



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/24/0391

Re: Property at 11 Hamilton Place, Glenrother, Fife, KY6 1AJ (“the Property”)

Parties:

Craig Morrison-Trustee of Lendrick Gillies, Quantuma LLP 2, Turnberry House, 175 West George Street, Glasgow, G2 2LB (“the Applicant”)

Jordyn Kilburn, Bobby Kilburn, 11 Hamilton Place, Glenrother, Fife, KY6 1AJ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 24th January 2024. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on grounds 1 and 1A of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 13th June 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 22nd July 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 4th July 2024.

3. On 14th June 2024, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 14th June 2024.
4. On 18th June 2024, the Applicant's representative emailed the Housing and Property Chamber to advise that the Applicant has been sequestrated by the Account in Bankruptcy on 11th June 2024. He attached a copy of the extract of the register of Insolvency. The Applicant's representative said that the estate of the Applicant now vests in his Trustee, Craig Morrison of Quantuma LLP.

The Case Management Discussion

5. A CMD was held on 22nd July 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Mr David Gray, Senior Accredited Paralegal, Gilson Gray LLP. The Respondents were present and represented themselves.
6. Mr Gray told the Tribunal that there is debt owed to the same mortgage provider for all 45 properties in the original Applicant's portfolio. In this case, this debt has not arisen from the Respondents not paying the rent. There are no rent arrears on the account. The original Applicant has not paid the monies paid to him by the Respondents to his mortgage provider. It is not known why he did not pay this money across. The Tribunal had briefly considered if there was a conflict in interest in Mr Gray acting for both the original Applicant and then his trustee. The Tribunal was satisfied that there was no conflict of interest as the Trustee was ultimately acting in the Applicant's best interests.
7. Mr Gray said that all of the original Applicant's properties will now be sold. This one is the first one to reach this stage. He did not know why that was the case as he had been instructed by the letting part of Gilson Gray LLP. Calling up notices were due to be issued on all of the other properties, however, Mr Gray said that his firm have been given time by the mortgage provider to try deal with the ending of the tenancies and sale of the Properties.
8. Mrs Kilburn spoke on behalf of both Respondents. She said that they did not oppose an order being granted. She is very worried as she and her family will have nowhere to live when evicted. She has looked for private rental properties but they are out of what she can afford. The cost of housing has doubled since she had first let this property. The private properties are now being let so fast before she can take consideration about making an offer for them. She has been in contact with her local authority. They have told her that they cannot assist her until such time as there has been an order granted by the Tribunal. Ms Kilburn stated that they have never been late paying the rent and there are no other issues with the tenancy. Mrs Kilburn said that the Respondents live in the Property with their two children who are aged 6 and 8. Her youngest child has additional needs. The local authority have been made aware of this. Mrs Kilburn also has a health condition which she has made the local council aware of so that they can process this with her application.

9. The Tribunal considered all before it. Given that the mortgage provider for this property is looking to issue a calling up notice it is very likely that the Respondents would be evicted through that process if not this one. Staying longer in the Property will not assist the Respondents with their homeless application. The Tribunal granted an order for eviction.

Findings and reason for decision

10. A Private Rented Tenancy Agreement commenced 7th October 2022.
11. The original Applicant has been sequestrated due to arrears in his mortgage payment on all 45 properties in his portfolio. The mortgage provider is looking to issue a calling up notices if the properties are not sold to repay the debts.
12. The eviction of the Respondents does not arise from any actions to do with them or their behaviour. It solely arises from the behaviour of the original Applicant not paying his mortgage payments.
13. The Respondents do not oppose an order being granted.
14. There are no issues of reasonableness that prevent an order from being granted.

Decision

15. The Tribunal found that ground 1 has been established and granted an order in favour of the Applicant.

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.

Gabrielle Miller

22nd July 2024

Legal Member/Chair

Date

