



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

Chamber Ref: FTS/HPC/EV/23/3223

Re: Property at 17 School Terrace, Aberdeen, AB24 1TW (“the Property”)

Parties:

The Royal Bank of Scotland PLC, 36 St Andrew Square, Edinburgh, EH2 2YB (“the Applicant”)

Mr James Otutu Onaghise, Mrs Evelyn Onaghise, 17 School Terrace, Aberdeen, AB24 1TW (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Mary Lyden (Ordinary Member)

Introduction

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for an Eviction Order under 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)

- 1. Granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016, and**
- 2. delayed execution of the order until 4th March 2024, in terms of Regulation 16A of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018.**

Attendance

Eleanor Hamilton, Aberdeen Considine, 18 Waterloo Street, Glasgow, G2 6DB, attended from for the Applicants.

The Respondents were initially not in attendance, having been served and intimated by the Tribunal on the 9th November 2023.

Preliminary Matters

The Respondent, Mrs Onaghise was found to be present on the teleconference line during an adjournment fixed by the Tribunal, 25 minutes after the hearing had commenced. There being no objection from the Applicant's representative the Tribunal then heard fully from the Respondent on her position, making appropriate adjustments and narrating to the Respondent the full position of the Applicant. The Respondent explained she had found it difficult to join the hearing when it commenced.

The Respondent Mr Onaghise, was thereafter found to be on the teleconference line 45 minutes after the hearing had commenced. He explained he lived and worked in Wales. There was no explanation from the Respondent as to the delay in joining the hearing.

There were no other preliminary or relevant procedural matters.

Summary of Discussion

For the Applicants

The Applicant's representative set out that she sought an Eviction Order on behalf of the Applicants who were the heritable creditor of the property. She set out further that decree for possession was pronounced at Aberdeen Sheriff Court on 22nd May 2022 and that the Applicant sought an Eviction Order in terms of Schedule 3, Part 1, Ground 2 of the Private Housing (Tenancies) (Scotland) Act 2016 that the Applicant is a lender who holds a security and requires vacant possession.

The Applicant's representative said further that It came to light that there was a tenancy agreement and the Respondents were in property by virtue of a PRT dated 11th March 2022. A Notice to Leave was serviced on 3rd May 2022, service and the notice expired 28th July 2023.

The Applicant's representative submitted that the Respondents had been aware of the need to sell the property for some time. She submitted that with the passage of time it was reasonable for an order to be granted.

For the Respondents

The Respondent Mrs Onaghise said she had resided in the property since March 2022. She resides alone but with her 2 children who are aged 5 years and 3 months. She is 33 years old and there are no known health vulnerabilities. She said at present she was not working and she had been trying to find accommodation. The property is a 2 bedroom apartment. She was aware the mortgage lender was seeking recovery but she said the landlord told her to ignore letters. They have nowhere to go at present. She is paying half rent of 395 per month to the landlord. The Respondent, Mr Onaghise said he is separated and lives and works in Wales.

Reasons for Decision and Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. There was no material facts in dispute. The Tribunal had the benefit of all necessary information and evidence before it.**
- 2. The Applicant sought an Order for Eviction in terms of Schedule 3, Part 1, Ground 2 of the Private Housing (Tenancies) (Scotland) Act 2016 on the grounds that a lender intends to sell the property.**
- 3. The Tribunal was satisfied that the property was subject to a heritable security.**
- 4. The Tribunal was satisfied that the Applicant under the heritable security intended to sell the property and that they required the Respondent to vacate the property to allow same to be sold.**
- 5. The Tribunal was satisfied that under Schedule 3, Part 1, Ground 2 of the Private Housing (Tenancies) (Scotland) Act 2016 an Order for Eviction on the grounds that the lender intends to sell the property was appropriate.**
- 6. The Tribunal found that the requirements of Ground 2 of Schedule 3, Part 1 to the Act had been met.**
- 7. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 8. The Tribunal noted the Local Authority under the 2016 Act had been notified.**
- 9. On the information given to the Tribunal by the Applicant's Representative which was credible the Applicant's considered they required vacant possession.**
- 10. The Tribunal was able to hear in detail from the Respondent. She had been told to ignore letters and had a young family but confirmed she had been aware about the need to find alternative accommodation for some time. The Applicants were seeking to enforce an order granted at Aberdeen Sheriff Court on 22nd May 2022. The Tribunal found that an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.**

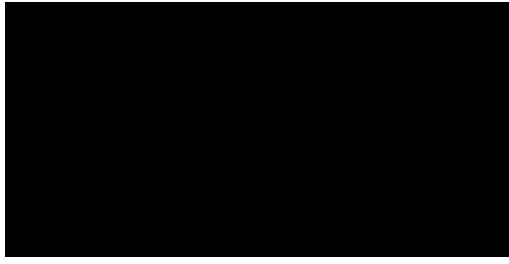
- 11. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.**
- 12. The Application will not be affected by the Cost of Living (Protection for Tenants) (Scotland) Act 2022. However, the Tribunal considered they had to apply the overriding objective and weigh the interests of both parties and in the interests of natural justice due to the presence of 2 young children in the property the Tribunal decided to delay enforcement of the order until on or after 4th March 2024. The Tribunal delayed execution of the order until on or after 4th March 2024, in terms of Regulation 16A of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018. A young baby was in the property and the Respondent confirmed she had nowhere to go.**

Reasons for Decision

This CMD was difficult on the basis that the Respondent's had not entered representations and had not joined same at commencement. However the Tribunal was able to fully hear from both. The material matters regarding the grounds for eviction were not in dispute alongside the Notice to leave, the PRT and the need to find alternative accommodation. The difficulty was that the family said they had been told to ignore the letters regarding recovery of possession by their landlord. They had no alternative accommodation and the Respondent was living alone with young children, one of which was 3 months old. The Tribunal found that an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents. The Application will not be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022. However, the Tribunal considered they had to apply the overriding objective and weigh the interests of both parties and in the interests of natural justice due to the presence of 2 young children in the property the Tribunal decided to delay enforcement of the order until on or after 4th March 2024.

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.



19/12/2023

Legal Member/Chair

Date