



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 19 and 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/4501

Re: Property at 2 Shawhead Cottage, Lockerbie, DG11 1DE (“the Property”)

Parties:

Castle Milk Trust, Castle Milk Trust, Castle Mile and Corries Estates, Norwood, Lockerbie, DG11 2QX (“the Applicant”)

Miss Joanne Kirkpatrick, 2 Shawhead Cottage, Lockerbie, DG11 1DE (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

1. On 13th December 2023 the Applicant lodged an Application with the Tribunal under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

2. Lodged with the application were: -
 - a. Short Assured Tenancy Agreement commencing 19th January 2015 and initially running for six months and monthly thereafter, and with weekly rent of £75
 - b. AT5 Notice dated 16th January 2015;
 - c. Notice to Quit dated 26th September 2022 for 20th January 2023
 - d. Section 33 Notice dated 26th September 2022 for 20th January 2023
 - e. Receipt

- f. Section 11 Notice with proof of service;
 - g. 6 Pre Action Protocol letters dated 7th March, 15th March, 14^h April, 22nd May, 3rd June and 8th August all 2023;
 - h. Rent Statement
3. The Application was served on the Respondent by Sheriff Officers on 14th March 2024.
 4. On 4th April 2024 the Applicant's solicitor lodged an Inventory of Productions containing rent statements from the commencement of the tenancy to date, and two emails from Universal Credit regarding direct payment.

Case Management Discussion

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Mr Miller of Anderson Strathern, Solicitors. The Respondent represented herself.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and also that it was reasonable for the Tribunal to grant the order.
7. Mr Miller sought an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988. He said that notices had been served correctly and the Respondent had refused to leave. He said that as far as reasonableness was concerned the Respondent had been in arrears continuously since 1st April 2019. Six pre action protocol letters had been sent and the Respondent had only had sporadic contact with the Applicant about the arrears. Her arrears now exceeded seventeen months' rent payments.
8. Mr Miller said that the Respondent was in receipt of Universal Credit ("UC") and in March 2021 the Applicant had asked UC to pay the benefit direct to them. The Respondent had stopped that arrangement in December 2021. The Applicant had requested direct payments again in February 2022.
9. The Respondent said that she had sometimes not paid rent because things that needed done by the landlord were not getting done. Things in her life had built up and built up and she could not pay. She said that she did receive UC for the rent direct and there were occasions when she did not pay it over because the Applicant did not carry out the repairs. There was a broken window and the cupboard doors were slack. She said that she had reported the repairs issue to Graham, and then Alistair, who had both worked for the Applicant. She had not kept the money retained in a separate account and she did not have it now.
10. The Respondent said that the property was one bedroomed and she lived there alone. She is aged 49 and not in employment. The house has not been adapted in respect of any disabilities.

11. Mr Miller said that the Respondent had not lodged any written representations with the Tribunal and had not brought these issues up before. She had not provided any dates when she had reported matters.
12. The Respondent said that she had not contacted the Applicant when she received the six pre action protocol letters. She did not contact them when she received the Notice to Quit and she did not contact them when she received service of the Tribunal papers. She could now offer £160 per month towards the arrears.
13. The Respondent said that she had had some contact with a woman named Lisa about re-housing, but she was not clear on who Lisa worked for.

Findings in Fact

- i. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
- ii. The tenancy commenced on 19th January 2015, with the initial term being for 6 months and monthly thereafter;
- iii. Notice To Quit and Section 33 Notice were served timeously and correctly;
- iv. The Application was served on the Respondent by Sheriff Officer on 14th March 2024;
- v. The current arrears are £5665.13 which is around 17 months' rent;
- vi. The majority of the rent is met by Universal Credit;
- vii. The Respondent has not made any contact with the Applicant recently to discuss the arrears;
- viii. The Respondent lives alone at the property;
- ix. The Respondent is not in employment.

Reasons For Decision

14. The Tribunal were satisfied that the ground of eviction was established by service of the notices.
15. Section 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:

Assured tenancies: discretionary eviction grounds

(1) The Housing (Scotland) Act 1988 is modified as follows.

(2) In section 18 (orders for possession)—

(a) subsections (3) and (3A) are repealed,

- (b)in subsection (4), for “Part II” substitute “Part I or II”,*
- (c)in subsection (6)(a), the words “or Ground 8” are repealed,*
- (d)in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.*
- (3)In section 19 (notice of proceedings for possession), subsection (5) is repealed.*
- (4)In section 20 (extended discretion of First-tier Tribunal in possession claims)—*
- (a)in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,*
- (b)subsection (6) is repealed.*
- (5)In section 33(1) (recovery of possession on termination of a short assured tenancy)—*
- (a)in the opening words, for “shall” substitute “may”,*
- (b)after paragraph (b), the word “and” is repealed,*
- (c)after paragraph (d) insert “, and*
- “(e)that it is reasonable to make an order for possession.”.*
- (6)In schedule 5 (grounds for possession of houses let on assured tenancies)—*
- (a)in Part I, Ground 8 is repealed,*
- (b)the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,*
- (c)the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.*

The Tribunal now has to decide if it is reasonable to grant the eviction order.

16. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered the facts carefully. There were periods when the Respondent accepted that she had retained UC payments which were paid to her to meet the rent obligation. She had not contacted the Applicant regarding the arrears when she received the Pre action Protocol letters, the Notice to Quit or when the Tribunal papers were served. She was seventeen months behind with the rent. The offer she made of £160 per month towards the arrears would mean it would take nearly three years to pay them off. It was not reasonable to expect the Applicant to

carry that debt for such a lengthy period. The Tribunal considered in all those circumstances that it was reasonable to grant the order.

17. Given that the Respondent did not appear to have made any progress in applying for re-housing the Tribunal decided to suspend the order for eviction for a period of three months.

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.

18 April 2024

Legal Member/Chair

Date