



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Sections 18 and 33 of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/25/1566 and FTS/HPC/EV/2966

**Re: Property at Flat 6, 2 Newbells Court, Maritime Street, Leith, EH6 6RY (“the
Property”)**

Parties:

**Picture Living Investments LP, Touchstone, 2 Crescent Office Park, Clarks Way,
Bath, BA2 2AF (“the Applicant”)**

**Ms Robyn Broome, Flat 6, 2 Newbells Court, Maritime Street, Leith, EH6 6RY
 (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that it would grant an order for recovery of possession of
the Property.**

Background

1. Three applications were made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under rules 65, 66 and 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking orders for recovery of possession under sections 18 and 33 of the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the Property; and a payment order for rent arrears.

2. The application papers included,
 - a copy of the tenancy agreement.
 - section 33 notice
 - AT6 Notice
 - notice to quit
 - execution of service by sheriff officers for the section 33 notice, AT6 Notice and the notice to quit
 - section 11 notice to local authority
 - pre-action protocol information
 - rent increase papers
 - rent statement
3. The applications called for a case management discussion on 14 October 2025. Appearing for the Applicant was Amy Goodway, and the Applicant's agent, Kenneth Caldwell, Patten and Prentice LLP, and for the Respondent, Mr Wilson from Chai.
4. The Applicant's agent had submitted an email on 2 September 2025 seeking an increase in the sum sought in the civil application and providing an updated rent statement. The email had been copied to the Respondent.

The Case Management Discussion

5. The Applicant's agent advised that he sought an order for possession under section 18 of the Housing (Scotland) Act 1988. He moved to withdraw the application under section 33. He moved to amend the order for civil proceedings to a new sum of £7,122. He advised that this increased sum took into account the rent arrears for the month of October. He noted that the tenant had indicated that she would not be leaving the Property until 31 October 2025. Thereafter, he sought an order for payment of the increased sum of £7,122 together with interest at the rate of 4 % per annum.

6. In terms of the order for eviction. The Applicant's agent advised that the tenancy had commenced in 2011. Since its commencement, there have been ongoing issues with the non-payment of rent. There had been 4 previous applications made for eviction due to rent arrears, and on the earlier occasions, the respondent had, towards the end of the eviction process, made a large lump sum payment towards the arrears, thereby preventing an order being granted.
7. On this occasion, the respondent had not made any lump sum payment to reduce the arrears. The reason for the 33 applications was to take a "belt and braces" approach, and if the lump sum had been paid, the Applicant would still be able to move for a decree under section 33. Given that the arrears have not been repaid, an order is sought under section 18 at the present time.
8. He advised that the last rental payment was made in April 2025. The arrears in April were £3,127, and this was also shortly after when the AT6 Notice, Section 33 and notice to quit had been served.
9. In relation to the question of reasonableness, the landlord has issued pre-action notices. There has been a significant expense incurred by the landlord in pursuing all of these previous and present applications. The respondent had continued to accrue rent arrears. There has been no payment since 10 April 2025. The arrears are at a significant level. While the Applicant was an investment business, it was nonetheless reasonable to grant the order in all the circumstances. It was acknowledged that the Respondent may have difficulties sustaining a tenancy.
10. In terms of the order for payment. He advised that he was moving to amend the sum sued at the hearing. The Respondent's representative was present. He also sought interest of 4% per annum in this case. He said 4% was a reflection of the banks' base rate. He acknowledged that there was no contractual provision for interest in the tenancy agreement, and it was a matter of discretion for the tribunal.
11. The Respondent's representative advised that he had no comments to make on the withdrawal application. The respondent was not opposed to the application for

eviction being granted. The respondent was also not opposed to the civil application being granted against her. The Respondent's representative advised that he had no objection to the sum being increased to £7,122, reflecting the actual rent arrears due. He had no objection to an order for interest being awarded, although he did not submit that it was reasonable to do so, but he acknowledged that the tribunal may award it. He had not been instructed to oppose any such order for interest.

12. The Respondent's representative advised that there was only the Respondent who was residing in the Property. He advised that the Respondent was moving to reside with her partner, and so, she has alternative accommodation to move to.

Findings in Fact

13. The tribunal makes the following findings in fact:-
14. The landlord is Picture Living Investments GP LLP.
15. The tenant is Miss Robyn Broome.
16. The Property is Flat 6, 2 Newbells Court, Maritime Street, Leith.
17. The tenancy commenced on 2 September 2011 until 1 March 2012 and continued on a month-to-month basis thereafter.
18. The rent as of October 2025 was £745 per calendar month.
19. The AT6 Notice was dated 24 February 2025 and sought vacant possession as of 11 March 2025. It relied on grounds 11 the tenant persistently delaying to pay rent and 12, some rent being due on the date when proceedings for possession have begun and subject to subsection 1 (b) in arrears of rent at the date of service of the AT6 notice. It advised that there were rent arrears of £3,137 as of the date of service of the notice.

20. The notice to quit was dated 24 February 2025 and sought it sought vacant possession as of 1 May 2025.
21. The section 33 notice was dated 24 February 2025 and provided two months' notice that the landlord required vacant possession.
22. There was evidence of service of the notice to quit, section 33 notice, and AT6 Notice by sheriff officers on 24 February 2025.
23. Pre-action protocol requirements had been sent to the tenant.
24. Rent increase notices had been sent to the tenant.
25. On 2 September 2025, the Applicant's agent emailed the tribunal office, copying the tenant into the correspondence and advising that they sought to amend the outstanding sum of rent arrears due at that date to £6,377. A rent statement had been submitted by the Applicant showing the rent due, rent paid, and rent arrears outstanding. As of 1 September 2025, the rent arrears were £6,377.
26. As of 14 October, the rent arrears were £7,122.
27. The last payment for rent was received in April 2025.
28. The tenant's representative had emailed the tribunal office on 13 October 2025, advising that the tenant did not oppose the applications for eviction or civil proceedings.
29. The tenant lived by herself. The tenant had alternative accommodation to move to if the order is granted.

Reasons for Decision

Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 provide as follows:-

Ground 11 - Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12 - Some rent lawfully due from the tenant— (a) is unpaid on the date on which the proceedings for possession are begun; and (b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Section 18 provides that,

(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3)-(3A) [...]2

(4) If the First-tier Tribunal is satisfied that any of the grounds in [Part I or II of Schedule 5] 3 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4ZA)-(4ZC) [...]4

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to [(a) the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, and

(b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.] 5 , ...

30. The tribunal finds that the tenancy was an assured tenancy. The tenancy agreement provided notice of the grounds for recovery in terms of subsection (6) of section 18; in addition, a notice to quit had been served, which had terminated the contractual tenancy on the *ish* date. An AT6 Notice had been served on the Respondent. On the date when proceedings for possession were begun, there were rent arrears due by the tenant and in addition, we find that the Respondent had persistently delayed paying rent which had become lawfully due. Most recently, her last payment for rent had been made on 10 April 2025, some 6 months ago. We also find that ground 12 is established, given that some rent was lawfully due from the tenant and remained unpaid on the date on which the proceedings for possession were begun. It appears that the requirements of section 18 of the 1988 Act had been complied with.

31. The tribunal turned to consider if it was reasonable to grant the order. We find that it would be reasonable to do so. We are required to balance the facts relevant to the application. We place weight on the following reasons for granting the order: the arrears are now of significant value, being over £7,000. The last payment made by the Respondent was in April 2025. There has been a history of rent arrears being run up by the Respondent. The landlords had previously instructed action to be taken to recover the property. We were advised this had happened on at least 4 occasions, and this had financial implications for the landlord, costing the landlord money each time to raise these proceedings. The Respondent resided in the Property by herself, and she had alternative accommodation to move to. We also place considerable weight on the fact that the Respondent does not oppose these orders being granted, and she has had the benefit of advice on these applications. Reasons against the order being granted are that the landlords are a commercial enterprise and will expect to take some risk in letting out the Property. In our opinion, the reasons for granting the order outweigh the reasons for not granting it. We do not consider that a landlord, and even a commercial one, should require to continue in a tenancy where the tenant has continued to accrue substantial rent arrears.

32. For completeness, the tribunal notes that the Applicant has withdrawn the application under section 33 of the 1988 Act.

33. Having considered all the papers before us and the oral submissions of the parties, we will grant an order for recovery of possession.

Decision

34. The tribunal will grant an order for recovery of 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.

Melanie Barbour

Legal Member/Chair

Date: 14th of October 2025