



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**DECISION WITH STATEMENT OF REASONS OF THE FIRST-TIER  
TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY CHAMBER) ON  
THE PRELIMINARY MATTER AS TO THE IDENTITY OF THE LANDLORD**

**Chamber Ref: FTS/HPC/RP/23/1039**

**Title No: MID100985**

**Flat 1, 7 East Pilton Farm Crescent, The Strada, Edinburgh EH5 2GF  
("The Property")**

**The Parties:-**

**Ms Jade Alvey and Mr Marc Rendle, Flat 1, 7 East Pilton Farm Crescent,  
The Strada, Edinburgh EH5 2GF ("the tenants")**

**Mr Roy Mark Fever, 50 Primrose Drive, Kingsnorth, Ashford, Kent  
TN23 3NP ("the named landlord")**

**Pepper (UK) Limited, a company incorporated under the Companies  
Acts and having its registered office at Harman House, 1 George Street,  
Uxbridge, London UB8 1QQ ("the heritable creditor")**

**Tribunal Members: Richard Mill (Legal Member) and Andrew Murray  
(Ordinary Member)**

**Introduction**

1. The tenants have applied to the tribunal for a determination of whether their landlord has failed to comply with the 'repairing standard' duties imposed by section 14(1) of the Housing (Scotland) Act 2006 in respect of the property.

**Relevant factual history**

2. The tenants and the named landlord entered into a private residential tenancy in respect of the property which commenced on 15 September

2020. In terms of the title information, held in the Land Register for Scotland, the named landlord purchased the property on 18 December 2006 and remains the named registered heritable proprietor.

3. The named landlord granted a Standard Security for £191,350, and further sums, in favour of GMAC-RFC Limited on 8 January 2007. On 18 December 2008 the Standard Security was assigned to Webb Resolutions Limited. On 24 June 2015 the Standard Security was assigned to LSF VII Bonette Investments Limited. On 20 June 2016 the Standard Security was assigned to Pepper (UK) Limited who is the heritable creditor.
4. In terms of a Decree granted at Edinburgh Sheriff Court on 9 December 2021 in Court Process EDI-B982-21, Pepper (UK) Limited were successful in obtaining a Decree against Mr Roy Mark Fever and was found entitled to enter into possession of the heritable subjects known as Flat 1, 7 East Pilton Farm Crescent, Edinburgh, Title Number MID100985 and to receive and recover the rents of and for the said subjects or at least so much of the said rents as will satisfy and pay Pepper (UK) Limited the sum of £211,611.47 with interest thereon at the rate of 5.35% per centum per annum from 15 June 2021 until payment. Warrant was granted to Pepper (UK) Limited in terms of Section 24(1B) of the Conveyancing and Feudal Reform (Scotland) Act 1970 to sell the subjects, to effect all such repairs and make good such defects as are necessary to maintain the security subjects in good and sufficient repair and to enter into possession of the security subjects and to exercise in relation thereto all powers competent to a creditor in possession of the subjects.
5. On both 3 March 2022 and 18 November 2022 the heritable creditor's agents, Alston Law, served notices to leave upon the tenants, acknowledging the existing lease and intimating that if the tenants did not leave in accordance with the notices that eviction proceedings would be initiated on the ground that the let property was to be sold by the heritable creditor. Eviction proceedings are now pending before the tribunal.

### **Procedural history**

6. At the time the application was received on behalf of the tenants their representative highlighted the dispute regarding the identity of the landlord and in order that the application could be intimated the tribunal stipulated pre-service that the heritable creditor was the landlord.

An inspection and hearing had been arranged to take place on 22 August 2023. Having regard to the stated health and safety concerns and in order to expedite matters the tribunal having considered the application and supporting documentary evidence Directed as follows:

Pepper (UK) Limited is required to produce:

- a current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
- a copy of a current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection and a corresponding report regarding the condition of the heating system.

The said documentation was required to be lodged with the Chamber no later than 12 noon on Monday 7 August 2022.

7. The heritable creditor's representative responded to the service of the application and said Direction, disputing responsibility for the 'repairing standard' under the Housing (Scotland) 2006 Act ('the 2006 Act'). Written submissions were received on the heritable creditor's behalf dated 23 July 2023. The tribunal determined that it was in the interests of justice for the fundamental issue raised to be the subject of an oral hearing and to allow the tenants and their representative the right to be heard and to have the right of reply.
8. Accordingly, on 26 July 2023 a further Direction was issued in the following terms:

The nominated landlord, Pepper (UK) Limited, who is the heritable creditor, is entitled to possession of the subjects in terms of a Decree granted at Edinburgh Sheriff Court on 9 December 2021 in Court Process EDI-B982-21. The lender disputes responsibility for the 'repairing standard' under the 2006 Act. Following service of the application submissions have been received on their behalf dated 23 July 2023. It is in the interests of justice for the fundamental issue raised to be the subject of an oral hearing, which will take place by teleconference on a date to be afterwards fixed. It may be possible to retain the date of 22 August 2023 for this purpose.

The obligations placed upon Pepper (UK) Limited, in terms of the tribunal's earlier direction dated 5 July 2023, are withdrawn pending a formal decision on the identity of the landlord following the said preliminary hearing.

Pending the preliminary hearing, of new, the tribunal Directs:

1. The said decree pronounced on 9 December 2021 requires Pepper (UK) Limited "...to effect all such repairs

and make good such defects as necessary to maintain the security subjects in good and sufficient repair...". Pepper (UK) Limited are therefore required to provide specification and evidence of the enquiries they have made regarding the condition of the property to satisfy the said obligation and provide specification and evidence of any works undertaken. Repair issues which may cause danger to members of the public have been intimated to Pepper (UK) Limited. Fair notice has been provided. The tribunal is concerned at the obvious health and safety issues raised in the application which could lead to death given the alleged absence of a gas safety certificate, lack of electrical safety certification and lack of heat and smoke alarms.

2. Pepper (UK) Limited were also found entitled to receive and recover the rents for the subjects. Pepper (UK) Limited are required to provide evidence of all communications with the tenant and a schedule of any rents received.

### **Preliminary hearing**

9. The hearing took place by place by teleconference of 22 August 2023 at 11.45 am. The tenants were represented by Natasha McGourt of Granton Information Centre. The heritable creditor was represented by Kenneth Young, Advocate.
10. Mr Young relied substantially upon his primary written submissions dated 23 July 2023 together with his supplementary written submissions dated 10 August 2023. He made some further supplementary oral submissions by way of summary. The applicant's representative did not make any formal or detailed submissions, instead leaving the matter in the hands of the tribunal. The tribunal reserved its decision.

### **Reasons for Decision**

11. The rights of the heritable creditor arise from the terms of the Conveyancing and Feudal Reform (Scotland) Act 1970. Section 20(5), titled 'Exercise of rights of creditor on default of debtor in complying with a calling-up notice' provides:

"There shall be deemed to be assigned to a creditor who is in lawful possession of the security subjects all rights and obligations of the proprietor relating to—

- (a) leases, or any permission or right of occupancy, granted in respect of those subjects or any part thereof, and

(b) the management and maintenance of the subjects and the effecting of any reconstruction, alteration or improvement reasonably required for the purpose of maintaining the market value of the subjects.”

It is clearly specified and is directive that the heritable creditor in possession assumes “...**all rights and obligations**...” of the proprietor relating to leases. It is self-evident that the obligations of the proprietor which transfer to the heritable creditor must include those relating to the repairing standard under the 2006 Act.

12. Despite the terms of Section 20(5) of the 1970 Act the representative for the heritable creditor sought to persuade the tribunal that a lender in possession does not have responsibility to carry out or undertake repairs and, as such, it has not made any enquiries with the applicant tenant or inspected the property beyond a cursory visit to the property in May 2021 and exchanged emails about a specific complaint regarding the water pressure. Further, it was suggested that the Edinburgh Sheriff Court Decree only *permits* the heritable creditor to undertake repairs and further, that it only permits limited repairs – those which are necessary to keep the subjects in good and sufficient repair. Reliance was placed upon Schedule 3, Condition 10(6) of the 1970 Act which states:

”He [the creditor upon default] may effect all such repairs ...”

The tribunal finds that those repairs which are necessary include those necessary to meet the ‘repairing standard’ under the 2006 Act.

The tribunal also notes the preceding provision contained within Schedule 3, Condition 10(5) which states:

“Where he has entered into possession as aforesaid there shall be transferred to him all the rights of the debtor in relation to the granting of leases or rights of occupancy over the security subjects and to the management and maintenance of those subjects.”

The transferring of all rights is indicative of the corresponding transfer of all obligations. It cannot be the case that a heritable creditor in possession can ignore the condition of the property and allow it to fall into a state of disrepair; or otherwise fail to adhere to the ‘repairing standard’ including the Scottish Government Guidelines, for example to ensure that there is adequate detection for heat, smoke and carbon monoxide, which if absent may lead to death. This is a dereliction of its legal obligation which arises from Section 20(5).

13. One of the primary arguments for the heritable creditor is that it is not the owner. However, a lender in possession ie the heritable creditor is commonly, across other Scottish legislation, deemed to be *treated as* the 'owner'. Section 123 of Title Conditions (Scotland) Act 2003 explicitly defines the term "owner":

"(1) Subject to subsections (2) and (3) below, in this Act "owner", in relation to any property, means a person who has right to the property whether or not that person has completed title; but if, in relation to the property (or, if the property is held pro indiviso, any pro indiviso share in the property) more than one person comes within that description of owner, then "owner"—

(a) for the purposes of sections 4(2)(b), 6(1)(a), 15, 16, 19, 33(1) and (2) and 35 of this Act, means any person having such right; and

(b) for any other purposes means such person as has most recently acquired such right.

(2) Where a heritable creditor is in lawful possession of security subjects which comprise the property, then "owner"—

(a) for the purposes of the sections mentioned in paragraph (a) of subsection (1) above includes, in addition to any such person as is there mentioned, that heritable creditor; and

(b) for any other purposes (other than of construing section 1 of this Act) means the heritable creditor.

(3) In section 60(1) of this Act, "owner" in relation to any property has the meaning given by subsection (1) above except that, for the purposes of this subsection, in that subsection—

(a) the words "Subject to subsections (2) and (3) below, in this Act" shall be disregarded; and

(b) paragraph (a) shall be construed as if section 60(1) were one of the sections mentioned."

Section 123(2) cannot be clearer in establishing that an owner includes a heritable creditor in lawful possession and Section 123(1) is clear that the fact that a person has not completed title is irrelevant.

14. The current application is one under the Housing (Scotland) Act 2006. Section 194 of the which is the interpretation section, specifies: that a

“landlord” means any person who lets a house under a tenancy, and includes the landlord’s successors in title.

The tribunal finds that a ‘successor in title’ does not have to be a registered title holder, as the heritable creditor’s representative submits. Such an entitled person would include an executor, heir and indeed the heritable creditor.

15. Though the tenancy is a private residential tenancy under the 2016 Act it is noteworthy that the interpretations contained in Section 55 of the Housing (Scotland) Act 1988 (for the purposes of assured residential tenancies) provides detail as to the extended definition of a landlord which clearly includes a heritable creditor in possession:

“includes any person from time to time deriving title from the original landlord and also includes, in relation to a house, any person other than a tenant who is, or but for the existence of an assured tenancy would be, entitled to possession of the house.”

16. Section 45 of the Private Housing (Tenancies) (Scotland) Act 2016 is directly applicable to the tenancy which exists here as it is a private residential tenancy. The section which is titled “Landlord’s interest transfers with ownership of property” specifies:

“When ownership of a property let under a private residential tenancy is transferred, the landlord’s interest under the tenancy transfers with it.”

The heritable creditor has *de facto* ownership despite not having its interest registered in the Land Register. Moreover the heritable creditor is ‘treated as’ the owner’ in law; as demonstrated by the provisions of both the 1970 and 2003 Act as set out above.

17. The representative for the heritable creditor relied upon Gretton and Reid on Conveyancing (5th Edition) 23-37 *It is sometimes wrongly supposed that ownership is vested in the heritable creditor. A standard security is indeed a real right, but a subordinate real right, not the real right of ownership. It is the debtor who has the real right of ownership. Another mistake is to suppose that, whilst the debtor is owner unless and until default, when default happens, or (in another version of the mistake) when the debtor is deprived of possession, the creditor become owner. This is not correct. The debtor remains the owner until the moment when ownership passes to the buyer, which happens when the disposition to the buyer is registered. Unless there is a decree of foreclosure, which is very rare, the creditor never becomes owner.*

18. The tribunal accepted that the heritable creditor in possession cannot register their title and as such cannot be the infekt registered owner.

However, as is obvious from the statutory authorities outlined above, it is clear that a heritable creditor in possession stands in the shoes of named landlords in residential tenancy arrangements in Scotland and are 'treated as' the landlord for all practical and legal purposes pertaining to lease arrangements. The tribunal therefore does not find that there is conflict between finding the heritable creditor in possession to be the landlord and the strict conveyancing interpretation stipulated by Gretton and Reid.

19. The heritable creditor is not collecting rent and is said not to have keys to the property. A heritable creditor in possession however *de facto* lets the property regardless of whether or not rents are collected. It is the heritable creditor that has the right to collect rents and this is directive in the terms of the Decree granted (in standard form) under the 1970 Act. The fact that the heritable creditor does not collect any rents is through choice. Any landlord who chooses, for whatever reason, not to collect rent does not invalidate their status as landlord. The named landlord has no rights to collect the rent and, indeed, has no rights and therefore no obligations. His rights, including the right to collect rent have been extinguished in consequence of the Decree granted at Edinburgh Sheriff Court on 9 December 2021 in Court Process EDI-B982-21. The tribunal again reminds itself of the provisions of Section 20(5) of the 1970 Act.
20. The representative for the heritable creditor relied upon the Outer House case of *Crewpace Ltd v French*, 2012 S.L.T. 126. This was not a case involving a residential tenancy. Residential tenancies have their own jurisprudence requiring a balance to be struck between the protection of the tenant and fairness to any landlord. An individual's rights to enjoy their home peaceably are protected under Article 8 of the European Convention on Human Rights.
21. The heritable creditor has already assumed the status as landlord, as it is entitled to, for the purposes of initiating eviction proceedings against the current tenant. The heritable creditor has served (two) notices to leave, being the first step in the legal process to evict the applicant tenant. This demonstrates the exercise of the heritable creditors rights as landlord. A Case Management Discussion has taken place in eviction proceedings now raised before the tribunal and a final hearing has been fixed to take place on a date as yet to be assigned in order that the tribunal can consider the reasonableness of granting an eviction order.
22. It would be illogical for the heritable creditor to be entitled to act as landlord for some purposes yet unilaterally reject their status as landlord so as to simply diminish, and according to the heritable creditors representative, extinguish corresponding obligations. It is the heritable creditor's position that the landlord for the purposes of the 2006 Act is the named landlord on the written lease. The tribunal



rejects this submission. This would give rise to a situation where there was more than one landlord, albeit for different purposes. It is also in direct contradiction to the directive nature of Section 20(5) of the 1970 Act which makes it clear that all rights and obligations of the proprietor transfer to the heritable creditor. This is consistent with the terms of the Sheriff Court Decree. In the event that the heritable creditor is not to be treated as the landlord then the tenant would be without any landlord for the purposes of the 2006 Act. That cannot be the case. Someone or some body has to be responsible as the landlord and the only person that can be is the heritable creditor.

23. The applicant tenants are entitled, pending any eviction, to a standard of accommodation which is set out under the umbrella of the 'repairing standard' as specified in Section 13 of the 2006 Act. This is their right. This right cannot be extinguished. The tribunal finds it troubling that it has been brought to the heritable creditor's attention that the property (1) does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, (2) does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, (3) has no gas safety certificate (nor have checks been carried out for over 3 years) and, (4) no portable appliance testing (PAT) has been carried out for over 3 years; and yet such concerns have been ignored.

### **Decision**

24. The tribunal finds that the heritable creditor, Pepper (UK) Limited, is the landlord of the property for the purposes of the Housing (Scotland) Act 2006.

25. **The tribunal therefore Directs of new :**

- (i) Pepper (UK) Limited is required to produce:
- a current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
  - a copy of a current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection and a corresponding report regarding the condition of the heating system.

The said documentation is required to be lodged with the Chamber no later than 12 noon on 15 September 2022.

- (ii) A fresh inspection and hearing will be assigned to take place as

soon as practicably possible, on a date to be afterwards fixed.

### **Right of Appeal**

26. 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.
27. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Legal Member: R.Mill

Date: 24 August 2023