

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/23/1190

**Re: Flat 2/3, 53 Hutcheson Street, Glasgow, G1 1SJ
 (“the Property”)**

Parties:

**Tuliptree Limited, a company incorporated under the Companies Acts with registered number SC319690 and having its registered office at 3 Clairmont Gardens, Glasgow, G3 7LW
 (“the Applicant”)**

**Miss Cho Cho Aung, Flat 2/3, 53 Hutcheson Street, Glasgow, G1 1SJ
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Melanie Booth (Ordinary Member)

Present:

The hearing took place at 10am on Friday 15 December 2023 by teleconference call (“**the Hearing**”). The Applicant was not present at the Hearing but was represented by Ms Jennifer McMillan, Lettings Manager of Pacitti Jones (“**Applicant’s Representatives**”). The Respondent was not present in person, nor represented, at the Hearing. The clerk to the Tribunal was Sumayyah Mahmood. This case was conjoined with the case with reference FTS/HPC/CV/23/3183.

BACKGROUND

1. The Applicant made an application to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.
3. The application was dated 14 April 2023.
4. Copies of various other documents were also provided to the Tribunal by the Applicant's Representatives, including:
 - a. the private residential tenancy agreement between the Applicant and the Respondent, signed by the Respondent, the Guarantor (Mr Farham Amin) and the Applicant dated 31 July 2019 ("**Tenancy Agreement**").
 - b. a notice to leave dated 13 March 2023 from the Applicant, addressed to the Respondent at the Property ("**Original Notice to Leave**"), which stated that the eviction ground was that "You are in rent arrears of over three consecutive months" and that an application would not be submitted to the Tribunal for an eviction order before 13 April 2023.
 - c. the required notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail dated 14 April 2023 sending it to the local authority.
 - d. statement of account in respect of rent payable for the Property from 31 July 2019 to 30 April 2023 which showed a balance outstanding of £3,425.10 as at 30 April 2023.
5. A notice of acceptance of the application was issued dated 12 May 2023 under rule 9 of the HPC Rules.
6. A case management discussion ("**CMD**") was held on Monday 26 June 2023 in the absence of the Respondent.
7. On 19 June 2023, the Applicant's Representatives had sent an amended application form to the Tribunal in which the only ground of possession/eviction was ground 12 (rather than both grounds 11 and 12). Given that this was submitted less than 14 days prior to the CMD but was removing, rather than seeking to add, a ground of possession/eviction, the amended application form was accepted by the Tribunal at the CMD.
8. Directions were issued dated 26 June 2023 which were in the following terms:
 - "1. *By 9am on Tuesday 11 July 2023, the **Applicant** is required to submit to the Tribunal (with a copy sent to the Respondent) copies of the following:*
 - a. Evidence of service of the notice to leave on the Respondent and, if this is an e-mail, the e-mail in its original form with all (if any) attachments;*
 - b. Evidence of compliance with the pre-action protocol (for eviction on the basis of rent arrears); and*

c. An updated statement of account in respect of rent.

2. *By 9am on Tuesday 11 July 2023, each of the **Applicant** and the **Respondent** is respectively invited (should the party so wish) to provide written submissions as to whether or not it would be reasonable for the Tribunal to grant an eviction order and the reasons for that.”*

9. The Tribunal noted that satisfactory evidence of service of the Original Notice to Leave on the Respondent and of compliance with the pre-action protocol had since been provided on behalf of the Applicant.

10. The Tribunal noted that the Applicant was the registered landlord of the Property.

11. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number GLA171534).

12. The notice of the Hearing had been served by advertisement (with a copy sent to the e-mail address for the Respondent noted in the Tenancy Agreement) in accordance with rule 6A of the HPC Rules. A certificate of service of advertisement was provided to the Tribunal. In addition, the Respondent had replied (to the e-mail sent by the Tribunal’s administration team) by e-mail on 7 November 2023.

PRELIMINARY MATTERS

13. The Tribunal was satisfied, on the balance of probabilities, that the Respondent had received notice of the date and time of the Hearing and that, accordingly, the Hearing could and should proceed.

14. A copy of a second notice to leave (“**Second Notice to Leave**”) dated 11 December 2023 (which the Tribunal assumed should have been dated 11 July 2023), was provided and which stated that:

- a. the eviction ground was that “You have substantial rent arrears (equivalent to 6 months’ worth of rent)”;
- b. there were rent arrears of £7,870;
- c. no payment had been made by the Respondent since 12 April 2023 (albeit that the statement of account dated 11 September 2023 in respect of rent payable for the Property attached, showed a payment of £100 on 16 June 2023); and
- d. an application would not be submitted to the Tribunal for an eviction order before 13 October 2023.

This, together with a printout from the Applicant’s Representatives’ customer management system which indicated that an e-mail attaching it had been sent on 11 September 2023 at 13:58, was sent to the Tribunal on 11 September 2023 with a request “for amendment to this case on the grounds of 12A”.

15. Ms McMillan confirmed that this was an application to amend the eviction ground from ground 12 to ground 12A.
16. Given that the Tribunal was satisfied, on the balance of probabilities, that the Second Notice to Leave had been served on the Respondent on 11 September 2023 and the date after which an application could be made and proceedings could start had passed more than two months before the date of the Hearing, the Tribunal allowed the application to amend the eviction ground to ground 12A of schedule 3 to the 2016 Act in terms of rule 14A of the HPC Rules.
17. In addition, an updated statement of account in respect of rent payable for the Property dated 23 November 2023 ("**Updated Rent Schedule**") was sent to the Tribunal on 23 November 2023 which stated that there were arrears of rent of £9,860 as at 31 October 2023.

PROCEEDINGS, NAMELY THE CMD

18. Ms McMillan of the Applicant's Representatives confirmed that the Respondent was, as far as she was aware, still living in the Property.
19. Ms McMillan noted that the arrears of rent now amounted to £10,855 and that the last payment made by the Respondent was of £100 on 16 June 2023.
20. Ms McMillan noted that she believed that the Respondent owned a restaurant business and so was not in receipt of housing benefit. She also confirmed that, as far as she was aware, the Respondent lived alone and did not have dependents living with her.
21. Ms McMillan confirmed that a tenancy deposit of £1,492 was still in place and that it was held by Safe Deposits Scotland.
22. Ms McMillan put forward a number of reasons why it would be reasonable to grant an eviction order, which are summarised later in this decision.

FINDING IN FACT

23. The Tribunal was satisfied, on the balance of probabilities, that:
 - a. the pre-action protocol requirements had been met;
 - b. the Original Notice to Leave and the Second Notice to Leave were valid and had been served on the Respondent;
 - c. rent of £995 per calendar month was payable by the Respondent to the Applicant in terms of the Tenancy Agreement;
 - d. the Respondent had accrued rent arrears of £9,870 as at 31 October 2023;

- e. the accrued rent arrears as at 31 October 2023 related to a period of over nine months, each month being a period in respect of which rent was due and payable;
- f. further arrears had accrued since 1 November 2023;
- g. there had continuously been arrears (of some amount) since 1 December 2022, a period of over 12 months to the date of the Hearing; and
- h. it was reasonable for an eviction order to be granted.

REASONS

24. The requirements of ground 12A(2)(a) and (b) of schedule 3 to the 2016 Act had been met.

25. In addition, for the purposes of ground 12A(2)(c) of schedule 3 to the 2016 Act, the Tribunal was satisfied that it was reasonable to issue an eviction order for the following reasons (in summary):

- a. the arrears of rent were substantial, being of more than 9 months' worth of rent;
- b. the last payment made by the Respondent was only of £100 and that was made approximately 6 months previously;
- c. in the period of 12 months up to the date of the Hearing, an amount equivalent to less than 2 months' rent had been paid (in total) by the Applicant;
- d. the Respondent was a restaurant business owner and was not in receipt of housing benefit; and
- e. the Respondent did not have dependents living with her. However, even if she had had dependents living with her, the substantial nature of the arrears would not have resulted in this overriding the other factors in favour of it being reasonable to grant an eviction order in this case.

26. Accordingly, ground 12A of schedule 3 to the 2016 Act applied.

DECISION

27. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 12A (*substantial rent arrears*).

Right of Appeal

In terms of Section 46 of the Tribunals (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.



Chair

15 December 2023

Date