



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/24/3959

Re: Property at Flat 3/3, 43 Dalmarnock Drive, Glasgow, G40 4LQ (“the Property”)

Parties:

Santander UK Plc, 2 Triton Square, Regent's Place,, London, NW1 3AN (“the Applicant”)

Mr Ilmars Sklauda, Flat 3/3, 43 Dalmarnock Drive, Glasgow, G40 4LQ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 3/3, 43 Dalmarnock Drive, Glasgow, G40 4LQ under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees, and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant’s case is

based on Ground 2 (Property to be sold by Lender) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act").

2. The application was accompanied by a Private Residential Tenancy Agreement dated 15 May 2022 between the Respondent and Ifran Anwer, a Notice to Leave dated 15 April 2024 together with a Sheriff Officers' Execution of Service dated 15 April 2024, an extract decree of repossession from Glasgow Sheriff Court dated 20 May 2022 and extracted on 30 November 2022 and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with an email to Glasgow City Council dated 26 August 2024.
3. On 3 March 2025 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 9 April 2025. This paperwork was served on the Respondent by Andrew McLean, Sheriff Officer, Glasgow on 5 March 2025 and the Execution of Service was received by the Tribunal administration.
4. Prior to the CMD proceeding the Tribunal requested the Applicant to lodge a copy of Form BB (notice to occupier) under Schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970. The Applicant's solicitor thereafter lodged a copy of Form BB dated 21 May 2021 together with a signed execution of service and copy Recorded Delivery slip.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 9 April 2025 by way of teleconference. The Applicant was represented by Steven Docherty, from Ascent Legal Scotland. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the Private Residential Tenancy Agreement dated 15 May 2022 between the Respondent and Ifran Anwer, the Notice to Leave dated 15 April 2024 together with a Sheriff Officers' Execution of Service dated 15 April 2024, the extract decree of repossession from Glasgow Sheriff Court dated 20 May 2022 and extracted on 30 November 2022, the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with the email to Glasgow City Council dated 26 August 2024 and Form BB dated 21 May 2021 together with a signed execution of service and copy Recorded Delivery slip. The Tribunal noted the terms of these documents.

7. Mr Docherty submitted that Form BB had been served at the time his clients had commenced calling up proceedings. Ifran Anwer had granted a standard security in favour of the Applicant. When he fell into mortgage arrears the bank called up the standard security and raised a court action in Glasgow Sheriff Court seeking the usual orders. Decree of repossession was granted against Mr Anwer. However, when the bank discovered there was a tenant in the Property, they were put to the necessity of raising the current action.
8. He further submitted that the Notice to Leave had been served on 15 April 2024. As the Respondent had by that time lived in the Property for more than 6 months, the period of Notice was 84 days in terms of Section 54 (2) of the 2016 Act. The tenancy agreement between Mr Anwer and the Respondent had commenced on 15 May 2022. The Notice to Leave expired on 9 July 2024. The Notice to Leave was valid. A Form BB, Notice to Occupiers had been served on 21 May 2021. A Section 11 Notice had been served on the City of Glasgow Council on 26 August 2024.
9. Mr Docherty submitted the requirements of Ground 2 of Schedule 3 of the 2016 Act had been met. His clients had to sell the Property with vacant possession to obtain the best price.
10. The Tribunal queried why it had taken between November 2022 when the decree was extracted until April 2024 for the Applicant to take action against the Respondent. In answer, Mr Docherty explained that they had originally arranged an eviction on 12 January 2023, but that after Sheriff Officers reported that there was a tenant in the Property after being given the two pages of the tenancy agreement lodged with the Tribunal, the eviction was cancelled, Mr Anwer then made a proposal to the Applicant on 31 March 2023 on the understanding he would resume occupation of the Property. This arrangement failed in September 2023 and a further eviction was arranged but subsequently cancelled when they discovered there was still a tenant in the Property. They had written to the Respondent and to Mr Anwer. There had been no contact with the Respondent. He had no information regarding the Respondent's circumstances.

Reasons for Decision

11. The Tribunal considered the issues set out in the application together with the documents lodged in support.
12. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 2, namely the Property is to be sold by the Lender. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict.

13. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, unless it is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
14. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 2 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 9 July 2024. The Notice to Leave was served on the Respondent by Sheriff Officers on 15 April 2024. In terms of Section 54 the notice period of the Notice to Leave is 84 days the Respondent having lived in the Property for more than 6 months. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 9 July 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
15. The Tribunal considered the submissions made by on behalf of the Applicant. The Tribunal was satisfied on the basis of the documents lodged, together with Mr Docherty's submissions that the factual basis of the application had been established in relation to Ground 2 and was satisfied the Applicant intended to sell the Property as soon as they regained possession. The Tribunal accepted, based on the documents provided by the Applicant, that a standard security had been granted in their favour by Ifran Anwer over the Property, that a calling up notice had been served on Mr Anwer after his default, and that the Applicant had a sheriff court decree that entitled them to recover possession and sell the Property. The Tribunal further accepted that the Applicant required vacant possession of the Property to achieve the best market price.
16. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's intention was to sell the Property when they obtained possession. The Respondent on the other hand had not been in contact with the Applicant and had not participated in the current proceedings. On balance the Tribunal considered the balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
17. In the circumstances the Tribunal considered that in terms of Ground 2 of Schedule 2 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

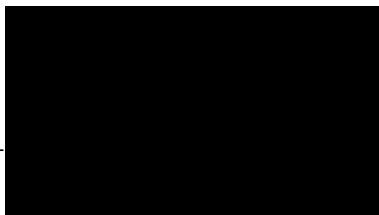
Decision

18. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.

Legal Ch



10 April 2025

Date