



**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/21/2234

**Re: Property at Cramond Brig Farmhouse South, Cramond, EH4 6DX (“the
Property”)**

Parties:

**The Earl's Partnership, Dalmeny Estate Office, Dalmeny House, South
Queensferry, EH30 9TQ (“the Applicant”)**

**Miss Jane Erica Mawdsley, Cramond Brig Farmhouse South, Cramond, EH4
6DX (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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

Background

The Applicant lodged an application on the 14th September 2021 under Rule 66 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), seeking eviction under section 33 the Housing (Scotland) Act 1988.

Lodged with the application were:-

1. The Short Assured Tenancy Agreement dated 25th and 26th January 2016;
2. AT5 Notice dated 19th and 23rd January 2016;
3. Notice to quit dated 11th November 2020;
4. Section 33 Notice;
5. Recorded Delivery slip dated 11th November 2020;
6. Proof of service dated 12th November 2020;

7. Section 11 Notice;
8. Schedule of rent Arrears to March 2021;
9. Schedule of rent arrears from April 2021 to September 2021.

The papers were served on the Respondent by Sheriff Officer on 11th November 2021.

On 8th December 2021 the Applicant lodged an up to date rent statement.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr Bauchop of Turcan Connell, Solicitors. The Respondent represented herself.

The Tribunal explained the purposes of a CMD in terms of Rule 17 of the Rules.

The respondent said that she had emailed a statement to the Tribunal that morning. It was located and emailed to the Tribunal members and to Mr Bauchop.

Mr Bauchop said that he was seeking eviction in terms of the Application, the tenancy having reached its ish and notices having been correctly served.

The Respondent said that she accepted this and was not seeking to oppose the eviction. She did not however, wish an order against her and wished to be given to the end of January 2022 to leave the property. Mr Bauchop said that the Respondent had had plenty of time to find a new property and he reluctantly had to move for the order to be granted.

The Tribunal confirmed that they were satisfied that the grounds had been established.

Mr Bauchop addressed the Tribunal on reasonableness. He said that there were significant rent arrears. The arrears now stood at £44,300. There had been numerous attempts by the Applicants to enter in to a payment plan with the Respondent. It had been over a year since notices had been served and she had had ample time to find somewhere else to live. The Respondent had entered on to one payment plan but had not been able to maintain it. He said that at the time the notices were served the arrears stood at £22,150, at the time the application was made they stood at £39,400 and they now stood at £44,300. The Respondent lived alone in the property.

The Respondent confirmed the terms of the statement she had lodged. She had originally resided with her friend, Anna Main. Miss Main had died in 2017. The Respondent was grief stricken, and also lost Miss Main’s income. She said she probably should have moved then but loved the house and was not ready to move. She obtained work as a self employed caterer, but when the pandemic hit she lost that income, and did not qualify for any of the government help schemes. She had income of £1200 per month from her teacher’s pension, having taken early retirement. She apologised for all the trouble she had caused and accepted that she could no longer live there. The Respondent was asked if she had looked for other properties. She said

that she had and had been hoping that the Applicant could rent her a smaller property on the estate. However, that had not happened. She was considering moving to Fife where rental property was cheaper. She confirmed that she would be able to stay with friends or family in the meantime, and that her brother had offered to be a guarantor on her next rental property.

Findings in Fact

1. The parties entered into a Tenancy Agreement dated 25th and 26th January 2016;
2. An AT5 dated 19th and 23rd January 2016 had been entered in to prior to the commencement of the tenancy;
3. The Tenancy was a Short Assured tenancy;
4. Notice to Quit dated 11th November 2020 was served on the Respondent;
5. Section 33 Notice dated 11th November 2020 was served on the Respondent;
6. Section 11 Notice was served on Edinburgh Council;
7. The ground of eviction had been met;
8. The Respondent was in arrears of rent when notices were served in the amount of £22,150;
9. The Respondent was in arrears of rent at the date of lodging the application in the amount of £39,400;
10. The Respondent was in arrears of rent at today's date of £44,300;
11. The Respondent accepted that it was reasonable to grant the order for eviction.

Reasons for Decision

It is usually mandatory to grant an application under section 33 of the Housing (Scotland) Act 1988. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

(1)The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph.

(2)Section 18 (orders for possession) has effect as if—

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

(b)in subsection (4), for “Part II” there were substituted “Part I or Part II ”,

(c)in subsection (4A), after the word “possession” there were inserted “ on Ground 8 in Part I of Schedule 5 to this Act or ”.

(3)Section 20 has effect as if subsection (6) (no discretion where landlord entitled to possession) were repealed.

(4)Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if in subsection (1)—

(a)in the opening words, for the word “shall” there were substituted “ may ”,

(b)after paragraph (b), the word “and” were repealed,

(c)after paragraph (d) there were inserted “, and

(e)that it is reasonable to make an order for possession.”.

(5)Schedule 5 (grounds for possession of houses let on assured tenancies) has effect as if for the heading of Part I there were substituted “ Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act 2020 ”.

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

The Tribunal were of the view in this case that the Applicants had established a prima facie case for eviction and that the Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The rent arrears here are significant. They also began prior to the pandemic. The Respondent was frank about her position and admitted in her statement that she had buried her head in the sand and waited for a miracle to happen. She was adversely affected by the pandemic as her income dropped and she did not have any recourse to government assistance and she could not afford the rent. She would not become homeless as she had friends and family she could stay with and her brother had offered to be guarantor on her next tenancy.

The Tribunal considered all the circumstances. The rent arrears are high. The Respondent does not oppose the order. In all the circumstances the Tribunal decided that it is reasonable to grant the eviction.

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.

Alison J Kelly

16th December 2021

Legal Member/Chair

Date