



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/22/3460

Re: Property at 9 Eagles View, Livingston, EH54 8AE (“the Property”)

Parties:

Mr Steven Kerlin, 103 Colinton Mains Grove, Edinburgh, EH13 9DE (“the Applicant”)

Mr James Armit, 9 Eagles View, Livingston, EH54 8AE (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and David MacIver (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.

Introduction.

This Hearing concerned an Application under application for an Eviction order under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in respect to a Private Residential Tenancy. The hearing took place by teleconference.

1. Attendance and Representation.

John MacAulay Ennova Law, 26 George Square Edinburgh, EH8 9LD, attended for the Applicants.

The Respondent was not present. The Respondent was served by Sheriff Officer on 12th January 2023.

2. Preliminary Matters.

The Respondent was not present. The Applicant's representative said that there had been no contact from him. At the beginning of 2023 the Respondent had stopped paying rent and the Applicant was last in communication with the Respondent on that basis.

The Applicant's representative said that he sent 2 documents to the Tribunal by email on 18th May 2023. The Tribunal accessed same and noted one was a copy of the proof of delivery of the Section 11 Notice in the papers to the Local Authority on 21st September 2022 and the other was an updated letter of engagement from the Applicant's estate agent.

There were no other preliminary matters raised.

3. Case Management Discussion

The Applicant's representative submitted that the Applicant sought an order for Eviction under the application in terms of Rule 109 of the Tribunal Procedure Rules and Ground 1, Part 1 of Schedule 3 of the 2016 Act that the property is to be sold. The application was lodged on 22nd September 2022 and relates to a Private Residential Tenancy that commenced on 25th January 2019. The heritable proprietor's being Margaret Kerlin who died in 2019 and James Kerlin who died in 2020. Their son following their death has authority through confirmation to act in this matter as Executor dative. The Applicant's representative set out that he has been dealing with the administration of the estate and the estate cannot be wound up without the property being sold. There is an outstanding mortgage on the property of £129,896,87.

The Applicant's representative submitted that a Notice to Leave was served by Sheriff Officer on the 20th June 2022. Following same no rent has been paid by the Respondent and the arrears of rent due are now £8580. The Applicant is now under significant monthly pressure to meet mortgage payments and the mortgage is a buy to let interest only mortgage that has come to end and the mortgage company refuses to renew it. The mortgage monthly payments are £700 and the Applicant has been bearing same himself with a constant fear of repossession.

The Applicant's representative said the Respondent has kept a dog in the property in breach of the tenancy with their also being complaints of anti-social behaviour. The respondent is 42 years, believed to be in employment and not known to have any vulnerabilities. The Applicant applied for universal credit payments for housing costs to be paid direct if received and this was declined.

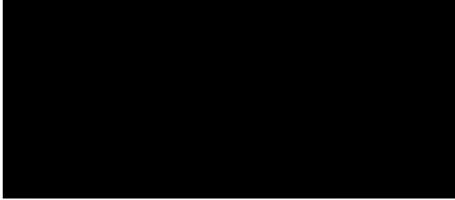
4. Reasons for Decision and Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the Hearing and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer on 12th January 2023, remains in the property and had not provided any written representations or appeared at the Hearing.**
- 2. The Applicant sought an Order for Eviction on Ground 1 of Schedule 3, of the Act that the property is to be sold.**
- 3. The Tribunal was satisfied that the Applicant had authority as Executor Dative of the estate of the late heritable proprietor of the Property to apply for an Order for Eviction as a copy titles and Confirmation as Executor Dative dated 7th December 2021 were both lodged with the Application.**
- 4. There was a PRT in place dated 26th January 2019. .**
- 5. A Notice to Leave was sent to the Respondent on 16th June 2022 and served by Sheriff Office on the 20th June 2022. had a signposting conversation with the Respondent.**
- 6. The Tribunal was satisfied on balance that in terms of Schedule 3, Part 1 Ground 1 of the 2016 Act the Applicant intends to sell the property, is entitled to sell the property, intends to market for sale within 3 months of vacant possession and that the Applicant has produced evidence of said intention.**
- 7. The Tribunal found that the requirements of Ground 11, Part 1 of Schedule 3 to the Act had been met.**
- 8. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 9. The Tribunal noted the Local Authority under the 2016 had been notified.**
- 10. On the evidence available to the Tribunal the Respondent had no dependents residing with him, no vulnerabilities noted and is believed to be in employment. The Applicant is unable to wind up his late parent's estate and funds as Executor without selling the property which has an outstanding mortgage. He is meeting the mortgage payments which are rising personally and there are rent arrears on the property in excess of £8000. The property is at risk of repossession and the mortgage term has ended. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.**
- 11. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondent.**

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.



19th May 2023

Karen Kirk

Legal Member/Chair

Date