

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/0936**

**Re: Property at Flat 4, 18 Castleview Drive, Edinburgh, EH16 4BF (“the Property”)**

**Parties:**

**Places for People Scotland Ltd, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Mr Stuart Davis, Flat 4, 18 Castleview Drive, Edinburgh, EH16 4BF “the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondent Stuart Davis)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of £24,404.15 be granted in favour of the Applicant and against the Respondent together with interest at the rate of 4% per annum until paid.

**Background**

1. This application for a payment order was first lodged with the tribunal on 22<sup>nd</sup> March 2023 and accepted by the tribunal on 11th August 2023. A case management discussion was fixed for the 24th of November 2023 at 10:00 am. A related application for eviction with reference (EV/23/0939) also called against the Respondent.

2. At the case management discussion on 24th November 2023 the tribunal had sight of the eviction and payment order applications, a tenancy agreement, Notices to Leave in respect of both the Respondent and the other tenant John Davis, a notice in

terms of section 11 of the Homelessness etc (Scotland) Act 2023, a rent statement, an updated rent statement, a pre action protocol letter sent to the Respondent Stuart Davis, papers apart giving information, a series of emails between the Applicant's representative and the tribunal and emails between the Applicant's solicitor and Mr John Davis.

3. The case management discussion was attended by Mr Caldwell solicitor of Patten and Prentice LLP, as representative for the Applicant which at that time was said to be Places for People (Scotland)Ltd. There was no appearance at that stage by or on behalf of the Respondent Stuart Davis. The tribunal legal member noted that both applications and supporting papers had been served on him by sheriff officer and was satisfied that he had been given fair notice of both applications and the time and date of the case management discussion. The tribunal legal member explained to Mr Caldwell that the tribunal eviction papers had not been served on John Davis and the eviction application appeared to be calling in relation to Stuart Davis only.

4. Mr John Davis attended the teleconference as a party in respect of the eviction application and observed the payment order application case management discussion.

5. Mr Caldwell clarified that the tenancy agreement was in the name of touchstone in error. Touchstone were the letting agents and the landlords were Places for People Scotland Limited and this had been explained to the tenants at an earlier stage.

6. Mr Caldwell had intimated to the Respondent Stuart Davis a request to increase the sum being requested by way of a payment order to £24,404.15 and given that this had been intimated properly in terms of the Tribunal rules of procedure the Tribunal allowed the sum in the application to be increased.

7. The Respondents had entered into a tenancy agreement at the property with effect from the 18th of June 2018. The rent, payable four weekly, had started out at £675 per calendar month and had increased in April 2019 to £695.25. The rent had increased to £716 per month with effect from March 2020 and had been increased again with effect from April 2021 to £731.04. In June 2022 the monthly rate had been increased to £759.55. These increases had been properly intimated to the Respondents. No rent had been paid since August 2021.

8. It was accepted that the second Respondent John Davis had ceased to occupy the property before the rent arrears had accrued in terms of the tenancy agreement. The Applicant was not seeking a payment order against Mr John Davis. The Respondent Stuart Davis, Mr John Davis's brother had remained at the property and was known to be working at the start of the tenancy and was not eligible for benefits. He had refused to engage regarding the rent arrears over a lengthy period and it was not known in detail why these arrears had accrued to the level they had reached being £25186.49 in terms of an updated rent statement lodged with the tribunal.

9. In March 2023 the Applicant's solicitor sent a pre action protocol letter to the Respondent Stuart Davis, also sending him information regarding sources of support if in financial difficulty.

10. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

11. Places for People Scotland Ltd entered into a tenancy agreement at the property with the Respondent Stuart Davis and another tenant John Davis with effect from the 18th of June 2018.

12. The rent at the start of the tenancy was £675 to be paid four weekly in advance but this was properly increased on an annual basis and with effect from June 2022 the four weekly rent payable was increased to £759.55.

13. Rent arrears started to accrue at the property with effect from October 2019 and by October 2023 stood at £24,404.15

14. The tenant John Davis left the property before the rent arrears accrued but as there were joint tenants the tenancy agreement continued.

15. In March 2023 agents for the landlord wrote to the Respondent Stuart Davis setting out the level of rent arrears and referring him to sources of financial help.

16. It is not known why the rent arrears at the property have accrued as the Respondent Stuart Davis has not engaged with any attempts to communicate with him regarding the rent arrears.

17. The Respondent Stuart Davis was working at the start of the tenancy and is not understood to be claiming any benefits.

18. The sum of £24,404.15 is lawfully due by the Respondent to the Applicant by way of accrued rent arrears at the property in terms of the tenancy agreement.

### **Reasons for Decision**

19. The rent arrears accrued in this application were substantial and the Applicant has exercised the right to proceed against one tenant only for the whole of the arrears as the other tenant had ceased to occupy the property before the rent arrears were accrued.

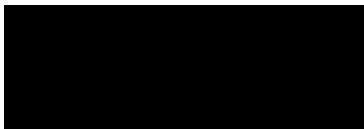
20. The Respondent had failed to engage with the landlord regarding the arrears and it therefore seemed reasonable to grant a payment order. The Applicant had sought interest on the order at the rate of 4% per annum and this rate seemed appropriate given current bank base rates and the use value of the sums in unpaid rent.

## **Decision**

The Tribunal determined that a payment order in the sum of £24,404.15 be granted in favour of the Applicant and against the Respondent together with interest at the rate of 4% per annum until paid.

## **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.**



24.11.23

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**Legal Member/Chair**

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**Date**