



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/24/1865

Re: Property at Flat 13, 10 East Pilton Farm Crescent, Edinburgh, EH5 2GH (“the Property”)

Parties:

Pepper (UK) Limited, Harman House, 1 George Street, Uxbridge, London, UB8 1QQ (“the Applicant”)

Mr Piotr Miecznikowski, Flat 13, 10 East Pilton Farm Crescent, Edinburgh, EH5 2GH (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for repossession of the Property be granted.

Background

1. An application was submitted to the Tribunal with a covering email dated 23 April 2024 in terms of Rule 109 of the Chamber Rules being an application for a Private Residential Tenancy Eviction Order.
2. The Tribunal contacted the Applicant’s representative on 15 May 2024 asking for a copy of the tenancy agreement which had not been included with the application.
3. The Applicant’s representatives sent a copy of the tenancy agreement to the Tribunal by email on 21 May 2024.
4. The application was accepted and scheduled for a case management discussion on 4 October 2024. Details of the application and the case

management discussion were served on the Respondent who was advised that he was required to submit any written representations by 16 September 2024. No written representations have been received.

5. The Respondent was also advised:
“The Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”

The Case Management Discussion

6. The case management discussion took place today by teleconference. Mr Richard Taylor, solicitor, attended on behalf of the Applicants. The Respondent did not attend and was not represented. The Applicant’s solicitor took the Tribunal through the application and advised that he was seeking an order for repossession on behalf of the heritable creditors. On questioning by the Tribunal, he advised he did not know why the tenancy agreement was not signed by the Respondent or why the Landlord had signed the tenancy agreement electronically on 16 June 2022. The Applicant’s solicitor’s position was that, in the absence of any evidence to the contrary, this was the tenancy agreement between the parties. His position was that the Respondent had not engaged apart from the email that had been lodged of 15 April 2024 where the Respondent had indicated he had not vacated the Property due to the Cost of Living crisis. The Applicant’s solicitor was unable to give any further information about the Respondent’s circumstances including his age, whether he lived alone and whether rent was being paid. His position was that all the paperwork had been served correctly and vacant possession of the Property was required in order for the Applicants to sell it. When asked about selling the Property with the tenant in situ, discussion took place about section 25 of the Feudal Reform (Scotland) Act 1970 which states:

“a creditor in a standard security having right to sell the security subjects may...exercise that right either by private bargain or by exposure to sale, and in either event it shall be the duty of the creditor to advertise the sale and to take all reasonable steps to ensure that the price at which all or any of the subjects are sold is the best that can be reasonably obtained.”

7. The Applicant’s solicitor advised that his position was that having a tenant in situ would likely lessen the value of the Property. He also advised that there would be practical difficulties in terms of marketing the Property with a tenant in situ. The Tribunal adjourned to allow the Applicant’s solicitor to make further enquiries with those instructing him. On reconvening, the Applicant’s solicitor advised that the Applicants had not collected any rent from the Respondent and were pretty sure he lived alone at the Property.

Findings in Fact

Anne Mathie

8. The Tribunal made the following findings in fact:
 - I. A tenancy agreement was entered into between the Respondent and the Landlord from 10 May 2021;
 - II. The rent due in terms of this tenancy agreement was £800 per calendar month;
 - III. A calling up notice and a Form BB both dated 26 May 2023 were served by the Applicants
 - IV. A decree for possession of the Property was granted in favour of the Applicants against the Landlord on 2 November 2023
 - V. A valid Notice to Leave was served on the Respondent by email dated 19 January 2024

Reasons for Decision

9. The Tribunal took into account all the written information before it along with the Applicant's solicitor's oral submissions today. The Tribunal considered the terms of Ground 2 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 which provides:

“(1) It is an eviction ground that a lender intends to sell the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a) the let property is subject to a heritable security, (b) the creditor under that security is entitled to sell the property, (c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession and (d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of these facts.”

10. Having found that the Applicant is bound to market and sell the Property at the best price and that this is likely to be achieved by securing vacant possession of the Property and having little information about the tenants circumstances apart from the Applicants belief that he lives alone and their position that he has not been in touch with them except for the email of 15 April 2024, and the fact that the calling up notice and Form BB were served in May 2023 with decree being granted on 2 November 2023 the Respondent has had a lot of notice of the Applicant's seeking possession of the Property the Tribunal is satisfied, on balance, that it is reasonable to issue the eviction order in these circumstances.

Decision

11. The Tribunal grants an order for possession of the Property in favour of the Applicants.

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.

Anne Mathie

Legal Member/Chair

4th October 2024
Date
