



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/22/3699

Re: Property at 3 Selby Street, Coatbridge, North Lanarkshire, ML5 2NY (“the Property”)

Parties:

Ms Annette Menzies, c/o William Duncan (Business Recovery) Ltd, 2nd Floor, 18 Bothwell Street, Glasgow, G2 6QY (“the Applicant”)

Mr Kieran O'Brien, Kelly McCafferty, 3 Selby Street, Coatbridge, North Lanarkshire, ML5 2NY (“the Respondents”)

Tribunal Members:

Andrew Upton (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted, and that the Private Residential Tenancy will end on 13 March 2023.

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion by teleconference call on 30 January 2023. The Applicant was represented by Mr Gray. The Respondents were neither present nor represented.
2. This is an Application for eviction under ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant is the Trustee in Sequestration of Adam Simpson, who was the landlord of the Property under a Private Residential Tenancy with the Respondents. Mr Simpson was sequestered by order of court dated 18 March 2020. By virtue of section 78 of the Bankruptcy (Scotland) Act 2016, the Applicant became vested in Mr Simpson’s property as at that date; including the Property and his interest

under the PRT. The Applicant now wishes to sell the Property for the benefit of Mr Simpson's creditors.

3. In terms of Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, the Tribunal may do anything at a CMD that it may do at a Hearing, including make a Decision. In terms of Rule 2, the Tribunal must have regard to the overriding objective to deal with proceedings justly when making a decision; including the need to avoid unnecessary delay.
4. The Respondents have had an opportunity to lodge representations opposing the Application, and also to attend the CMD to make such representations. They have chosen not to avail themselves of that opportunity. In the circumstances, the Tribunal considers that the Application is not opposed by the Respondents. There is accordingly no need to fix a further hearing. The Tribunal is content to make the decision now.
5. The Tribunal has had sight of the award of sequestration appointing the Applicant as Trustee. The Tribunal is satisfied that she has title to pursue the Application. The Tribunal is also satisfied that she intends to sell the Property in order to realise its value for the benefit of Mr Simpson's creditors. That is, after all, her principal duty as Trustee. Finally, the Tribunal is satisfied that it is reasonable to grant the eviction order in this case, standing (i) the lack of any opposition from the Respondents, (ii) the lack of any information to support a finding that it was not reasonable to grant the order, and (iii) the Tribunal's view that, for reasons of public policy, trustees in sequestration should be entitled to recover property forming part of a sequestrated estate for the benefit of the estate creditors.
6. Accordingly, the Tribunal unanimously granted the eviction order under ground 1. The Tribunal determined that the tenancy will terminate on 13 March 2023, being the earliest date of enforcement of the eviction order.

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.

A Upton

30th January 2023

Legal Member/Chair

Date