



**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/21/2019

Re: Property at 19 Shore Road, Skelmorlie, PA17 5EQ (“the Property”)

Parties:

Acre Lettings Limited, 6 Stanlane Place, Largs, KA30 8DA (“the Applicant”)

**Mr Martyn McCulloch, 19 Shore Road, Skelmorlie, PA17 5EQ (“the
Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member) and Linda Reid (Ordinary Member)

Decision

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

FINDINGS IN FACT

1. The Applicant is the landlord, and the Respondent the tenant, of the property under and in terms of a Short Assured Tenancy Agreement which commenced on 11 August 2008.
2. The property is in disrepair.
3. The Respondent is in rent arrears.
4. The Respondent is unable to meet his monthly rent on an ongoing basis.
5. The Respondent is unable to make any contribution to his outstanding arrears.
6. The Respondent is disabled. He suffers from arthritis in his back, both hips and both hands. He suffers from Post-Traumatic Stress Disorder.
7. The Respondent resides at the property with his three sons aged 14, 22 and 24.
8. The Respondent’s youngest son is at Largs Academy in his third year, and will be undertaking exams in his next school year.

9. The Respondent's middle son, Christopher, suffers from severe Asperger's Syndrome.
10. The Respondent's eldest son, Lee, is carer for the Respondent and Christopher McCulloch.
11. The property has not been adapted for the special needs of the Respondent or his family.
12. The Respondent and his family do not access any specialist local services for their disabilities.
13. The Respondent keeps two dogs at the property.
14. The Respondent formerly kept birds of prey at the property in aviaries outside the property with the consent of the Applicant.
15. The Respondent formerly kept two small owls in cages inside his property without consent of the Applicant.
16. The Respondent formerly kept ferrets in one of the outbuildings of the property without consent of the Applicant.
17. The Respondent no longer keeps birds or ferrets at the property or anywhere on its grounds.
18. The Respondent operates a business whereby he shows birds of prey. The administration for that business is undertaken from the property. The birds were previously accommodated at the property, but no longer are.
19. In April 2021, the Applicant arranged for gutters and downpipes to be cleaned to remedy water ingress at the property.
20. In April 2021, the Applicant arranged for works to tidy the garden and remove refuse and dog droppings therefrom.
21. The Applicant intends to undertake significant renovations of the property.
22. There are other properties in the local authority area that are available for let and suitable for the Respondent's needs and those of his family.

FINDINGS IN FACT AND LAW

1. The Short Assured Tenancy between the parties has reached its end.
2. Tacit relocation is not operating on the Short Assured Tenancy between the parties.
3. Notice in terms of section 33(1)(d) of the Housing (Scotland) Act 1988 was validly served on the Respondent.
4. In all of the circumstances, it is reasonable to grant an order for possession.

STATEMENT OF REASONS

1. This Application called for a Hearing by teleconference on 11 January 2022. The Applicant was represented by Miss Bell of the Applicant. The Respondent appeared personally.
2. In this Application, the Applicant seeks an eviction order under and in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). In terms of section 33 of the 1988 Act (as temporarily amended by the Coronavirus (Scotland) Act 2020):-

“33.— Recovery of possession on termination of a short assured tenancy.

- (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 ish;
 - (b) that tacit relocation is not operating;
 - ...
 - (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.
- (2) The period of notice to be given under subsection (1)(d) above shall be—
 - (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;
 - (ii) in any other case, six months.
- (3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.
- (4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.
- (5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”

3. At the Case Management Discussion on 28 October 2021, the parties agreed that the tenancy in this case was a Short Assured Tenancy, that it had reached its ish, that tacit relocation was not operating due to proper service of a valid Notice to Quit, and that notice in terms of section 33(1)(d) of the 1988 Act had been properly served. The only question for the Tribunal to determine was whether it was reasonable to make the order for possession. The purpose of the Hearing was to determine that question.

The Evidence

4. The Applicant led evidence from Miss Andrea Bell, an employee of the Applicant, and from Mr John Corrigan, the sole director of the Applicant. The Respondent gave his own evidence.

Andrea Bell

5. Miss Bell confirmed that she had been employed by the Applicant for approximately eight years. Her role was office based. She did not undertake

any of the property inspections. She would receive complaints of disrepair from tenants from time to time. She would action such complaints by following a defined procedure whereby she would instruct one of a number of contractors with whom the applicant has a business relationship to attend a property and remedy any wants of repair in the property.

6. In advance of the Hearing, Miss Bell had prepared written representations for the Applicant. She adopted those representations as her evidence. I do not propose to narrate the terms of those representations in full in this decision. In summary, she asserted the Applicant's position in the following terms:-
 - a. No challenge is taken to the Notices served on the Respondent in this case.
 - b. The Respondent has been offered alternative accommodation and chose not to accept it.
 - c. The Respondent is in receipt of housing benefit which covers part only of his monthly rent. The Respondent has failed to make full payment of the shortfall and is in arrears of in excess of £1,945.84.
 - d. The Respondent's misuse of the property has caused the condition of the property to deteriorate.
 - e. The Respondent has kept, and is keeping, animals including birds of prey and ferrets at the property without permission.
 - f. The Respondent has deposited ferret waste over the railings outside of the coach house, which attracts vermin.
 - g. The Respondent operates a business from the property without permission.
 - h. The Respondent fails to keep the property and associated buildings and garden ground in a clean and tidy condition.
 - i. The Respondent has persistently failed to notify the Applicant of wants of repair as they arise.
 - j. The Respondent has undertaken partial decoration in the property without consent.
 - k. The Respondent failed to allow potential purchasers of the property full access for viewings.
 - l. The Applicant now intends to renovate the property for its sole director, Mr Corrigan, to occupy as a family home. The property will require considerable renovation due to its condition.
7. In addition, Miss Bell confirmed that, other than the specific repairing requests referred to in the written submissions, the Applicant has no record of any repairing requests having been made by the Respondent.
8. Upon being asked about notification of a downed tree having been made to her by the Respondent, Miss Bell read out a text message she received from the Respondent on 27 August 2021 which alleged that something had happened but that the tenant was dealing with it. The specifics of the event were not referred to, but there was an attempt to send a photograph which had not downloaded to her phone. There was no suggestion that damage had been caused to any part of the property, including a car port. Miss Bell did not

follow up on that message as it appeared that the Respondent was going to deal with whatever the issue was himself.

9. When asked, Miss Bell also accepted that the Respondent had written to her in or around May 2021 to say that none of the windows in the property could open, under exception of the window in the “upstairs bedroom front master”. When asked her views on whether this was a longstanding issue at the Property, Miss Bell said that she would be surprised if it was. Her view was that the Respondent would have insisted on having opening windows at some time between the tenancy commencing in August 2008 and the issue being raised for the first time in May 2021.

Mr John Corrigan

10. Mr Corrigan is the sole director of the Applicant. He is the owner of the Applicant. He spoke of having originally purchased the property with a view to occupying it as a family home. He spoke of having paid in excess of £500,000 to purchase the property, which he said was reflective of its condition. However, his then partner desired to remain in their then home, and so the property was let out.
11. Mr Corrigan explained that the previous owner of the property had kept canaries or similar small birds. There was a bird cage in the grounds of the property adjacent to a car port. Mr Corrigan expressed the view that all of the windows in the property were capable of being opened at the beginning of the tenancy, but conceded that he had not checked them himself. His position was that, if the question of the condition of the windows was relevant, then the Tribunal would need to “take a view” on them.
12. Mr Corrigan confirmed that, when the property had been let to the Respondent, he was permitted to keep two dogs. He had not provided permission to keep any other pets. Mr Corrigan recalled the Respondent asking whether he could keep birds at the property in the bird cage left by the previous owner. Mr Corrigan confirmed that he gave permission to the Respondent to do so. However, the Respondent then constructed new aviaries at the property without permission. No enforcement action was taken. The Respondent was also keeping ferrets without permission.
13. Mr Corrigan spoke of having seen three dogs at the property at an inspection in April 2021 and expressed the view that the Respondent was keeping more than only two dogs at the property. He described a Doberman type dog, a Labrador type dog and a smaller dog the breed of which he did not know.
14. Mr Corrigan spoke of having attended some property inspections during the tenancy, but not many. He explained that during the period 2011 until 2013, and possibly into 2014, he had not attended any property inspections. That was due to his diagnosis of and treatment for bowel cancer. His position was that inspections and repair requests were typically dealt with by his staff. He had no recollection of any repairing issues having been raised by the

Respondent, in particular as regards a fault with the oven or hob. He said that his staff would have reported that to him.

15. Mr Corrigan conceded that an issue of water ingress had been reported to the Applicant by the Respondent. This, he said, was due to the gutters and downpipes requiring cleaning. This work took longer to action than he would have liked due to difficulties caused by the pandemic. However, he said that those works were undertaken in April 2021. Further, the garden was also tidied up at that time. Mr Corrigan spoke of the garden not been kept tidy, rubbish and bags of clothes having been left in the garden rather than taken to the dump, and of copious amounts of dog droppings throughout the garden.
16. Mr Corrigan accepted that, as of October 2021, the birds kept by the Respondent had been moved away from the property. He had witnessed this himself. He had, at that time, been unable to see if the ferrets had been moved.
17. Mr Corrigan confirmed that his personal circumstances had changed and that he would now prefer to live in the property rather than where he is living just now. As such, he confirmed that his intention was to renovate the property and then move into it.
18. Mr Corrigan was unable to comment generally on the Respondent's personal circumstances. His only comment was that he doubted whether the Respondent would be in a position to pay the shortfall in rent on an ongoing basis, or indeed make a contribution towards the outstanding arrears. In any event, Mr Corrigan expressed the view that he was unwilling to enter into an agreement with the Respondent regarding repayment that involved the Respondent remaining in the property.

Mr Martyn McCulloch

19. Mr McCulloch also provided written representations ahead of the Hearing, which the Tribunal has considered.
20. Mr McCulloch spoke of having lived at the property since 11 August 2008. He said that, when he was moved into the property, the person who showed him the property advised him that the windows did not open and that the bathroom upstairs was not plumbed in properly. He said that this was not a problem for him because the let was only intended to be a short term thing. However, when asked later, he also said that he hounded the Applicant to remedy both of those matters until he got "fed up" and stopped. He said that the property benefitted from planning permission to demolish the property and build flats, and he felt that the Applicant was unwilling to spend money on the property when the ultimate intention was to demolish it.
21. Mr McCulloch confirmed that he resided at the property with his three sons, aged 14, 22 and 24. Mr McCulloch suffers from arthritis in his back, both hips and both hands. He described his spine as "crumbling". He also suffers from

Post-Traumatic Stress Disorder as a consequence of his service in the armed forces. His youngest son is in High School at Largs Academy. His middle son (Christopher) suffers from severe Asperger's Syndrome, but does not access any local services in respect of that condition. His eldest son (Lee) is carer to Mr McCulloch and Christopher McCulloch. The property has not been adapted for use by any member of the family. It is in relatively close proximity to Inverclyde Royal Infirmary, which is of assistance to Mr McCulloch.

22. Mr McCulloch confirmed that he had two dogs at the property. He confirmed that he had, for a period of two months, a third dog which was a small breed. That dog was now kept by his mother as her pet.
23. Mr McCulloch spoke of having asked permission from Mr Corrigan to keep birds at the property. After he received that permission verbally from Mr Corrigan, he built aviaries in the garden to house those birds. He said that Mr Corrigan would look at the birds in those aviaries when he visited the property and did not raise any issues with their being kept. He also confirmed that he had two small owls, approximately the size of budgerigar, being kept in cages inside the property.
24. Mr McCulloch confirmed that his eldest son, Lee, kept ferrets in the coach house. He spoke of Lee being the one who cleaned the ferret lodgings out. He said that Lee typically bagged the ferret waste, but conceded that Lee had on at least one occasion disposed of the ferret waste by tipping them over railings next to the coach house. In any event, Mr McCulloch stated that the birds and ferrets had been moved to a local farm where it was envisaged that a visitor attraction would be opened.
25. Mr McCulloch said that his business was showing his birds of prey at events. He accepted that he operated his business from the property, but described that as involving work from a home office and, until recently, accommodation for the birds. No showings took place at the property. No visitors attended at the property to view the birds.
26. Mr McCulloch spoke of the pandemic having had a serious negative impact on his income. He had been unable to show his birds at any events during 2021. That was the reason why he had been unable to make up the shortfall in his rent as it fell due. He said that he had recently cleared other outstanding payments to another party, and expected to be able to clear the shortfall in rent on an ongoing basis. However, he would need to wait until finances improved to contribute towards the arrears. He said that when that would be depended on what the Scottish Government did moving forward regarding Covid-related restrictions.
27. Mr McCulloch accepted that the property was in significant disrepair. He had produced photographs of areas of the property showing black mould, rotten window frames and vegetation growing out of the roof. He contended that the windows in the property would not open due to having been painted and the paint now preventing the sash and case windows from opening.

28. However, the crux of Mr McCulloch's evidence was that he was not responsible for the wants of repair at the property. His position was that the property was in a poor condition due to the Applicant's failure to repair it when called upon to do so. He spoke of having himself replaced an oven and hob after the Applicant allegedly failed to do so some ten years prior. He spoke of damp and water ingress at the property which had not been remedied. He denied that he had failed to report wants of repair timeously. He accepted that there had been dog fouling in the garden that had not been cleaned up, which he attributed to his son, Christopher, having failed to clean up after the dogs. However, he disputed the allegations that the garden had not been properly tended.
29. Mr McCulloch also confirmed that he had been in discussions with the local authority, and anticipated being offered a house that day which would meet the needs of his family and which he expected to move into within the next four weeks. He explained that he had previously been offered a two bedroom house to accommodate him and his sons, but that he had refused this as it did not meet his family's needs.

Assessment

30. The Tribunal found Miss Bell to be credible and reliable in her account. She was clear and straightforward in giving her evidence. She relied on the records that were available to her. The Tribunal had no hesitation in accepting her evidence.
31. The Tribunal did not consider that either Mr Corrigan or Mr McCulloch were credible or reliable.
32. Mr Corrigan appeared reluctant to provide full answers to the questions posed by the Tribunal, and at times was guarded in his replies. He gave the impression that he wished to keep to a prepared case and avoid the Tribunal looking too closely at the arrangements made with the Respondent regarding the keeping of animals which may have contributed to the condition of the property.
33. Mr McCulloch's evidence was contradictory in places. He claimed not to be bothered about significant wants of repair at the commencement of the tenancy, but then suggested that he had "hounded" the Applicant to remedy them. The Tribunal found it difficult to accept that, if there were issues at the property associated with ventilation and the windows were sealed shut that a reasonable tenant would not have continuously raised that issue with its landlord. Similarly, the Tribunal found it unlikely that a reasonable tenant would not take issue with a bathroom in the property failing to function properly. That Miss Bell had no record of the window complaint until mid-2021, and no record of the bathroom complaint at all, was telling to the Tribunal.

34. However, that being said, based on the evidence heard the Tribunal was prepared to make the following findings in fact:-
- a. The property is in disrepair.
 - b. The Respondent is in rent arrears.
 - c. The Respondent is unable to meet his monthly rent on an ongoing basis.
 - d. The Respondent is unable to make any contribution to his outstanding arrears.
 - e. The Respondent is disabled. He suffers from arthritis in his back, both hips and both hands. He suffers from Post-Traumatic Stress Disorder.
 - f. The Respondent resides at the property with his three sons aged 14, 22 and 24.
 - g. The Respondent's youngest son is at Largs Academy in his third year, and will be undertaking exams in his next school year.
 - h. The Respondent's middle son, Christopher, suffers from severe Asperger's Syndrome.
 - i. The Respondent's eldest son, Lee, is carer for the Respondent and Christopher McCulloch.
 - j. The property has not been adapted for the special needs of the Respondent or his family.
 - k. The Respondent and his family do not access any specialist local services for their disabilities.
 - l. The Respondent keeps two dogs at the property.
 - m. The Respondent formerly kept birds of prey at the property in aviaries outside the property with the consent of the Applicant.
 - n. The Respondent formerly kept two small owls in cages inside his property without consent of the Applicant.
 - o. The Respondent formerly kept ferrets in one of the outbuildings of the property without consent of the Applicant.
 - p. The Respondent no longer keeps birds or ferrets at the property or anywhere on its grounds.
 - q. The Respondent operates a business whereby he shows birds of prey. The administration for that business is undertaken from the property. The birds were previously accommodated at the property, but no longer are.
 - r. In April 2021, the Applicant arranged for gutters and downpipes to be cleaned to remedy water ingress at the property.
 - s. In April 2021, the Applicant arranged for works to tidy the garden and remove refuse and dog droppings therefrom.
 - t. The Applicant intends to undertake significant renovations of the property.
 - u. There are other properties in the local authority area that are available for let and suitable for the Respondent's needs and those of his family.

Decision

35. In reaching a decision on reasonableness, the Tribunal is to have regard to all of the circumstances of the case. It is required to have regard to the impact on both sides that a grant, or refusal to grant, an eviction order may cause.

36. In this case, the Tribunal considers that the balance falls in favour of granting an eviction order. It is clear that the Respondent is unable to afford to live in the property. Affordable housing in the local authority area is available. Irrespective of who is responsible for the condition of the property, which matter the Tribunal does not express a view on, it is not in dispute that it is in significant disrepair such that it requires significant renovation. The Applicant desires to do so. There is nothing special about the property that would necessarily tie the Respondent and his family to the property, or which would tend to suggest that it would not be reasonable to grant an order for possession. Accordingly, having regard to all of the facts as we have found them, the Tribunal is satisfied that it is reasonable to grant an order for possession.

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. Upton

11th January 2022

Legal Member/Chair

Date