



**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/22/0961**

**Re: Property at 23 Eynort Street, Glasgow, G22 6PH (“the Property”)**

**Parties:**

**Bank of Scotland PLC - Halifax, The Mound, Edinburgh, EH1 1YZ (“the Applicant”)**

**Mr Wojceich Malik, 23 Eynort Street, Glasgow, G22 6PH (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted 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 of schedule 3 to the said Act.**

- **Background**
  1. An application 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 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- **Case Management Discussion**
  2. A Case Management Discussion (“CMD”) took place on 19 July 2022, by tele-conference. The Applicant was represented by Ms Masters of Aberdeen Considine. The Respondent appeared personally and represented himself.

3. The Applicant's representative moved for the Order to be granted as sought. The Applicant is a creditor under a heritable security. The debtor under that heritable security is Brian Wylie, who was previously the heritable proprietor of the Property. Mr Wylie transferred title of the Property to his mother, Flora Wylie in 2011 as he was unable to register with the local authority as a landlord due to having been in prison. Despite this title transfer, he remains the sole debtor under the heritable security. A Private Residential Tenancy Agreement ("the Agreement"), was entered into between Brian Wylie and the Respondent which commenced 1 March 2019. Mr Wylie has defaulted on the terms of the standard security, by way of non-payment since October 2017. The Applicant has 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 15 March 2019 at Glasgow Sheriff Court under reference GLW-B208-19.
4. The Applicant intends to sell the Property and requires 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 17 May 2021. A previous Notice to Leave was also served on the Respondent in 2019 which was not acted upon, as negotiations took place with the Respondent's then agents to obtain vacant possession. The Respondent has made an offer to purchase the Property at the sum of £40k, however the Applicant cannot accept this and in terms of s25 of the Conveyancing and Feudal Reform (Scotland) Act 1970 the Applicant must obtain best price by selling the Property on the open market or by auction.
5. The Respondent submitted that when he rented the Property from Mr Wylie he was unaware that Mr Wylie had not been paying his mortgage. He has had numerous people attending at the Property, some behaving in a threatening manner, which has been very stressful for him and his partner. The Respondent's partner is disabled and the Property is not suitable for his partner's needs. The Respondent wants to be rehoused by the Local Authority, but having consulted with the homelessness department they have advised him to remain in the Property until an order is granted by the Tribunal. Only then will they be able to start looking at options for accommodation for him and his partner.
6. 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 15 March 2019
- Findings in Fact
7. 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 15 March 2019 at Glasgow Sheriff Court under reference GLW-B208-19;
- (iii) The debtor under the heritable security and the Respondent entered into a Private Residential Tenancy Agreement which commenced on 1 March 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

8. 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 Glasgow Sheriff Court and dated 15 March 2019, and that the Applicant requires the Respondent 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. The Tribunal was also satisfied that, on the basis that the Respondent was not opposing the application and the Property was no longer suitable for the needs of his disabled partner, that it was reasonable to grant the order.

- Decision

9. 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**

**Date: 19 July 2022**