



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/22/0740

Re: Property at Waygateshaw House, Milton Road, Carluke, ML8 5PX (“the Property”)

Parties:

Topaz Finance Limited t/a Heliodor Mortgages, The Pavilions, Bridgwater Road, Bristol, BS13 8AE (“the Applicant”)

Ms Mairi McInnes, Waygateshaw House, Milton Road, Carluke, ML8 5PX (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession be granted.

1. This was a hearing in respect of an application by the Applicant dated 11th March 2022 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
 - A copy of the Tenancy Agreement dated 1st September 2020
 - Copy Notice to Leave dated 8th September 2021
 - Evidence of sending by recorded delivery and track and trace dated 10th September
 - Notice of proceedings to eject proprietor and letter to South Lanarkshire Council dated 11th March 2022
 - Copy extract decree from Lanark Sheriff Court dated 4th October 2011
 - Copy warrant from Sheriff Clerk Depute at Lanark re warrant for diligence in favour of Topaz Finance Ltd
3. The Hearing proceeded today by way of teleconference. The Convener made introductions, and explained how the Hearing would be conducted over the

teleconference. The Applicant did not attend but was represented by their solicitor Ms Eleanor Hamilton from Ascent Legal Scotland.

4. The Respondent did not attend nor was she represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in her absence.
- The Case Management Discussion
5. Ms Hamilton advised that she was seeking on behalf of her clients an order for possession today on the basis that her clients were entitled to take possession of the Property in order to sell it as it had been subject to a heritable security in favour of Nram Limited and from whom the Applicant had obtained right and title by virtue of an assignation in their favour. Ms Hamilton had lodged a copy of this assignation which is dated 5th November 2019 and assigns amongst other securities the standard security by Simon Chiswell and Annmarie Chiswell to Northern Rock plc over the Property which security was registered on 1st November 2006. Ms Hamilton advised that a decree authorising the sale and possession of the Property was granted by Lanark Sheriff Court on 4th October 2011 in favour of Nram (who were previously known as Northern Rock plc) and the right to sell and take possession of the Property has now passed to her clients via the assignation. She advised that there had then been protracted legal proceedings between the heritable creditor and the owner Mr Chiswell which meant that her clients only tried to enforce the decree last year by trying to take possession at which point they discovered there was a tenant in the Property namely the Respondent.
 6. Ms Hamilton advised that the Respondent gave the sheriff officers the Applicant sent to the Property a copy of the lease and advised it is a Private rented tenancy which was entered into by Mr Simon Chiswell as landlord on 1st September 2020. She advised that the Applicant is not receiving any rent from the tenant and is not aware if the Respondent is paying any rent to Mr Chiswell. Ms Hamilton confirmed the Applicant wishes to regain possession of the Property in order to sell it but confirmed the Respondent has not vacated the Property since being served notice to leave on 8th September 2021 and the Applicant's agents have not been able to gain access to try and arrange for a valuation. She advised that the Applicants are owed over £2M by the debtors and require to sell the Property to realise some of this debt though she now believes it may be in negative equity. Ms Hamilton submitted that in view of the fact that there has been no response from the Respondent, that the required notices have been served and the Respondent has had nearly 10 months' notice since the notice to leave was served it was reasonable for the order for possession to be granted.
 7. Under questions from the Tribunal she advised that the Respondent is the only tenant and she is not aware of anyone else staying regularly at the Property.

Findings in Fact

1. The Landlord Mr Simon Chiswell and the Respondent entered into a lease of the Property which commenced on 1st September 2020.
2. The tenancy is continuing.
3. The Property is subject to a security over the property which was created on 1st November 2006 before the creation of the tenancy agreement.
4. The Applicant is the heritable creditor in the property by virtue of the standard security granted by Simon Chiswell and Annmarie Chiswell in favour of Northern Rock plc (and registered in the Land Register for Scotland on 1st November 2006 under Title Number LAN54818, subsequent assignation to Nram Ltd registered in the Land Register for Scotland on 25th July 2016 and assignation by Nram Ltd to the Applicants dated 5th November 2019 and registered in the Land Register on 12th November 2019.
5. Nram Ltd obtained a decree for possession of the Property from Mr Simon Chiswell and Ms Annmarie Chiswell on 4th October 2011.
6. The Applicant now has the right to enforce that decree and is entitled to vacant possession in order to sell the property.
7. The Applicant is owed £2,844,023.68 pounds as heritable creditor.
8. The Applicant wishes to sell the Property
9. A notice to leave dated 8th September 2021 was served on the Respondent by recorded delivery confirming that no proceedings would be raised before 11th March 2021
10. These proceedings were raised on 11th March 2021 and the application included a copy of the Notice to Leave.
11. A Section 11 notice has been served on South Lanarkshire Council
12. No payments are being made to the Applicant by the Respondent as tenant or by the landlord Mr Simon Chiswell. The debt due by Mr Chiswell and Ms Annmarie Chiswell continues to grow.
13. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

14. The Applicant is the heritable creditor in a security granted by Mr Simon Chiswell and Ms Annmarie Chiswell in 2006. They are seeking an order for possession under Ground 2 of Schedule 3 of the Act which says:-
15. "(1) It is an eviction ground that the lender intends to sell the property
16. (2) The First Tier Tribunal may find that the ground named by subparagraph (1) applies if
 - (a) the let property is subject to a heritable security
 17. (b) The creditor under that security is entitled to sell the property and
 18. (c) The Creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession.
 19. (d) the Tribunal is satisfied that it is reasonable to grant an eviction order on account of those facts"
20. The Applicants have the benefit of a decree of possession which they sought to exercise but were then involved in lengthy litigation for a number of years which precluded them from pursuing the possession. That litigation has now been settled according to Ms Hamilton but when the Applicant sought to take possession they discovered that the Respondent had taken possession with a lease granted by Mr Chiswell to her for the Property.

21. The Applicant has served a valid Notice to leave on the Respondent giving her 6 months' notice to leave as required by the Coronavirus legislation at the time of service of the Notice in September 2021. The period in the notice has now expired and the Respondent has not left the Property and has refused the Applicant's agent access to the Property to carry out inspections. The Applicant has right and title to the heritable security by virtue of an assignation of the standard security in their favour. They have served the appropriate notice on the Respondent and have served a S11 notice on the local authority. The lease was granted after the decree for possession to the heritable creditor was granted and has been granted without the heritable creditor's permission. The Applicant is receiving no rent from the Respondent and is not aware if she is paying rent to Mr Chiswell. The debt due to the Applicant as heritable creditor is considerable at over 2 million pounds and they require possession in order to put the property up for sale with vacant possession. There has been no response from the Respondent either in writing or in person. In the absence of any response from the Respondent the Tribunal finds that the grounds of eviction have been met and it is reasonable for the order to be granted.

22. Decision

23. An order for possession is granted.

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.

J Todd

07/07/2022

Legal Member/Chair

Date