

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

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/23/1173**

**Re: Property at 5 South Quarry, Edinburgh, EH23 4GZ (“the Property”)**

**Parties:**

**Mrs Lyndsey Mary Jackson and John Scott Jackson, 101 La Bolsa Road, Walnut Creek, California, 94598-4817, United States (“the Applicants”) per their agents, Gillespie Macandrew, solicitors, 5 Atholl Crescent, Edinburgh, EH3 8EJ (“the Applicants’ Agents”)**

**Mr David Hamlett, 5 South Quarry, Edinburgh, EH23 4GZ (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)**

## **Decision**

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

## **Background**

1. By application received on 13 April 2023 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for possession of the Property based on the ground that the tenancy was terminated by Notice in terms of Section 33 of the Act. The Application comprised a copy of the tenancy agreement between the Parties with Form AT5, copy Notice to Quit, copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Midlothian Council, being the relevant local authority and copy letter from the Respondent advising that he and his family would remain in the Property until an Order was granted. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 20 June 2023 at 14.00 by telephone conference. The CMD was intimated to the Parties.

## **CMD**

2. The CMD took place on 20 June 2023 at 14.00 by telephone. The Applicants were not present and were represented by Mr. A. Robertson of the Applicant's Agents. The Respondent took part on his own behalf and was not represented.
3. The Respondent confirmed to the Tribunal that he did not formally oppose the Application but had been unable to find alternative accommodation.
4. The Tribunal noted from the Application that the correct statutory procedures had been carried out and explained to the Respondent that the tenancy had been brought to an end in terms of Section 33 of the Act, which allowed the Applicants to recover possession of the Property without a breach of tenancy conditions. The Tribunal advised the Parties that the only issue for the Tribunal was reasonableness in respect of the facts before it.
5. The Tribunal invited the Respondent to provide information on his family and his circumstances. The Respondent explained that he and his family have lived at the Property for eight years and are settled. He explained that he has three children, a daughter aged six years and twin sons aged fourteen years, all of whom have additional needs due to disability. The Respondent stated that children attend local schools. He explained that one of his sons is profoundly disabled with complex needs and that the Property meets his son's needs as it is safe and in a good location away from main and busy roads. He confirmed that the Property has had no special adaptations.
6. With regard to alternative housing, the Respondent advised that the family are on the Midlothian Council waiting list and has maximum points in respect of medical reasons but that no housing is available. He explained that the Council will not entertain an application for homelessness priority housing until an eviction order is granted.
7. On behalf of the Applicants, Mr. Robertson explained that the Applicants had lived in the Property until moving to Ireland in 2015 and that they have moved again and are settled in California, where they intend to reside permanently having obtained Green Card visas. He explained that the Applicants have three children aged five, nine and eleven all of whom are settled in school and take part in sports and community events. Mr. Robertson explained that the Applicants require to sell the Property to fund the purchase of permanent accommodation in the USA as they currently reside in temporary rented accommodation and wish to secure permanent accommodation for their family in their current location. Mr. Robertson explained that the Applicants each have a flat in the Edinburgh area and are selling these properties to fund their purchase in the USA and to wind up their assets in the UK. Mr. Robertson submitted that the grant of the Order would provide stability for both Parties.

### **Issue for the Tribunal**

8. 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. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do*

*anything at a case management discussion .....including making a decision”* . The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

### **Findings in Fact**

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There was a short assured tenancy of the Property between the Parties which was terminated in terms of Section 33 of the Act on 1 April 2023;
  - ii) The Respondent and his family did not remove from the Property on termination of the tenancy;
  - iii) Tacit relocation did not apply to the tenancy;
  - iv) The Respondent has three children all of whom have special and additional needs, one having complex needs;
  - v) The Respondent has applied to Midlothian Council for alternative accommodation;
  - vi) Midlothian Council will not prioritise his application for accommodation unless an Order is granted;
  - vii) The Applicants are settled in California and intend to reside there permanently;
  - viii) The Applicants have three school age children, all of whom take part in local community activities and sports;
  - ix) The Applicants have two other properties which they are selling to fund the purchase of a property in California;
  - x) The Applicants terminated the tenancy in order to sell the Property to provide additional funding needed for the purchase of a property in California and
  - xi) The tenancy was a short assured tenancy entered into before the Coronavirus (Scotland) Act 2020 came in to force and imposed the reasonableness test.

### **Decision and Reasons for Decision**

10. The Tribunal had regard to all the information before it and to its Findings in Fact.
11. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
12. The Tribunal had regard to the Respondent's family circumstances and the particular needs of his children. The Tribunal had regard to the fact, if evicted, the children would be safeguarded from permanent homelessness by the local authority's statutory homelessness and equality duties and that the Respondent and his family would have the benefit of security of tenure.
13. The Tribunal had regard to the Applicants' family circumstances and the facts that they are settled abroad and intend to make the USA their permanent home and residence. The Tribunal had regard to the fact that the Applicants are selling their properties to assist this intention. The Tribunal took account of the fact that the tenancy was short assured tenancy and that the Respondent did not have security of tenure when the tenancy began. The Tribunal found that it was not reasonable that the Applicants be required to continue to be landlords in this country against their wishes and intentions.
14. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

## 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.



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Legal Member/Chair

20 June 2023.  
Date