



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/23/3785

Re: Property at 46 Inglis Avenue, Prestonpans, EH32 0AQ (“the Property”)

Parties:

Gary John Thomson Kerr, Karen Marie Birkett-Johns, 38 Abbots View, Haddington, EH41 3QH; 8 Tangshan Court, Lincoln, LM1 3QA (“the Applicant”)

Miss Kerry Ross, 46 Inglis Avenue, Prestonpans, EH32 0AQ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application included: -

- a. Parts of the tenancy agreement,
 - b. notice to leave with evidence of service.
 - c. section 11 Notice with evidence of service
 - d. various documents about the estate of the late Jill Kerr
 - e. various emails between solicitors regarding the calling up notice of the standard security over the property
 - f. documents regarding a court case involving the late Jill Kerr
3. The applicant's agent and respondent both appeared at the case management discussion on 12 March 2024.

Discussion

4. The applicant's agent advised that he was seeking an order for recovery of the possession of the property under ground 1a (intention to sell due to financial hardship) and ground 1 (intention to sell).
5. The respondent advised that she was not opposed to the order being granted.
6. She had read the papers and she accepted that there was a need to sell the property. She advised that she resides in the property with her three children, one of whom has special needs. She had not been able to move out of the property when the notice to leave had been served on her, as she would have been homeless. She had contacted the local council and they advised her that she had to stay put and wait until eviction was granted.
7. She now has a housing officer. She has been advised to tell the officer when she received the eviction date and then she will be able to present herself and her family for homeless accommodation. She accepted that the applicant needed to sell the property.
8. The applicant's agent referred the tribunal to the paper apart submitted which set out the financial issues affecting the estate. He advised that there was continuing interest accruing in terms of the decree granted against the late Jill Kerr. The liability was now in excess of £91,000. In addition, he advised that heritable creditor had also called up the standard security over the property, and they had threatened to take possession of the property and may move to sell it. He noted that the respondent had made no written representations seeking to oppose the order being granted, and he noted that

she had confirmed that she did not oppose the order being granted. He submitted that the grounds had been met for the order to be granted.

Findings in Fact

9. The Tribunal found the following facts established: -
10. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 March 2019.
11. The tenant was Kerry Ross.
12. The landlords were the executors nominate of the late Jill Kerr, namely Gary Kerr and Karen Birkett-Johns.
13. The property is 46 Inglis Avenue, Port Seton, Prestonpans.
14. There was submitted a notice to leave dated 30 May 2023, stating that an application would not be made until 31 August 2023. It sought eviction under grounds 1 and 1a.
15. The notice to leave had been posted to the tenant. There was evidence of service.
16. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property.
17. The title deeds for the property show that the late landlord was the owner of the property.
18. There is a standard security over the property in favour of Together Commercial Finance Limited. It has been called up. The heritable creditors were considering selling the property. There is a risk that the heritable creditors could proceed to sell the property for less than market value.
19. The estate of the deceased totals £617,840.11. There are financial liabilities of at least £118,000. The estate has limited moveable property. The executors required to sell the property to meet the liabilities. There is interest accruing on the liabilities.
20. The respondent did not object to the order being granted.

Reasons for Decision

21. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in Schedule 3 of the Act applies.
22. The grounds which the Applicant seeks eviction under are grounds 1 and 1a. Ground 1 is in the following terms: -

1 Landlord intends to sell.

(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal [may] ² find that the ground named by sub-paragraph (1) applies if the landlord—

1. (a) is entitled to sell the let property, [...] ³
2. (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the

tenant ceasing to occupy it [, and] ⁴

[(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.] ⁴.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

- (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
- (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

23. The applicant's agent appeared. The respondent appeared. The applicants are the executors of the late Jill Kerr, who was the landlord of the property. Confirmation and the late Jill Kerr's Will were produced, as were the title deeds for the property. The applicants were entitled to sell the property. There was considerable correspondence lodged showing that the late Jill Kerr had been involved in a court case, where she had been found liable to a payment order and costs, this liability now totalled over £90,000. Interest was payable on it. There was also correspondence from agents for the heritable creditors who had the standard secured over the property. They had served calling up notices and were waiting to hear if the eviction order was granted, or they may proceed to sell the property themselves there was a concern that they would not

sell for market value. The estate did not have many liquid funds in order to pay the estate debts and the applicants wanted to sell this property to deal with the debts. If the order is granted it appears to the tribunal the property will be sold. We find that the application meets the tests set out in ground 1.

24. The tribunal was then required to consider if it would be reasonable to grant the order. We consider it would be reasonable to grant the order for eviction.
25. In deciding to grant the order we place considerable weight on the fact that the respondent is not opposing the order. We also place weight on the documents provided by the applicant which show ongoing financial liabilities which are increasing, and it appears that they will be required to sell the property to address these financial liabilities.
26. Having regard to the matters set out above, the tribunal was prepared to grant the order for recovery of possession under ground 1.
27. As we are prepared to grant the order under ground 1, we have not gone on to consider if we would also have granted it under ground 1A.

Decision

28. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of 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.

M. Barbour

12 March 2024

Legal Member/Chair

Date