

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/23/2890

**Re: 5 St. Andrew’s Court, Bellshill, ML4 1FD
 (“the Property”)**

Parties:

**JP Property Company Limited, a company incorporated under the Companies Acts (company number SC282215) and having its registered office address at 4d Auchingramont Road, Hamilton, ML3 6JT
 (“the Applicant”)**

**Miss Samantha Dymond, 5 St. Andrew’s Court, Bellshill, ML4 1FD
 (“the Respondent”)**

Tribunal Members:

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

Present:

The case management discussion in relation to case reference FTS/HPC/EV/23/2890 took place at 10am on 28 March 2024 by teleconference call (“**the CMD**”). The Applicant was represented by Mrs Lorraine Tolson, who was accompanied by Mrs Lorraine Magunnigal. The Respondent was neither present nor represented at the CMD. The clerk to the Tribunal was Leah Graham.

DECISION (in the absence of the Respondent)

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

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 (dated 23 August 2023) was accompanied by copies of various documents, including:
 - a. the private residential tenancy agreement between the Applicant and Adelphi Scott Limited dated 16 May 2018 (“**Tenancy Agreement**”).
 - b. covering letter from the Applicant (therein named JP Property Limited) addressed to the Respondent at the Property dated 9 May 2023, which stated that it enclosed “your notice to leave...by 10th June 2023” and “evidence of correspondence and photographs”. In e-mail correspondence to the Tribunal on 25 September 2023, it was confirmed on behalf of the Applicant that the notice to leave referred to in this letter was the “first notice” which “was hand delivered by [their] staff” but that, “after having a chat with [the Respondent] where she agreed to rectify the arrears and her behaviour, this did not improve and therefore [the Applicant] sent a second notice via royal mail which was signed for on 18th July 2023”.
 - c. a notice to leave dated 17 July 2023 from the Applicant addressed to the Respondent at the Property (“**Notice to Leave**”), which stated that that an application would not be submitted to the Tribunal for an eviction order before 17 August 2023 and that the eviction grounds were:
 - i. “You have breached a term(s) of your tenancy agreement” (ground 11);
 - ii. “You are in rent arrears over three consecutive months” (ground 12);
 - iii. “You have substantial rent arrears (equivalent to 6 months’ worth of rent)” (ground 12A);
 - iv. “You have engaged in relevant antisocial behaviour” (ground 14); and
 - v. “You have associated the Let Property with someone who has a relevant criminal conviction or has engaged in relevant antisocial behaviour” (ground 15).

It referred to rent statements and overview, together with evidence, attached. The Applicant’s representative confirmed during the CMD that the rent statement, copy e-mails from neighbours and photos provided to the Tribunal in the case papers had accompanied the Notice to Leave.

- d. proof of delivery of the Notice to Leave by Royal Mail Tracked 24, which stated it was signed for by the Respondent at 10.41 on 18 July 2023.

- e. rent statement in respect of the Applicant at the Property dated 17 August 2023, which stated that there were arrears of £1,332.38 as at 17 August 2023.
 - f. "Rent Statement Dymond 5 St Andrews" covering the period from 18 May 2018 to 24 June 2022 which stated that there were arrears of £1,914.82 as at 24 June 2022.
 - g. various e-mails to and from persons who indicate that they are in neighbouring / nearby properties complaining about the actions of the Respondent and/or those living with / visiting her.
 - h. various e-mails between a representative of the Applicant (therein named JP Property Ltd) and the Respondent regarding the arrears and items in the communal close.
 - i. pre-action correspondence from the Applicant in the form of four undated letters (apparently relating to arrears of rent as at 22 December 2022 of £750 and as at 10, 18 and 25 January 2023 of £1,125), together referred to as the "**Pre-Action Correspondence**". The Applicant's representative confirmed during the CMD that these had all been sent by recorded delivery post and e-mail to the Respondent.
 - j. various photographs showing black bin bags and other items (including but not limited to a child's bicycle and sit-in toy car, cuddly toy, TV, buggy) in a communal area and open black bin backs with rubbish on stairs, a communal area and a path/ grass area.
4. Following a request from the Tribunal, the Applicant also provided:
- a. an updated "Rent Statement Dymond 5 St Andrews" covering the period from 18 May 2018 to 25 August 2023 which stated that there were arrears of £3,291.75 as at 25 August 2023.
 - b. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail dated 25 September 2023 sending it to the local authority.
5. A notice of acceptance of the application was issued dated 13 October 2023 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 23 August and 25 September 2023.
6. The Respondent had not provided written representations and did not attend the CMD.
7. The Tribunal noted that the Applicant was the registered landlord of the Property.
8. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number LAN164265) and had been since 20 September 2022.

9. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

10. The Applicant's representative confirmed that:

- a. the Respondent was still in occupation of the Property.
- b. the Respondent had children (believed to be 3 of them, all under 10 years of age) and a partner (the identity of whom the Respondent had failed to disclose to the Applicant upon its request and in breach of the Tenancy Agreement¹).
- c. the current arrears amount was £3,442.82.
- d. the Property was a two-bedroom property.
- e. the Respondent was aware that the CMD was taking place and the Applicant had confirmed the (rearranged) date and time of the CMD to the Respondent. The Tribunal noted that the CMD had originally been scheduled for 11 January 2024 but had been postponed, the details of the original CMD having been served by sheriff officers personally on the Respondent.
- f. the Applicant had acquired the Property (along with the remainder of the block of flats of which it formed part and another nearby block of flats) in September 2022.
- g. the Applicant inherited the arrears of rent of £1,914.82 (which were outstanding from the Respondent in respect of the Property) from the previous registered proprietor and landlord of the Property, Adelphi Scott Limited.
- h. the Respondent was understood to having been in receipt of benefits but had not been paying them to the previous landlord and so, following acquisition, the Applicant applied to the Department for Work and Pensions ("DWP") for the benefits in respect of rent to be paid to it directly.
- i. since January 2023, benefits payments in respect of rent had been regular (and paid directly to the Applicant) but the benefits payments had not met the rent in full in April, May, July and August 2023 and January 2024, further increasing the arrears. Despite asking the Respondent and DWP for an explanation as to why there was a shortfall, none had been provided to the Applicant. The Respondent had not made any payment herself towards the rent since a payment of £50 on 30 June 2023.

¹ Clause 13 requires notification about any other resident for whom the Property is their only or principal home.

- j. an agreed course of repayment or payment plan had been agreed with the Respondent several times but she did not stick to them.
- k. there had been a number of reports from other tenants in the block of flats of allegedly anti-social behaviour which had, at times, resulted in the police being called. The police had not been asked to provide details of their call outs to the Property by the Applicant but the Applicant's representative also did not know if the police would provide the details to a landlord, even if asked.
- l. she herself had heard screaming and shouting from, and what appeared to be items being thrown about in, the Property when she was handing over flat number 2 to a new tenant in around October/November 2022 – flat 2 was two floors down from the Property.

11. In summary, the Applicant's representative explained that the reasons for each of the five eviction grounds (in terms of schedule 3 of the 2016 Act) referred to in the Notice to Leave were:

- a. ground 11 – the Respondent was in breach of the Tenancy Agreement for failing to pay rent in full² and as a result of anti-social behaviour and failing to have respect for other tenants of the block of flats³.
- b. grounds 12 and 12A – the Respondent having arrears (as at the date of service of the Notice to Leave) of £3,152.53 in total, and £1,237.71 in respect of the period since the Applicant acquired the Property in September 2022.
- c. grounds 14 and 15 – there being various reports of anti-social behaviour involving the Respondent and other person(s) in the Property, including screaming, banging and physical fighting (including through the night), with the police having been called on occasions; the Respondent leaving items (including a buggy, children's toys and a TV) and rubbish in communal areas both in black bin bags and loose outwith them (including some food waste and dirty nappies); damage being caused to communal areas by a wardrobe being thrown out the flat door and down the stairs and the Respondent's children writing on the walls in the communal areas.
- d. ground 15 was included on the basis of the anti-social behaviour – there was no evidence of the Respondent having any conviction.

12. The Applicant's representative addressed the Tribunal on the question of reasonableness and those factors which were relevant to the Tribunal's decision-making have been noted in the reasons for the decision below.

² Clause 8 of the Tenancy Agreement

³ Clauses 17 and 21 of the Tenancy Agreement

FINDING IN FACT

13. The Tenancy Agreement stated that:

- a. the landlord was Adelphi Scott Limited – however, the Applicant was now the registered proprietor of the Property and so was entitled to the landlord's interest in the Tenancy Agreement;
- b. the start date of the tenancy was 18 May 2018;
- c. rent was payable at a rate of £375 per calendar month in advance;
- d. payments of rent were due to be paid on or before the 18th of each calendar month;
- e. no rent deposit was payable; and
- f. notices to be served under the Tenancy Agreement were to be served using hard copy by personal delivery or recorded delivery.

14. An amount equivalent to six months' rent was £2,250.

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

- a. the Respondent had not complied with her obligations in the Tenancy Agreement to pay rent in full and on time.
- b. there had been arrears of rent under the Tenancy Agreement (of some amount) continuously since 18 October 2019 until the date of service of the Notice to Leave. This was a period of three or more continuous months, whether calculated from 18 October 2019 or 20 September 2022.
- c. as at 18 July 2023, being the date of receipt by the Applicant of the Notice to Leave, the arrears of rent amounted to a total of £3,152.53, of which £1,127.71 had been incurred since the Applicant had acquired the Property.
- d. as at the date of the CMD, the arrears of rent had increased further. This was based on the information provided by the Applicant's representative during the CMD, who was considered by the Tribunal to be reliable and credible in the provision of this information.
- e. the Respondent and/or those living with / visiting her had (in breach of the terms of the Tenancy Agreement):
 - i. not taken reasonable care of the common parts, as a result of depositing items and rubbish in or on them, and left rubbish in unauthorised places; and

- ii. made excessive noise and caused a nuisance or annoyance to other tenants, including (as a minimum) through “screaming” and/or “banging” particularly through the night and having the police attend the block of flats.

REASON FOR DECISION

16. The Applicant was seeking to rely on any one or more of five different eviction grounds.

17. The Tribunal did not have sufficient evidence before it (as at the date of the CMD) in order to consider whether or not grounds 14 and/or 15 had been met and it would have required further evidence and potentially witness testimony in order to consider them. Accordingly, no decision was made by the Tribunal on those grounds given that it was able to make a decision on at least one of the other three grounds advanced by the Applicant.

18. 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. for three or more consecutive months the Respondent had been in arrears of rent;
- d. there was more than one period of arrears;
- e. 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 Respondent;
- f. whilst the letter from the Applicant (therein named RP Property Ltd) dated 9 May 2023 (to which the first notice to leave was stated to be attached) referred to the arrears of rent in respect of the period prior to the Applicant having acquired the Property as well as those incurred after the Applicant had acquired the Property, the Pre-Action Correspondence referred only to the arrears of rent in respect of the period since the Applicant had been the landlord under the Tenancy Agreement;
- g. the Respondent 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 Respondent in respect of rent either (i) were received directly by the Respondent and not paid over to the landlord/Applicant in fulfilment of the rent or (ii) were of an amount which did not meet the rent amount in full and the Respondent had not made payment of the balance.
- h. it was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:

- i. the actions of the Respondent and/or those living with / visiting her were negatively impacting on the normal use and enjoyment of other flats within the block, including but not limited to as a result of excessive noise and (mis-)use of and/or damage to the common parts.
- ii. there had continuously been arrears (of some amount) for almost 4.5 years prior to the CMD (i.e. since October 2019).
- iii. there had continuously been arrears (of some amount) during the entirety of the Applicant's period of ownership of the Property.
- iv. there had been attempts to deal with the arrears of rent through payment plans but the Respondent had not kept to them.
- v. the Respondent had failed to engage in any way with the Tribunal's process and had not provided any submissions.
- vi. it would not be in the interests of either party for the rent arrears to continue to increase.
- vii. the Respondent was understood to have contacted the local authority for alternative accommodation and, based on the knowledge of the Tribunal, a local authority would not provide alternative accommodation unless an eviction order had been granted.

19. Accordingly, the Tribunal found that both ground 11 (breach of Tenancy Agreement) and ground 12 (rent arrears) to the 2016 Act applied. Had the Pre-Action Correspondence not referred only to the arrears of rent incurred after the Applicant acquired the Property, the Tribunal would also have found that ground 12A (substantial rent arrears) applied. In choosing one ground under which to grant an eviction order, the Tribunal determined that the most appropriate ground was ground 12 (rent arrears).

DECISION

20. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 12 (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

28 March 2024

Chair

Date