



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/0417

Re: Property at 31 Polwarth Terrace, Prestonpans, East Lothian, EH32 9PX (“the Property”)

Parties:

Mr Ian McCutcheon, 16 Canty Grove, Longniddry, East Lothian, EH32 0TB (“the Applicant”)

Mr Krzysztof Pisuk, Ms Ewa Wojcik, 31 Polwarth Terrace, Prestonpans, East Lothian, EH32 9PX (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 31 Polwarth Terrace, Prestonpans EH32 9PX under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. An application was made dated 10 February 2022 in terms of Rule 109 of the Chamber Rules for a Private Residential Eviction Order. Along with the application form, the Applicant lodged the following documents:**

- Copy tenancy agreement
 - Tenancy Reference Request Form dated 29 November 2019
 - Confirmation of Applicant as Executor of late Landlord's estate
 - Notice to leave x 2
 - Certificate of Service by Sheriff Officers
 - Death Certificate
2. The Tribunal wrote to the Applicant on 28 February 2022 asking for confirmation of how and when the section 11 Notice was sent to the local authority and for evidence of this. The Tribunal also noted that the Notice to Leave appeared to only be addressed to one of the Respondents and asked for a copy of the additional Notice to Leave. A copy of the additional Notice to Leave was provided by the Applicant.
 3. The application was accepted and assigned to a case management discussion. Intimation of the application and the case management discussion were served on the Respondents by Sheriff Officers on 6 April 2022. The Respondents were advised that they were required to submit any written representations in response to the application by 25 April 2022.
 4. No written representations have been received from the Respondents.

The Case Management Discussion

5. The case management discussion took place by teleconference today. Mr McCutcheon attended on his own behalf as did Mr Pisuk and Ms Wojik. The Applicant made submissions that he was executor of his late cousin's estate. She had died in 2019.
6. The Applicant had immediately told the Respondents that the Property would be sold. The main part of Dr Urquhart's estate was property and the other properties had been sold. The reference request had been submitted to East Lothian Council in 2019 but the Applicant was under the impression that the request for housing would not be progressed until an eviction order had been granted.
7. On questioning regarding the timescale of sale and, particularly with reference to section 1(2)(b) of Ground 1 of schedule 3 of the 2016 Act which requires that there is an intention to sell the Property or at least market it for sale within 3 months of a tenant ceasing to occupy it, the Applicant advised that solicitors had already sold that other properties that formed part of the estate and the Applicant was sure the Property would be put up for sale imminently.
8. In all the circumstances, the Applicant submitted that it was reasonable for the order for repossession to be granted.
9. Mr Pisuk spoke on behalf of both Respondents and advised that he had been looking for another property but he had not worked for 20 months. His mother-in-law and 7 year old son resided at the Property with him.

10. The Respondents were not objecting to the reasonableness of the granting of the Eviction Order and just wanted to get things moving as regards finding a new property.

Findings in Fact

11. The Applicant's late cousin and the Respondents entered into a tenancy agreement from 7 July 2019 in relation to the Property.
12. The Applicant's cousin had died on 9 September 2019 and the Applicant was appointed executor of the estate.
13. Confirmation of the estate was granted on 9 December 2020.
14. A valid Notice to Leave had been served by Sheriff Officers on the Respondents on 4 August 2021.
15. The Respondents reside at the Property with the first Respondent's 7 year old son.
16. The Applicant sent a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 to East Lothian Council by normal post and email.

Reasons for Decision

17. The Tribunal made its decision based on the written papers and evidence before it and on the oral submissions on behalf of both parties at today's case management discussion. The Respondents had been served a valid Notice to Leave by Sheriff Officers. There was nothing to challenge the Applicant's submission that the Property would be marketed for sale within the next three months. It was reasonable to grant the order for repossession in the circumstances. In reaching this view, the Tribunal took into account the length of time that had passed since the death of the Applicant's cousin and the fact that, as executor, he was keen to wind up the estate. The Tribunal also took into account the fact that the Respondents wished the order for repossession to be granted so that progress would be made with their housing application with East Lothian Council.

Decision

18. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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

Anne Mathie

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.

Anne Mathie

Legal Member/Chair

20 May 2022
Date

Anne Mathie