



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: Reference number: FTS/HPC/EV/22/3858

Order granted on 15 February 2023 in the respondent's absence

Property: 4 Cave Cottages, East End, East Wemyss, Kirkcaldy, KY1 4RT

Parties:

Bank of Scotland plc, The Mound, Edinburgh EH1 1YZ ("the Applicant")

Mark Ferguson, residing at 4 Cave Cottages, East End, East Wemyss, Kirkcaldy, KY1 4RT ("the Respondents")

Tribunal Members:

Paul Doyle (Legal Member)
Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 2 of schedule 3 to the 2016 Act.

Background

1. The Applicant seeks recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicant lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to Leave served on 18 February 2022, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy decree for repossession by a mortgage company granted in the applicant's favour on 31/08/2021 was produced as a link in title.

Case Management Discussion

2. A case management discussion took place by telephone conference at 2.00pm on 15 February 2023. The Applicant was represented by Ms E Masters of Aberdeen Considine, solicitors. The respondent was neither present nor represented. The time

date and place of the case management discussion had been properly intimated to the respondent.

Findings in Fact

3. The Tribunal made the following findings in fact at the Case Management Hearing.

- (i) On 01 February 2020 the applicant and a third party landlord entered into a private residential tenancy agreement for the property.
- (ii) The applicant is the heritable creditor with a standard security registered against the property. The applicant called up the standard security and, on 31/08/2021, decree for repossession was granted in the applicant's favour.
- (iii) The respondent has not paid any rent since December 2021. When Sheriff Officers served a notice to quit on the respondent, he told them he intends to stay in the property until an order for repossession is granted.
- (iv) On 18 February 2022 the applicant served a notice to leave on the respondent in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016. On 20 October 2022, the applicant submitted an application to the tribunal.
- (v) The Applicant seeks recovery of possession of the Property in terms Ground 2 of schedule 3 to the 2016 Act. The applicant is now heritable creditor in possession of the property and has an obligation to sell the property for market value before accounting to the former heritable proprietor.
- (vi) The respondents offer no resistance to this application.
- (vii) There is nothing to suggest that it is unreasonable to grant an order for repossession of the property. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in in terms Ground 2 of schedule 3 to the 2016 Act is established. The respondent offers no defence to the application. For these reasons, the Tribunal determined to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 2 of part 3 of schedule 3 to the 2016 Act.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Paul Doyle

15 February 2023

Legal Member