



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/1362

Order granted on 30 August 2023 in the respondent's absence

Property: 34 Ibris Place, North Berwick, EH39 4BD

Parties:

Fiona Elizabeth Hamilton, residing at 14 Castle Goring Way, Castle Goring, Worthing, West Sussex, BN13 3UN, as executrix on the estate of the late David Murdoch Reid. ("the Applicant")

Mr William Thomas Cuthbert Robertson, residing at 34 Ibris Place, North Berwick, EH39 4DB ("the Respondent")

Tribunal Members:

Paul Doyle (Legal Member)
Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 2 of schedule 3 to the 2016 Act.

Background

1. The Applicant seeks recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicant lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to Leave served on 15 December 2022, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy of the late David Murdoch Reid's will appointing the applicant as executrix was produced as a link in title.

Case Management Discussion

2. A case management discussion took place by telephone conference at 10.00am on 30 August 2023. The Applicant was represented by Ms K Irvine of Lindsays LLP. The respondent was neither present nor represented, but his solicitor wrote to the tribunal on 28 August 2023 confirming that he is aware of the time date and place of the case management discussion and that he will not oppose the application.

Findings in Fact

3. The Tribunal made the following findings in fact at the Case Management Hearing.

(i) On 01 October 2020 the applicant and the late David Murdoch Reid entered into a private residential tenancy agreement for the property.

(ii) The applicant is the sole surviving executor of the late David Murdoch Reid appointed by his will date 29 March 2019. The late David Reid died on 19 November 2021.

(iii) On 15 December 2022 the applicant served a notice to leave on the respondent in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016. On 27 April 2023, the applicant submitted an application to the tribunal.

(iv) The Applicant seeks recovery of possession of the Property in terms Ground 2 of schedule 3 to the 2016 Act. The applicant is the sole surviving executrix on the estate of the late David Murdoch Reid and has an obligation to sell the property for market value before accounting for her intromissions on the executry estate.

(v) The respondent offers no resistance to this application. By letter to the tribunal dated 28 August 2023 the respondent's solicitor said

We confirm that we have received the papers and discussed the Application for Mr Robertson's ejection from the property at 34 Ibris Place, North Berwick.

Mr Robertson advises that he has no opposition to the Order being granted.

It is neither Mr Robertson nor I's intention to appear at the Case Management Discussion by conference call on 30 August 2023 at 10.00am given there is no opposition to an Order being granted.

(vi) There is nothing to suggest that it is unreasonable to grant an order for repossession of the property. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for

possession set out in in terms Ground 2 of schedule 3 to the 2016 Act is established. The respondent offers no defence to the application. For these reasons, the Tribunal determined to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 2 of part 3 of schedule 3 to the 2016 Act.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Paul Doyle

Legal Member

30 August 2023
Date