



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

Chamber Ref: FTS/HPC/EV/23/1114

Re: Property at 61 Cameron Way, Knightsbridge, Livingston, EH54 8HE (“the Property”)

Parties:

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

Miss Kirsty Cunningham, 61 Cameron Way, Knightsbridge, Livingston, EH54 8HE (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.

Background

- 1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Tenancy Agreement, Notice to Leave, Notices to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, Form BB and Extract decree under the Conveyancing and Feudal Reform (Scotland) Act 1970. The application is based on ground 2 of schedule 3 of the 2016 Act, the property is to be sold by the lender.**
- 2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference**

call on 29 June 2023 at 2pm, and they were required to participate.

3. The CMD took place on 29 June 2023. The Applicant was represented by Ms Masters, solicitor. The Respondent participated.

Case Management Discussion

4. Ms Cunningham told the Tribunal that she does not oppose the application. She said that she has wanted to move from the property for a number of years but, due to financial difficulties, cannot do so unless she is re-housed by the Local Authority. She told the Tribunal that she was in receipt of housing benefit. However, the Council advised her to cancel her claim and stop paying rent as the owner of the property was not using it to pay the mortgage, resulting in the property being re-possessed. In response to questions from the Tribunal Ms Cunningham told the Tribunal that she lives at the property with her two children, twins aged six. Her son has special needs and attends a school with an additional supports' needs base. He is provided with transport. Her daughter attends a local school, a short walk from the property. She has been told by the Council that she will not be a priority for re-housing until an eviction order is granted and that she will be entitled to a temporary accommodation unit, not a B&B, because of her son's needs. The property is a mess. No repairs or maintenance have been carried out by the landlord for many years. In relation to timescales, Ms Cunningham said it would be very difficult for her to pack up and move during the school holidays as she has no family support nearby. She said that a delay in enforcement until after the holidays would be beneficial.
5. Ms Masters told the Tribunal that decree for repossession of the property was granted in 2019. The Applicant did not instruct them to serve a Notice to leave until 2021. The case was then put on hold again and they were re-instructed in 2022. A second notice to leave was served at that time. She was unable to provide the reason for the delay in starting proceedings but said it is usually the result of payment arrangements being made by the owner of the property. The arrears currently stand at £16,162 and the last payment to the account was made in 2022. In relation to the question of a delay in enforcement, Ms Masters said that she was in the Tribunal's hands. She added that they usually liaise with tenants in these cases and generally offer additional time when it is required.

Findings in Fact

6. The Applicant is the heritable creditor in relation to the property.
7. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
8. The let property is subject to a heritable security.

9. The Applicant is entitled to sell the let property.
10. The Applicant requires the tenant to leave the property for the purpose of disposing of it.
11. The property is in a state of disrepair because of the failure by the landlord to carry out maintenance and repairs.
12. The Respondent cannot afford to rent alternative accommodation in the private sector and hopes to be allocated alternative accommodation by the Local Authority.
13. The Respondent resides at the property with two children, one of whom has additional support needs.

Reasons for Decision

14. The application to the Tribunal was submitted with a Notice to Leave dated 14 October 2022, together with a Sheriff Officer certificate of service that establishes that the Notice was served on 18 October 2022. The Notice to leave states that an application to the Tribunal is to be made on ground 2, the property is to be sold by the lender. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 11 January 2023. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted copies of the Section 11 Notices and evidence that they were sent to the Local Authority by email. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
15. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 2 of Schedule 3 (as amended by section 43 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) It is an eviction ground that a lender intends to sell the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if – (a) the let property is subject to a heritable security, (b) the creditor under that security is entitled to sell the property, (c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession, and (d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts”.
16. The Applicant submitted an Extract Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 with the application. The Tribunal is satisfied that the Applicant is the heritable creditor and is entitled to sell the let property. From the documents submitted with the application, and the information provided at the CMD, the Tribunal is also satisfied that the Applicant

requires the tenant to leave the property for the purpose of disposing of it with vacant possession.

17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for eviction and had regard to the following:-

- (a) The property is in poor repair and the Respondent wants to be re-housed in accommodation more suitable for her family's needs.
- (b) The Respondent cannot afford to rent another property in the private sector.
- (c) The Respondent will not be re-housed unless an order for eviction is granted.
- (d) The owner of the property owes the sum of £16000 in mortgage arrears and has made no payments to the mortgage account since 2022.

18. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would be reasonable to grant the eviction order.

19. The Tribunal noted that the Respondent is a single parent of two young children, one of whom has additional support needs. In the circumstances, the Tribunal is satisfied that it should order a delay in enforcement of the order until 15 September 2023 in terms of Rule 16A(d) of the Tribunal Procedure Rules 2017

Decision

20. The Tribunal determines that an eviction order should be granted against the Respondent and orders a delay in enforcement of the order until 15 September 2023.

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.

29 June 2023