



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/19/3294

Re: Property at 49 Quentin Rise, Dedridge, Livingston, West Lothian, EH54 6NS (“the Property”)

Parties:

Mrs Safia Razaq, 18 Blinkbonny Gardens, Breich, West Calder, West Lothian, EH55 8DN (“the Applicant”)

Ms Rachel Sinclair, 49 Quentin Rise, Dedridge, Livingston, West Lothian, EH54 6NS (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland grants an order against the Respondent for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. **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 Respondents.**

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 furth 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. By application dated 10 October 2019 the Applicant’s solicitors applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the Property.

2. On 28 October 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. On 19 November 2019, the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 10 December 2019. The Tribunal advised parties on 19 November 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 20 December 2019. This paperwork was served on the Respondent by Douglas Llewellyn, Sheriff Officer, Dunbar on 21 November 2019 and the certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 10 December 2019.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 10 December 2019. The Applicant was represented by Mr Valentine from Sneddon Morrison, Solicitors. The Respondent did not appear and was not represented.
6. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondent signed and dated 11 June 2018, a Notice to Leave dated 12 April 2019 with a letter from Sneddon Morrison, signed proof of recorded delivery dated 17 April 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 with covering letter addressed to the West Lothian Council dated 10 October 2019. The Tribunal also had before it a copy of the Applicant’s title under Title Number MID142995 and a copy of the Agency Agreement dated 11 March 2019 to sell the Property signed by the Applicant. There was also a letter dated 1 January 2019 from Mortgage Works addressed to the Applicant to the effect that the Applicant was in mortgage arrears.
7. Mr Valentine moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 (“the 2016 Act”). The Respondent was in arrears of rent as a result of which the Applicant was in mortgage arrears. However he explained that the Applicant had passed away and passed a copy of a death certificate which showed the Applicant had died

on 12 November 2019. He advised the Tribunal that he represented the Executor under the Applicant's will, a copy of which he also passed to the Tribunal. This showed that the Executor was her husband Razaq Ahmed. He also produced Confirmation of the Applicant's Estate dated 17 December 2019. He advised the Tribunal that he had instructions from the Executor to proceed with the action and that the intention was still to sell the Property.

8. He further explained that Mr Morrison from his firm had been in regular contact with the Respondent and had kept her updated. She apparently was keen for the Order to be granted as at that stage she will be rehoused by West Lothian Council. The relationship with the Respondent was good and he explained that his firm would let the Respondent know straight away as to whether the Order was granted and then liaise with her to agree a date when she would voluntarily move from the Property and return the keys.

Findings in Fact

9. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement starting on 1 May 2018 in relation to the Property and signed on 11 June 2018.
10. On or about 1 January 2019 the Applicant had received a letter from Mortgage Works to advise she was in mortgage arrears. This was as a consequence of rent arrears.
11. On 11 March 2019 the Applicant had signed an agency agreement with Sneddon Morrison Solicitors with regards to the marketing and selling of the Property.
12. The Applicant had title to the Property under Title Number MID142995.
13. On 15 April 2019, the Applicant served a Notice to Leave dated 12 April 2019 on the Respondent by way of Recorded Delivery requesting that she remove from the Property by 21 July 2019. This was received and signed for by the Respondent on 17 April 2019.
14. The Respondent was still resident in the Property. The Applicant's solicitors were in regular contact with the Respondent and had an amicable relationship with her. The Applicant's solicitors would keep the Respondent updated as to the progress of the current action.
15. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on West Lothian Council on 10 October 2019.

16. The Applicant had passed away on 12 November 2019. Her husband Mr Ahmed was the Executor of her Estate. Mr Ahmed had instructed Sneddon Morrison to continue with the action and sell the Property.

Reasons for Decision

17. The Applicant's solicitor provided evidence of that the Applicant was in mortgage arrears and that she had instructed Sneddon Morrison to sell the Property under the agency agreement signed by her on 11 March 2019. The Applicant had title to the Property. The Tribunal was satisfied that the Notice to Leave was valid and gave proper Notice to the Respondent. The Tribunal was satisfied that the Applicant had passed away and that her husband Mr Ahmed had confirmation as Executor and had instructed Sneddon Morrison to proceed with the current action and sell the Property. On the basis of that evidence and the supporting oral submissions made on behalf of the Executor that the intention was still to sell the Property the Tribunal was prepared to grant the order to repossess the Property.

Decision

18. The Tribunal granted the order for repossession.

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.

Shirley Evans


Legal Member/Chair


Date

20 November 2019.