



**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**

**Chamber Ref: FTS/HPC/EV/23/1381**

**Re: Property at 11 Peffer Street, Edinburgh, EH16 4BA (“the Property”)**

**Parties:**

**Waugh Investments Limited, 27C Dryden Road, Loanhead, EH20 9LZ (“the Applicants”)**

**Mr Brian Kennedy, 11 Peffer Street, Edinburgh, EH16 4BA (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and made an Order for Possession of the Property.**

**Background**

1. By application, received by the Tribunal on 28 April 2023, the Applicants sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 1 November 2017 and, if not brought to an end on 1 May 2018, continuing on a monthly basis thereafter until terminated by at least two months’ notice given by either party to the other party. The rent was stated to be £525 per month. The Applicants also supplied copies of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 17 August 2022, and both requiring the Respondent to vacate the Property by 1 November 2022, with evidence of delivery of both Noticed by Recorded Delivery on 18 August 2022.

3. The Applicants stated that the Property is in untenable condition as a direct result of the Respondent's hoarding issues. The Applicants and their contractors have been unable to gain access to carry out safety checks. The condition of the Property is preventing safe use. The Applicants gave the Respondent the opportunity to clear the Property, but the Respondent made little effort to do so. The Applicants, via their agents, have tried to engage with the Respondent and have contacted his social worker and made attempts to contact the local authority. The Respondent has failed to ensure the Property is kept in good tenable condition as required by his tenancy agreement and the Applicants are concerned that the condition of the Property will deteriorate further if the tenancy continues. In all the circumstances, it would be reasonable for an Order for Possession to be granted.
4. On 1 June 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 22 June 2023. The Respondent did not make any written representations to the Tribunal.

#### **Case Management Discussion**

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 4 July 2023. The Applicants were represented by Ms Kirstie Donnelly of TC Young LLP, solicitors, Glasgow. The Respondent was present and was supported by Mr Mark Robertson of SACRO.
6. The Respondent told the Tribunal that he was looking for the case to be continued to enable him to properly instruct a solicitor with whom he had made contact the previous evening. It appeared that the solicitor had raised concerns in relation to the tenancy agreement and the contents of the Notice to Quit. The Respondent also told the Tribunal that he had been in the Property since 2004. He asked why the papers had not been sent to him by recorded delivery, but had instead been pinned to his door. The Tribunal Chair advised him that service had been by sheriff officers, who had reported that they had carried out service by affixing the documentation to the door of the Property as there was no letter box. The question was, however, academic, as the Respondent was not suggesting that he had not received them.
7. Ms Donnelly told the Tribunal that she understood that the Tribunal would probably be minded to grant the request for a continuation. She said that she did not consider it necessary to fix a full evidential Hearing at this stage but asked that the Tribunal direct the Respondent to provide written submissions outlining the reasons for his querying the tenancy agreement and the Notice to Quit, together with his argument as to whether it would be reasonable to make an Order for Possession. She told the Tribunal that the letting agents had been trying to engage with the Respondent to arrange access to the Property, as they were concerned about its condition and, in particular because they required to arrange for gas safety and electrical inspections to be carried out. Ms Donnelly said that her clients were looking for an

assurance that the Respondent would now permit such access, as the case was not going to be decided today. The Respondent stated that he would “100% co-operate” with the letting agents to allow the access requested.

8. The view of the Tribunal was that the most appropriate course of action would be to continue the case to a further Case Management Discussion and, in the meantime, to issue Directions to the Parties.
9. The Direction required the Respondent to provide written submissions from his legal advisors in relation to his contention that there are issues with the tenancy agreement and the contents of the Notice to Quit, a copy of any tenancy agreement that pre-dates the Short Assured Tenancy which commenced on 1 November 2017, and written submissions from his legal advisor on the question of whether it would be reasonable for the Tribunal to make an Order for Possession.
10. The Respondent did not provide the Tribunal with any submissions or documentation, so did not comply with the Direction.

### **Second Case Management Discussion**

11. A second Case Management Discussion was held by means of a telephone conference call on the morning of 10 October 2023. The Applicants were again represented by Ms Donnelly. The Respondent was not present or represented.
12. Ms Donnelly advised the Tribunal that, since the first Case Management Discussion, an electrician had gained entry to the Property, but had reported that he was unable to access 50% of the installation due to the cluttered state of the Property. The Applicants’ agents had made efforts to contact the Respondent, who had told them that he has been in contact with the local authority regarding being re-housed. The agents had arranged to visit the Respondent on 4 October, but he had not been in when they called and had, since then, failed to respond to texts or telephone calls. SACRO had also confirmed that they are no longer working with the Respondent. Ms Donnelly asked the Tribunal to accept that the Applicants, through their agents, had done more than could have been reasonably expected to try and resolve the situation and to have the required safety inspections carried out and that it would be reasonable to make an Order for Possession.

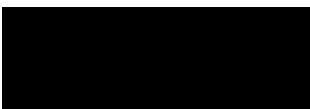
### **Reasons for Decision**

13. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

14. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.
15. The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.
16. The Tribunal considered carefully all the evidence before it and noted that the Respondent had not complied with the Direction made on 4 July 2023 and had not taken the opportunity to attend or be represented at the second Case Management Discussion. The Tribunal noted in particular that, as a result of a failure by the Respondent to engage with their agents, the Applicants have been unable to carry out the obligatory electrical and gas safety checks and that they have concerns about the condition of the Property but have not been allowed access to inspect it, despite the assurances given by the Respondent at the first Case Management Discussion. The Tribunal also noted the considerable efforts made by the Applicants' agents to resolve the situation by contacting the Respondent's social worker, the local authority and SACRO. On the basis of the information before it, the Tribunal was satisfied that it was reasonable to make an Order for Possession.
17. The application is affected by The Cost of Living (Tenant Protection) (Scotland) Act 2022.

## 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.**



---

Legal Member/Chair

10 October 2023  
Date