



The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/23/3247

Re: Property at 8 Ruberslaw Drive, Denholm, TD9 8BL (“the Property”)

Parties:

Gillespie MacAndrew (Trustees) Limited, 5 Atholl Crescent, Edinburgh, EH3 8EJ (“the Applicant”) per the Applicant’s Agents, Lowrie Property Limited, 4, Towerhouse, Hawick. TD9 9OQ

Mr David Lyon, 8 Ruberslaw Drive, Denholm, TD9 8BL (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

Background

1. By application received on 15 September 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties and Fiona Nunn, now deceased;
 - ii) Copy of the Deed of Trust with supporting information;
 - iii) copy Notice to Leave in terms of Grounds 1, the landlord intends to sell the Property, of Schedule 3 to the Act;
 - iv) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Scottish Borders Council being the relevant local authority and
 - v) Copy instructions to Lowrie Property Limited to sell the Property emails.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 12 April 2024 at 10.00 by telephone conference. The CMD was intimated to the Parties and, in particular, to the Respondent by Sheriff Officer Service on 7 March 2024.

CMD

4. The CMD took place on 12 April 2024. The Applicant was not present and was represented by Miss A Paterson of the Applicant's Agents. The Respondent was not present and was not represented. The Tribunal, being satisfied that the Respondent was aware of the proceedings, proceed in his absence.
5. The Tribunal advised Miss Paterson with regard to Ground 1, the Tribunal had to be satisfied that the Landlord is entitled to sell. The Tribunal noted from the Application form that the Ms. Fiona Nunn had an ownership interest in the Property along with the Trust but had no information in respect or Estate, or, indeed a death certificate for her.
6. Miss Paterson advised that the beneficiary of the Trust wished the Property to be sold.
7. Miss Paterson advised that the Respondent had not engaged with Applicant's Agents in spite of the agents trying to contact him.
8. The Tribunal adjourned the CMD for a short time to enable Miss Paterson to investigate the Applicant's entitlement to sell the late Ms. Nunn's interest in the Property with the Applicant's solicitors.
9. The CMD reconvened and the Applicant was represented by both Miss Paterson and Miss Young of the Applicant's solicitors. Miss Young explained the background to the Trust and provided a copy of Confirmation in the Estate of the late Ms. Nunn in favour of the Applicant which includes a power to sell the Property.

Findings in Fact

10. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Parties and the late Ms. F. Nunn which began on 26 March 2019;
 - ii) The Applicant has an ownership interest in the Property and has a Confirmation in its favour with power of sale in the Estate of Ms. Nunn;
 - iii) The beneficiary of the Trustee wishes the Property to be sold;
 - iv) The Applicant intends to sell the Property and has instructed selling agents;
 - v) and
 - vi) The Respondent has not opposed the Application.

Issue for the Tribunal

11. The issue for the Tribunal was to determine whether or not to grant the Order sought. The Ground on which the Application proceeds is Ground 1 which *"It is an eviction ground that the landlord intends to sell the let property. (2)The First-tier*

Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord (a)is entitled to sell the let property, (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 (c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”

12. The statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

13. The Tribunal had regard to all the information before it and to its Findings in Fact.
14. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
15. The Tribunal had regard to the fact that the Applicant is both a Trustee owner of the Property and Executor in the Estate of the joint owner. The Tribunal had regard to the facts the duty of the Applicant as Trustee is to act in the interest of the beneficiary and that the duty of the Applicant as Executor is to realise the Estate of the deceased. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.
16. This decision is unanimous.

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.

Karen Moore

Legal Member/Chair

Date 12 April 2024