



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/19/2908

Re: Property at 6 Kaimes Terrace, Being the Southmost House on the Ground Floor, Livingston, EH54 7EX (“the Property”)

Parties:

Bank of Scotland Plc (Heritable Creditors), The Mound, Edinburgh, EH1 1YZ (“the Applicant”)

NA Bhagat Singh Kokkiligadda and all other Occupier-s, 6 Kaimes Terrace, Being the Southmost House on the Ground Floor, Livingston, EH54 7EX (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for eviction of the Respondent(s) from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 2 under schedule 3 to the said Act.

- Background
- 1. An application dated 13 September 2019 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Applicant’s intention to sell the Property as creditor under a heritable security, being Ground 2 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 28 November 2019. The Applicant was represented by Miss McAlister of Ascent Legal Scotland. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the application had been intimated on the Respondent by way of Sheriff Officer on 29 October 2019 and accordingly the Respondent had sufficient intimation of the date and time of the CMD. Accordingly, the Tribunal was satisfied that the CNMD could proceed in the Respondent’s absence.
3. The Applicant’s representative moved for the Order to be granted as sought. The applicant was a creditor under a heritable security. The heritable proprietor of the Property was a landlord under a Private Residential Tenancy Agreement (“the Agreement”), which commenced 5 April 2019. The landlord had defaulted on his mortgage and the Applicant had called up the security and obtained Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 for possession of the Property and sale thereafter, dated 3 April 2019 at Livingston Sheriff Court under reference LIV-B91-19.
4. The Applicant intended to sell the Property and required vacant possession in order to do so. A Notice to Leave had been served on the Respondent on the basis of Ground 2 of Schedule 3 to the 2016 Act, on 5 July 2019. The Respondent had made contact with the Applicant following service of the said Notice indicating that he had taken up employment in Milton Keynes and required a further period of time to allow him to obtain alternative accommodation and move. The Applicant had agreed to allow the Respondent until the end of August to remove from the Property. However, the Property is still occupied and this has been confirmed by Sheriff Officers having carried out further visits to the Property. The Order is accordingly necessary.
5. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave by recorded delivery
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Copy Extract Decree dated 3 April 2019

- Findings in Fact

6. The Tribunal made the following findings in fact:
 - (i) The applicant is creditor under a heritable security secured against the Property;

- (ii) The applicant has obtained Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 dated 3 April 2019 at Livingston Sheriff Court under reference LIV-B91-19;
- (iii) The heritable proprietor of the Property and the Respondent entered into a Private Residential Tenancy Agreement which commenced on 5 April 2019;
- (iv) The Applicant is entitled to sell the Property;
- (v) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 2 of Schedule 3 to the 2016 Act;

- Reasons for Decision

7. The Tribunal was satisfied that the terms of Ground 2 of Schedule 3 to the 2016 Act had been met, namely that the Property is subject to a heritable security, that the Applicant intends to sell the property and is entitled to do so by virtue of the Extract Decree issued at Livingston Sheriff Court and dated 3 April 2019 ,and that the Applicant requires the tenant to leave the Property for the purpose of disposing of it with vacant possession. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.

- Decision

8. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 2 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

28/11/19.

Date