



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/19/0900

**Re: Property at Flat 35, The Ironworks, 12 Pilrig Heights, Edinburgh, EH6 5BB
("the Property")**

Parties:

**Picture Living Property Limited, C/O Touchstone, 2 Crescent Office Park,
Clarks Way, Bath, BA2 2AF ("the Applicant")**

**Mr Jonathan Landau Litewski, Mr Lee Riches, Flat 35, The Ironworks, 12 Pilrig
Heights, Edinburgh, EH6 5BB ("the Respondent")**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

BACKGROUND

1. By lease dated 13 February 2017 the Respondents rented the Property from the then proprietors, Places for People Homes Ltd;
2. The rent payable was £650.00 per calendar month;
3. Places for People Homes Ltd sold their interest in the Property (and numerous other properties within their portfolio of rented properties) to Picture Living Property Limited. An application to register the transfer of ownership was received by the Keeper of the Registers of Scotland on 15 June 2018. As at the date of the Case Management Discussion the registration process had not been completed but confirmation of the application was provided and is publicly available;
4. The Respondents fell in to arrears of rent. A notice in terms of s19 of the Housing (Scotland) Act 1988 ("the 1988 Act") – commonly referred to as a

form AT6 – was served on each Respondent on 1 March 2019. The notice intimated an intention to raise proceedings for recovery of possession on the basis of Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.

5. As at 1 March the rent arrears were in excess of 3 months rent. As at the date of the application to the Tribunal rent was in arrears for a period of 5 months. In advance of the Case management Discussion the Applicant moved to amend the amount claimed by increasing it from £3,350.00 to £4,690.00, reflecting the fact that rent had not been paid for 7 months;
6. An application for an order for removal was received by the Tribunal on 20 March 2019;
7. The Application proceeded on the basis that rent was due at the rate of £670.00 per calendar month. The lease, however, provided for rent at the rate of £650.00 per calendar month. It made no provision for automatic increases at any time. No evidence was provided to indicate that the rent had been increased nor that the Respondents had agreed to any such increase;
8. The Applicants also served a Notice to Quit and a notice in terms of s33 of the 1988 Act on the Respondents. The Application to the Tribunal, however, was made in terms of Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Rules”) which relates to recovery of possession under s18 of the 1988 Act, rather than under Rule 66 of the FTT Rules which relates to recovery of possession under s33 of the 1988 Act. The Tribunal, accordingly, proceeded in terms of Rule 65 and considered only the issue of rent arrears;
9. As at the date of the Case Management Discussion arrears of rent amounted to 7 months and 10 days. On the basis of the contracted rental payments of £650.00 this amounted to £4,763.70;
10. The Respondents continued to reside in the Property;

THE CASE MANAGEMENT DISCUSSION

11. The Applicants were represented at the Case Management Discussion by Mr N Matheson, Solicitor; Messrs TC Young Solicitors, Edinburgh;
12. The Respondents failed to attend. The Tribunal was in receipt of executions of service by sheriff officers confirming that the place, date and time of the Case Management Discussion had been intimated to the Respondents, together with a copy of the case papers. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of the FTT Rules that the Respondents had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;
13. Mr Matheson confirmed that the Respondents continued to reside in The Property. Rent was still not being paid. Accordingly the Applicants sought an order for removal of the Respondents;
14. Having regard to the rent arrears accrued, Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act were established. There was no information available to the Tribunal to enable it to conclude that any arrears were as a result of the delay or failure in payment of any relevant benefit.

FINDINGS IN FACT

15. The Tribunal found the following facts to be established:-

- a) By lease dated 13 February 2017 the Respondents rented the Property from the then proprietors, Places for People Homes Ltd;
- b) The rent payable was £650.00 per calendar month;
- c) Places for People Homes Ltd sold their interest in the Property (and numerous other properties within their portfolio of rented properties) to Picture Living Property Limited. An application to register the transfer of ownership was received by the Keeper of the Registers of Scotland on 15 June 2018. As at the date of the Case Management Discussion the registration process had not been completed but confirmation of the application was provided and is publicly available;
- d) The Respondents fell in to arrears of rent. A notice in terms of s19 of the 1988 Act was served on each Respondent on 1 March 2019. The notice intimated an intention to raise proceedings for recovery of possession on the basis of Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.
- e) As at 1 March, the date of service of the notice in terms of s19 of the 1988 Act, and as at 10 June 2019, the date of the Case Management Discussion, at least 3 months rent lawfully due from the Respondents was in arrears;
- f) The Respondents have persistently failed to pay rent which is lawfully due;
- g) Some rent lawfully due from the Respondents was unpaid on the date on which proceedings began and was in arrears at the date of service of the notice in terms of s19 of the 1988 Act;

DECISION

The Tribunal grants an order against the Respondents for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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.

V Crawford

10 June 2019

Legal Member/Chair

Date