

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/4071

Re: Property at Ground Floor Left, 115 Bowman Street, Glasgow, G42 8LE (“the Property”)

Parties:

Platform Funding Limited, PO Box 101, 1 Balloon Street, Manchester, M60 4EP (“the Applicant”)

Mr German Lacatus, Mrs Estera Lacatus, Ground Floor Left, 115 Bowman Street, Glasgow, G42 8LE; Ground Floor Left, 115 Bowman Street, Glasgow, G42 8LE (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This is an application for an eviction order dated 24th December 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondents, and provided with its application copies of a purported short assured tenancy agreement, notice to leave, section 11 notice, occupancy report, form BB, extract decree, and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the

procedures set out in that Act appeared to have been correctly followed and applied, save in respect of the form of the tenancy agreement.

The Respondents have been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 10th January 2020, and the Tribunal was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held on 13th February 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Miss Masters, solicitor. The Respondents appeared, and were not represented. They were accompanied by a friend as a supporter, Mr Horvat.

The Tribunal confirmed with the Respondents that they are Romanian, and enquired whether they might need the assistance of an interpreter. They discussed matters with the Tribunal, and indicated that their understanding and use of English was good enough that they did not need an interpreter, but that they would advise the Tribunal if they did not understand anything which was said or if they felt they did need an interpreter to assist them.

The Respondents produced the full principal copy of the tenancy agreement which had been signed by the parties. This bore to be a short assured tenancy, but commenced and was executed on 16th March 2018.

The Respondent explained that they had three very young children, and were on a very low income. After the applicant had called up the security over the Property, they lost the housing benefit which they had until then been receiving.

They had been told to stop paying rent as a result of the calling up, and had insufficient income to pay the rent without housing benefit anyway.

The Respondents accepted that they needed to leave the Property and did not oppose the application, but explained that they were having difficulty in obtaining alternative available accommodation. They were trying hard to find such accommodation, and hoped to do so in the coming few weeks.

Miss Masters explained that the Applicant brought this application in terms of Rule 109, as a new tenancy agreement created after 1st December 2017 could not be a short assured tenancy agreement in terms of the *Private Housing (Tenancies) (Scotland) Act 2016*. The terms of the agreement were, however, sufficient to create a private residential tenancy.

Miss Masters invited the Tribunal with reference to the application and papers to grant the order sought in terms of Paragraph 2 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The landlord of the Property had defaulted on his mortgage agreement with the Applicant, who had called-up the standard security which it held over the Property.

The Applicant obtained decree on 28th July 2017 in terms of the *Conveyancing and Feudal Reform (Scotland) Act 1970*, which *inter alia* granted warrant to the Applicant to enter into possession of the Property and ordained occupiers of the Property to vacate it.

The Applicant had not been made aware of the tenancy agreement, nor had it consented to it.

Statement of Reasons

Paragraph 2 of Schedule 5 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") has the effect that a short assured tenancy cannot be created after 1st December 2017. However, the purported short assured tenancy agreement here fulfils the criteria set out in Section 1 of the Act to be deemed a private residential tenancy agreement.

In terms of Section 51 of the Act, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Paragraph 2 of Schedule 3 to the Act provides that it is an eviction ground that a lender intends to sell the let property. The Tribunal must find that this ground applies if (1) the let property is subject to a heritable security, (2) the creditor under that security is entitled to sell the property, and (3) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession.

The Tribunal is satisfied that ground 2 has been established. The Applicant intends to sell the Property, is entitled to do so in terms of the heritable security and the court decree provided, and requires the Respondents to leave in order for it to dispose of the Property with vacant possession.

The Respondents do not oppose the granting of the order sought in this application.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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 Member/Chair

13/02/20

Date