



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 and Schedule 5 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/2433

Re: Property at Flat 1/2, 296 Maxwell Road, Glasgow, G41 1PG (“the Property”)

Parties:

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

Mr Martin Rostas, Flat 1/2, 296 Maxwell Road, Glasgow, G41 1PG (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. The Property was purchased by a Mr Naveed Ackrim on 21 March 2007. At that time he obtained a loan from, and granted a standard security in favour of, Abbey National plc;
2. Abbey National plc subsequently changed its name to Santander UK plc;
3. Mr Ackrim defaulted on his loan repayments and after sundry procedure the sheriff at Glasgow, on 12 January 2018, granted an order for recovery of possession of the Property by the Applicant. The order also granted warrant to eject persons occupying the Property;
4. The Applicant instructed Sheriff Officers to effect an ejection of occupants of the Property. When they attended to do so the Respondent advised the sheriff officers that he was the lawful tenant of the Property. In those circumstances, the sheriff officers reported back to the Applicant’s solicitors that the ejection could not proceed;

5. The Applicant's solicitors thereafter presented an application to the Tribunal seeking an order for recovery of possession on the basis of Ground 2 of Schedule 5 to the Housing (Scotland) Act 1988 (the "1988 Act");
6. The Applicant was unable to produce a tenancy agreement, proof of rental payments nor any other documents to establish that a tenancy existed;
7. The Applicant produced a telephone bill and a council tax bill, both addressed to the Respondent at the Property, as proof of a tenancy;

THE CASE MANAGEMENT DISCUSSION

8. The Applicant was represented by Mr J. Di Paola, Aberdeen Considine Solicitors. The Respondent did not attend and was not represented;
9. The Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the FTT Rules") that the Respondent had been given reasonable notice of the date, place and time of the case management discussion, determined in terms of Rule 29 of the FTT Rules that it was appropriate to proceed with the case management discussion in his absence;
10. The Tribunal, however, had an immediate concern in relation to its jurisdiction. The Tribunal can only deal with cases arising from a tenancy. There was no tenancy agreement, no proof of rental payments, no correspondence indicating the existence of a tenancy and, at first, no other information to confirm that a tenancy existed, as opposed to the Respondent simply occupying the Property;
11. During an adjournment, Mr Di Paola contacted the Sheriff Officers who attended to effect an ejection. It was confirmed that when they attended they met with the Respondent, that he stated that he was a tenant, that he provided the telephone bill and the council tax bill, as he seen it, to evidence that he was a tenant and indicated that he was entitled to occupy the property as such;
12. On the basis of that information, the Tribunal concluded, on the balance of probabilities, that there was a tenancy agreement and that it did, therefore, have jurisdiction. Even if the Tribunal was wrong in that assessment, it would not have assisted the Respondent as, in the absence of a tenancy agreement, the Applicant was entitled to eject occupants of the property in terms of the sheriff's order dated 12 January 2018;
13. Thereafter, however, the Tribunal asked to be addressed in relation to the terms of Ground 2 of Schedule 5 to the 1988 Act. That ground provides as follows:-

The house is subject to a heritable security granted before the creation of the tenancy and—

 - (a) as a result of a default by the debtor the creditor is entitled to sell the house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement; and*
 - (b) either notice was given in writing to the tenant not later than the date of commencement of the tenancy that possession might be recovered on this Ground or the sheriff is satisfied that it is reasonable to dispense with the requirement of notice.*
14. Was there evidence that the heritable security was granted before the tenancy was created? There was little evidence of the tenancy at all, save as referred

- to above, but the Tribunal concluded that it could infer that this part of Ground 2 was established. The Tribunal had a copy Land Certificate for the Property which confirmed that the standard security was created at the time of purchase and, on the balance of probabilities, the tenancy was created after the purchase by Mr Ackrim;
15. In relation to part (a) of Ground 2, this was established by virtue of the order of the sheriff dated 12 January 2018;
 16. In relation to part (b), was the Respondent given notice in writing at the commencement of the tenancy that possession may be recovered on this ground? It was accepted on behalf of the Applicant that this could not be established. Mr Di Paolo, however, moved the Tribunal to dispense with the requirement of notice;
 17. In relation to that the Tribunal sought further information. It was confirmed:
 - a) The Applicant wished to sell the subjects to repay sums due to them;
 - b) The amount outstanding as at 7 December 2018 was £162,500.78;
 - c) The arrears at that date were £11,916.66
 - d) No payments had been made to the Applicant since 20 June 2017;
 - e) The Respondent had not entered in to any correspondence nor discussion with the Applicant in relation to the matter;
 18. In the circumstances, given the significant sum outstanding to the Applicant, together with the Respondent's failure to engage with the Applicant and, indeed, the Tribunal, the Tribunal concluded that it was reasonable to dispense with the requirement of such notice;

FINDINGS IN FACT

19. The Property was purchased by a Mr Naveed Ackrim on 21 March 2007. At that time he obtained a loan from, and granted a standard security in favour of, Abbey National plc;
20. Abbey National plc subsequently changed its name to Santander UK plc;
21. Mr Ackrim defaulted on his loan repayments and after sundry procedure the sheriff at Glasgow, on 12 January 2018, granted an order for recovery of possession of the Property by the Applicant. The order also granted warrant to eject persons occupying the Property;
22. The Respondent is a tenant of the Property;
23. The tenancy was granted after the creation of the standard security in favour of the Applicant;
24. The Applicant, as a result in default in payment by the owner of the Property, and conform to an order of Glasgow Sheriff Court dated 12 January 2018, is entitled to sell the Property and requires vacant possession for that purpose;
25. That in the circumstances it is reasonable to dispense with the requirement that the Respondent was provided with notice that recovery of possession of the Property may be sought in terms of Ground 2 of Schedule 5 to the 1988 Act;

DECISION

The Tribunal granted an order against the Respondent(s) for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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.

Virgil Crawford

7 December 2017

Legal Member/Chair

Date