discussion in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

The Chairperson asked the Applicant if he had had sight of the Written Response lodged on behalf of the Respondent, and he confirmed that he had. The Chairperson asked him if he had read the decision of the Tribunal in relation to the repairing standards case, and he said that he had,

The Chairperson narrated the fact that the Tribunal had dismissed that application as they had held that the existence of the liferent meant that the tenancy agreement was not valid. She asked the Applicant if he was going to put forward something to refute that contention.

The Applicant explained that he had property in June 2008 from the respondent, and had paid her £80,000. He issued a Short Assured Tenancy to her at that time. Lately there had been issues with the rent. The Chairperson pointed out that this did not change the fact that there was a liferent in the title. The Applicant said that he had not known that there was a liferent, had not instructed it and would not have agreed to it. He felt that the Tribunal did have jurisdiction as there was a Short Assured Tenancy between the parties and rent had been paid in the past.

The Chairperson asked how he had come to buy the property in 2008. He said that he was a landlord, and bought a lot of property. The Respondent's brother approached him and asked him he wanted to buy the property from the Respondent. The Applicant used the solicitor he had been using for 25 years, and that solicitor's paralegal acted for the Respondent. The Chairperson asked if the same firm of solicitors usually acted for both buyer and seller, and the Applicant said no He did not know if the Respondent had had an existing connection with the firm.

The Applicant had attempted to contact the firm of solicitors, seeking answers, but had only managed to get hold of them on Monday of this week. He had consulted other solicitors, but they were not available to appear on his behalf today.

The Applicant had contacted the Lender. They confirmed that they had no knowledge of the liferent, and would not have lent on the property in the circumstances, as the liferent would have made any repossession difficult.

The Applicant said that he accepted that there was a liferent in relation to the property, but he was concerned about the rent arrears.

The Chairperson pointed out that the Applicant had not presented anything to suggest that the liferent had come to an end, meaning that a tenancy could be constituted. He said that he did not know what could be done to bring the liferent to an end. He accepted that the application was likely to be dismissed, given he had nothing new to put forward.

The Chairperson considered the written submission lodged by the Respondent's solicitor was full and stated the position completely. There was no need for the solicitor to address the Tribunal on the statement.

### **Findings In Fact**

1. There is no tenancy or occupancy agreement in existence in terms of section 16 of the Housing (Scotland) Act 2014.
2. The Tribunal therefore does not have jurisdiction to determine the Application.

## Reasons For Decision

The Tribunal's jurisdiction comes from section 16 of the Housing (Scotland) Act 2014, which states:

*16 Regulated and assured tenancies etc.*

*(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—*

*(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),*

*(b) a Part VII contract (within the meaning of section 63 of that Act),*

*(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).*

*(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.*

*(3) Part 1 of schedule 1 makes minor and consequential amendments.*

Occupation by way of a life interest does not fall within the definitions in any of these sections, and therefore The Tribunal therefore does not have jurisdiction.

## 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 Kelly

28/6/19  
Date