

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/23/3963

**Re: 19 Burndyke Court, Flat 2.2, Govan, G51 2BG
 (“the Property”)**

Parties:

**Marble Properties Ltd, a company incorporated under the Companies Acts (company number SC285267) and having its registered office address at 249 Govan Road, Glasgow, Scotland, G51 1HJ
 (“the Applicant”)**

**Miss Helen Fleming and Mr Michael McArthur of 19 Burndyke Court, Flat 2.2, Govan, G51 2BG
 (jointly and severally “the Respondents”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Elizabeth Dickson (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/23/3963 took place at 2pm on 28 March 2024 by teleconference call (“**the CMD**”). The Applicant was represented by Mr Alan Wong. The Respondents were neither present nor represented at the CMD. The clerk to the Tribunal was Leah Graham.

DECISION (in the absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 12A of schedule 3 to the 2016 Act against the Respondents.

BACKGROUND

1. An application had been made 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 form was dated 8 November 2023 and the Applicant provided copies of various documents, including:
 - a. the private residential tenancy agreement between the Applicant and the Respondents dated 30 August 2019 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 5 September 2023 from the Applicant addressed to the Respondents at the Property (“**Notice to Leave**”), which stated that an application would not be submitted to the Tribunal for an eviction order before 6 October 2023 and that the eviction ground was “You have substantial rent arrears (equivalent to 6 months’ worth of rent)” (ground 12A). It stated that it was accompanied by a rent statement.
 - c. covering e-mail to each of the Respondents (using the e-mail addresses for notices set out in the Tenancy Agreement) dated 5 September 2023 attaching the Notice to Leave and rent statement in respect of the period from 1 April 2021 to 28 August 2023.
 - d. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, dated 8 November 2023, together with the covering e-mail sending it to the local authority on the same date.
 - e. pre-action correspondence from the Applicant in the form of three letters dated 2 March 2023, 9 March 2023 and 12 April 2023, together with covering e-mails (using the e-mail addresses for notices set out in the Tenancy Agreement) of the same dates.
4. A notice of acceptance of the application was issued dated 22 December 2023 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 8 and 27 November 2023.
5. The Respondents had not provided written representations and did not attend the CMD.
6. The Tribunal noted that the Applicant was the registered landlord of the Property.
7. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number GLA89990).
8. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

9. The Applicant's representative confirmed that:
- a. Miss Fleming was still in occupation of the Property and that Mr McArthur, who was one of Miss Fleming's four sons, stayed there when he felt like it.
 - b. Mr McArthur had purported to terminate the Tenancy Agreement in respect of himself alone but that had not been accepted as legally valid by the Applicant and the Applicant's representative had informed the Respondents to this effect.
 - c. Miss Fleming's sons were all adults.
 - d. Miss Fleming was not believed to be in employment or working. He did not know if any or all of her sons were in employment or working.
 - e. When he had attempted to discuss the arrears with the Respondents, Miss Fleming had indicated that she considered £400 per month (the amount of rent which her benefits payments would cover) was enough rent for a three-bedroom property in Glasgow.
 - f. The Property did indeed have three bedrooms.
 - g. He had tried phoning, texting and e-mailing the Respondents and tried to reason with them that they needed to pay the rent (including the arrears) if they wished to remain in occupation of the Property but they were not interested and expected the Applicant to write off the arrears, which it was not willing to do. The Respondents had made it clear (including via conversations with Miss Fleming's son, Thomas) that they had no intention of paying the arrears or the full amount of the rent.
 - h. The current rent arrears amount was £10,534.53.
 - i. No payments other than benefits payments had been made since 29 September 2022. The benefits payments did not meet the rent in full and covered only just over half of the monthly rent.
 - j. The local authority had been informed of the proceedings to seek an eviction order.
10. The Applicant's representative was unwilling to answer a question from the Tribunal as to how many other properties the Applicant owned. This was stated to be on the basis that it was not relevant to this particular case.
11. With regard to why it would be reasonable to grant an eviction order, the Applicant's representative gave the following reasons:

- a. There was a shortage of three-bedroom accommodation and the Respondents did not need three bedrooms, even if both of the Respondents were still resident.
- b. The substantial amount of the rent arrears.
- c. The Respondents had no intention to do the right thing and comply with the Tenancy Agreement. They had no intention to pay the arrears of rent or full amount of future rent. The attitude of the Respondents was a real problem.

FINDING IN FACT

12. The Tenancy Agreement stated that:

- a. the Respondents were jointly and severally liable as joint tenants for payment of the rent and for all of the other obligations of the tenant under the Tenancy Agreement;
- b. the start date of the tenancy was 30 August 2019;
- c. rent was payable at a rate of £850 per calendar month in advance;
- d. payments of rent were due to be paid on or before the 30th of each calendar month;
- e. a rent deposit of £600 was payable; and
- f. notices to be served under the Tenancy Agreement were to be served using the email addresses set out in the Tenancy Agreement.

13. An amount equivalent to six months' rent was £5,100.

14. The Tribunal was satisfied, on the balance of probabilities, that:

- a. any purported partial termination of the Tenancy Agreement by Mr McArthur alone by e-mail was not valid and had no effect.
- b. at least one of the Respondents continued to reside in the Property as their sole or main residence.
- c. the Respondents had not complied with their obligations in the Tenancy Agreement to pay rent in full and on time.
- d. there were, as at the date of service of the Notice to Leave, rent arrears of £7,622.75 (which was an amount in excess of the amount equivalent to six months' rent, namely £5,100).

REASON FOR DECISION

15. The Tribunal was satisfied, on the balance of probabilities:

- a. the Notice to Leave was valid and had been validly served;
- b. the pre-action requirements had been met;
- c. there was more than one period of arrears;
- d. the cumulative amount of the rent arrears under the tenancy exceeded the equivalent of six months' rent under the Tenancy Agreement when the Notice to Leave was served on the Respondents;
- e. the Respondents being in arrears of rent was not "as a consequence of a delay or failure in the payment of a relevant benefit", rather the benefit payments available to the either of the Respondents in respect of rent either (i) were received directly by a Respondent and not paid over to the Applicant in fulfilment of the rent or (ii) were of an amount which did not meet the rent amount in full and the Respondents had not made payment of the balance.
- f. it was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. there had continuously been arrears (of some amount) since at least April 2021, which was a period of almost 3 years. The rent statement provided only went back to 1 April 2021;
 - ii. the rent arrears (as at the date of service of the Notice to Leave) were excessive and amounted to almost nine months' worth of rent;
 - iii. the rent arrears were even greater as at the date of the CMD;
 - iv. the Respondents had not been willing to agree any payment plan;
 - v. there was no realistic prospect of the benefits payments being increased to meet the full amount of the monthly rent payable;
 - vi. the Respondents had failed to engage in any way with the Tribunal's process and had not provided any submissions;
 - vii. there was no obvious reason why the Respondents required (as opposed to desired) a three-bedroom Property; and
 - viii. it would not be in the interests of either party for the rent arrears to continue to increase.

16. Accordingly, the Tribunal found that ground 12A (substantial rent arrears) of schedule 3 to the 2016 Act applied.

DECISION

17. 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.

P S Woodman

Chair

28 March 2024

Date