



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/EV/22/2397**

**Re: Property at 3 Milton of Conon Farm Cottage, Carmyllie, Arbroath, DD11 2RG  
("the Property")**

**Parties:**

**Ms Janice Whittick, Mackintosh Hall, Fern, By Forfar, DD8 3QW ("the Applicant")**

**Mr Paul Crosbie, 3 Milton of Conon Farm Cottage, Carmyllie, Arbroath, DD11  
2RQ ("the Respondent")**

**Tribunal Members:**

**Richard Mill (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an order be granted against the Respondent for  
payment to the Applicant of the sum of Twelve Thousand Two Hundred Pounds  
(£12,200)**

**Introduction**

1. These are two conjoined applications between the same parties. A short assured tenancy was entered into between the parties. The first application is under rule 66 and section 33 of the Housing (Scotland) Act 1988. The application seeks an eviction order. The second application is under rule 70 and section 16 of the Housing (Scotland) Act 2014. The application seeks recovery of rent arrears.
2. Intimation of the applications and CMDs is certified to have been made upon the respondent by sheriff officers on 5 December 2022.

3. The CMD took place on 20 January 2023 at 10.00 am. The applicant was present and represented by Mr Joseph Myles, solicitor. The respondent failed to participate in the hearing.

### Findings and Reasons

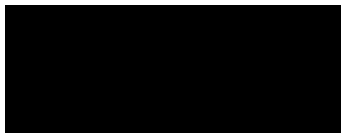
4. The Tribunal attached weight to the entirety of the documentary evidence which is not the subject of challenge. This was found to be both credible and reliable.
5. The property is 3 Milton of Conon Farm Cottage, Carmyllie, Arbroath DD11 2RQ. The applicant is Ms Janice Whittick who is the heritable proprietor and registered landlord of the property. The respondent is Mr Paul Crosbie who is the tenant.
6. The parties entered into a short assured tenancy which commenced on 21 December 2012. The initial period of let was until 24 June 2013. The tenancy has continued month to month since then, with an ish as at the 24<sup>th</sup> of each calendar month. A statutory AT5 was timeously served in advance of the tenancy being created. Monthly rent was stipulated at a rate of £475 per month and the rent was subsequently increased to £500.
7. The respondent has fallen into considerable rent arrears. As at the time of the amended application being received by the Tribunal, the arrears stood at £12,200. This is evidenced in terms of a detailed rent statement. The Tribunal found it necessary to grant the civil proceedings application requiring the respondent to pay the outstanding rent arrears to the applicant. He refuses or unreasonably delays to make the payments which he is legally obliged to.
8. By way of Notice to Quit dated 20 December 2021 the applicant gave notice to the respondent that he would require to remove from the property on or before 24 June 2013. Further, the applicant served notice under Section 33(1)(d) of the 1988 Act stating that possession was required of the property as at 24 June 2013. Additionally an AT6 in terms of section 19 of the 1988 Act was served providing notice of relevant schedule 5 grounds to be relied upon in the alternative.
9. The Notice to Quit and other Notices were served upon the respondent by post office delivery. There is vouched evidence to show that the items were delivered on 29 December 2021. In the circumstances less than the required 6 month notice period was provided to the respondent to bring the contractual tenancy to an end. It is accepted on behalf of the applicant that the Notice to Quit cannot be relied upon therefore in a section 33 recovery application under Rule 65.
10. In the alternative however the applicant relies upon grounds 8, 11 and 12 contained in Schedule 5 of the 1988 Act which all relate to rent arrears. An order for possession under section 18 of the 1988 Act is relied upon being an application under Rule 65. The Tribunal was satisfied that there was no prejudice to the respondent by proceeding in that manner. Those grounds are

found established on the basis of the significant outstanding rent arrears which the Tribunal has found which exist. The written lease between the parties refers to the schedule 5 grounds which are fully set out at length. Sufficient notice was given to the respondent under the AT6 of the applicant's intention to recover on schedule 5 grounds and the specification of the grounds to be relied upon. A Notice to Quit is not required in such circumstances.

11. Having found grounds 8, 11 and 12 of Schedule 5 of the 1988 Act established the Tribunal proceeded to consider the issue of reasonableness. All eviction grounds are now discretionary.
12. The respondent has chosen not to oppose these proceedings. Little is known regarding his personal profile. There is no evidence before the Tribunal that he has any disabilities or other vulnerabilities.
13. The Rent Arrears Pre-Action Requirements are evidenced to have been complied with by the applicant.
14. The applicant has served a valid Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. In the event of an eviction order being granted the local authority is under an obligation to make alternative accommodation available for the respondent.
15. The Tribunal took account of the considerable rent arrears which exist. It is not reasonable for the applicant to maintain the tenancy in the absence of rent being paid.
16. In all of the circumstances the Tribunal found that it was reasonable to grant the eviction order sought.

### **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**

**20 January 2023**

**Date**