



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/3808

Re: Property at 59 Leithland Road, Glasgow, G53 5SN (“the Property”)

Parties:

BANK OF SCOTLAND PLC (HALIFAX DIVISION), The Mound, Edinburgh, EH1 1YZ (“the Applicant”)

Miss Stacey Harper, 59 Leithland Road, Glasgow, G53 5SN (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for eviction of the Respondent(s) from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 2 under schedule 3 to the said Act.

- Background
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Applicant’s intention to sell the Property as creditor under a heritable security, being Ground 2 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 26 February 2024 by conference call. The Applicant was represented by Ms Masters of Aberdeen Considine, solicitors. There was no appearance by or on behalf of the

Respondent. The Tribunal was satisfied that the application had been intimated on the Respondent by way of Sheriff Officer on 10 January 2024 and that the Respondent had sufficient intimation of the date and time of the CMD. The Tribunal was therefore satisfied that the CMD could proceed in the Respondent's absence.

3. The Applicant's representative moved for the Order to be granted as sought. The applicant was a creditor under a heritable security. The heritable proprietor of the Property was a landlord under a Private Residential Tenancy Agreement ("the Agreement"), which commenced 17 March 2021. The landlord had defaulted on their mortgage and the Applicant had called up the security and obtained Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 for possession of the Property and sale thereafter, dated 15 December 2022 at Glasgow Sheriff Court under reference GLW-B211-20.
4. The Applicant intended to sell the Property and required vacant possession in order to do so. A Notice to Leave had been served on the Respondent on the basis of Ground 2 of Schedule 3 to the 2016 Act, on 5 May 2023. The Respondent continues to reside in the Property. She is believed to have two children, whose ages are not known. The last update received from the Respondent was in August 2023 when she advised that she was on the waiting list to be rehoused with the Local Authority, but she could not confirm a timescale within which that may take place.
5. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave by recorded delivery
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Copy Extract Decree dated 13 January 2024

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (i) The applicant is creditor under a heritable security secured against the Property;
- (ii) The applicant has obtained Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 dated 15 December 2022 at Glasgow Sheriff Court under reference GLW-B211-20;
- (iii) The heritable proprietor of the Property and the Respondent entered into a Private Residential Tenancy Agreement which commenced on 17 March 2021;
- (iv) The Applicant is entitled to sell the Property;
- (v) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 2 of Schedule 3 to the 2016 Act;

- Reasons for Decision

7. The Tribunal was satisfied that the terms of Ground 2 of Schedule 3 to the 2016 Act had been met, namely that the Property is subject to a heritable security, that the Applicant intends to sell the property and is entitled to do so by virtue of the Extract Decree issued at Glasgow Sheriff Court and dated 15 December 2022, and that the Applicant requires the tenant to leave the Property for the purpose of disposing of it with vacant possession. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that in all the circumstances, it was reasonable to grant the order.

- Decision

8. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 2 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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

Date: 26 February 2024