



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

**Chamber Ref: FTS/HPC/CV/23/0078**

**Re: Property at Flat 5, 6 Elliot Street, Edinburgh, EH7 5LU (“the Property”)**

**Parties:**

**Mr Mark Douglas Platt, 9 Adelphi Street, Drifffield, East Yorkshire, YO25 6RF (“the Applicant”)**

**Mr David Gregory, Flat 5, 6 Elliot Street, Edinburgh, EH7 5LU (“the Respondent”)**

**Tribunal Members:**

**Nairn Young (Legal Member) and Janine Green (Ordinary Member)**

**Decision**

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

- Background

This is an application for an order for payment of arrears of rent alleged to be owed by the Respondent to the Applicant in terms of his private residential tenancy at the Property. It called for a hearing, by teleconference, on 3 November 2023. After hearing some evidence, it became clear that further documentary evidence would require to be produced. The hearing was adjourned and a direction was made for this. The hearing reconvened, again by teleconference, at 10am on 12 February 2024. On both days, the Applicant and Respondent were on the call in-person and representing themselves. They did not call any witnesses, but each gave evidence on their own behalf.

- Findings in Fact

1. The Respondent occupies the Property in terms of a private residential tenancy, with a start date of sometime in March 2020.
2. The tenancy was formed after the Applicant moved out of the Property, which he was originally sharing with the Respondent: the latter as a lodger.
3. There are no written terms of agreement in relation to the tenancy.
4. The Applicant's management of the tenancy has been extremely informal throughout its term.
5. The parties communicated extensively via WhatsApp, principally socially, rather than in any formal manner, until 28 January 2022.
6. Rent in terms of the tenancy is £375, payable on the first day of each month.
7. At some point in January 2022, the parties met in a pub to discuss the future of the tenancy.
8. During that discussion, the Respondent raised various issues he had regarding the state of repair of the Property, the lack of formal documentation re: the tenancy, and the fact that the Applicant did not appear to be registered as a landlord.
9. The outcome of that discussion was that the Respondent indicated that he was interested in buying the Property and would make an offer at some point in the near future; and that the Applicant agreed to allow him a 'rent holiday' while he (the Respondent) took some time off work, until, at latest, the end of 2023.
10. The Applicant had allowed the Respondent to take a rent holiday for a period in 2020.

11. The Applicant contacted the Respondent by WhatsApp on 27 January 2022, saying that he wished to increase the rent to £590 per month and stating that this should not impact on any discussion around purchase of the Property.

12. The Respondent replied to that message within half an hour, without referring to the rent holiday, and saying, "I will make sure is raised for March [sic]."

13. The Respondent sent the Applicant a message by SMS on 29 January 2022, stating that WhatsApp did not appear to be working on his phone; and:

"I wanted to ask can we hold off on what we said for the rent increase until I make an offer for the flat. I will send it in writing so it is on the record.

From our chat last month I understood I was going to make an offer and we were going to hold off on rent until end of next year at the latest. Is this still good to go?"

14. The Applicant responded later the same day, also by SMS, stating:

"Hi there. It's all sorted. Grant was on at me about rent. Was getting steadily tipsy. Sorry for the rambling David just continue on as discussed. Cheers."

15. The Respondent responded immediately to say he would be away for a couple of weeks and to phone rather than send a message if any contact was required.

16. At some point following this exchange, but prior to 8 February 2022, the Respondent posted a letter to the Applicant referring to the points raised at the meeting in the pub re: landlord registration and the tenancy documents; referring to a rent pause having been agreed; and offering to purchase the Property for £150,000, on the basis that this was £50,000 less than the £200,000 it was worth, due to the repair issues.

17. The Applicant acknowledged receipt of the letter by WhatsApp message on 8 February 2022 and stated that it would be best to get the Property valued; and, later the same day, that it might be best for the parties to meet to discuss.
18. On 9 February 2023, the Applicant sent a further WhatsApp message to the Respondent accusing him of not communicating and stating that an, "eviction notice," would follow.
19. On 14 February 2023, the Applicant sent a message to the Respondent by SMS, stating that he wished to gain entry to the flat to check that smoke alarms had been installed properly.
20. On 16 February 2023, at 22:22, the Applicant sent a further SMS message to the Respondent stating, "I am so angry. Just leave my flat. Expect notice to quits [sic]."
21. A few hours later, at 01:05 on 17 February 2023, the Applicant sent four SMS messages in short succession, which, combined, read: "Its my place am changing the locks tomorrow. Go away yr trouble. Get out my flat. Squatter. Please just go go go. Leave.."
22. On 19 February 2023, the Respondent sent an SMS message back explaining that notifications on his phone had been off except for calls and offering to leave the flat, if the Applicant confirmed that was what he wanted.
23. The Applicant responded later that day, also by SMS, saying: "David no! It's all fine. Grant got a hold of me phone. All OK. No worries. On we go..."
24. After further messages from the Applicant on 5 and 6 March 2023 where he threatened eviction (apparently illegal eviction) and then recanted that position, the Respondent sent a message on 7 March 2023 asking, "Just to clarify going forward – are we still good to hold on rent until later next year? I know it is a big ask so I want to make sure it is doable for you."

25. The Applicant responded later the same day, saying, "Aye let's do that will see how things are later next year. Would defo need an answer for flat by then but can sort when time comes."

26. The Respondent acknowledged that message later the same day and the parties have not been in touch with each other directly since.

27. In reliance on the agreement that he have a rent holiday, the Respondent paid no rent between 1 February 2022 and 1 December 2023, inclusive.

- Findings in Law

28. The Applicant waived his right to receive rent in terms of the tenancy for the period of 1 February 2022 to 1 December 2023, inclusive.

29. The Respondent does not owe the Applicant rent for that period.

- Reasons for Decision

30. Determination of this application ultimately came down to the question of whether the Applicant had agreed to a 'rent holiday' for the relevant period- in legal terms, a waiver of his right in terms of the contract to receive rent. The Tribunal was in the somewhat unusual position of having competing and disputed documentary evidence on that point, having received radically different copies from each party of a document they claimed was the letter sent by the Respondent offering to purchase the Property; and the Applicant having disputed the veracity of certain of the SMS messages produced by the Respondent to support his position.

31. On both points, the Tribunal considered the Respondent's position to be credible and reliable; while the Applicant's was not.

32. It is worth noting first that the veracity of the WhatsApp messages produced by the Respondent was not in dispute. On the strength of these alone, and, in particular, the exchange set out at 13 and 14 above, the Tribunal was satisfied that the waiver was explicitly granted by the Applicant.
33. However, the WhatsApp messages also demonstrated the consistency and coherence of the Respondent's case, which contrasted notably in that regard with the Applicant's. The messages established that there was what has been described above, perhaps euphemistically, as an extremely informal approach to management of the tenancy on the part of the Applicant. The inconsistency in position exemplified by the texts quoted or referred to in the findings in fact, and the explanation for that by the Applicant himself in those texts as being due to varying levels of intoxication, is characteristic of the longer history of communication that the Tribunal saw in the productions and the Respondent spoke to in evidence. The Respondent stated that his usual response when the Applicant became more challenging or aggressive in his tone was to go along with what he said, to allow matters to de-escalate, before confirming a few days later that everything was to continue as previously. In this way, he explained why he did not immediately refer to the rent holiday following the message of 27 January 2023 (findings in fact 11 & 12 above). This was indeed consistently his approach, as demonstrated in the messages quoted above and throughout the exchanges that the Tribunal saw.
34. Against that background, the Tribunal found it readily believable that the Applicant might agree to a rent holiday, as he had admittedly done previously, and thereafter attempt to recant that position. That addressed one of the Applicant's arguments against this: that he had visited a lawyer for advice and raised the application at all. His approach throughout has been so inconsistent, that to suggest that inconsistency in his actions now would be in some way unusual is simply not tenable.
35. Having accepted the Respondent's position in relation to the waiver on the strength of the undisputed WhatsApp messages, it might be superfluous for the Tribunal to make a determination in regard to which version of the offer

letter it was presented with (if either) was a true copy. Nonetheless, the Tribunal is clear that the version furnished by the Respondent was the true version; and records here its concern that the version submitted by the Applicant appears to have been fabricated in an attempt deliberately to deceive it.

36. It reaches this conclusion on the basis, firstly, that the terms of the letter as set out by the Respondent fit within the flow of the general communication between the parties as set out in the WhatsApp messages. The letter produced by the Applicant does not. In particular, it purports to have been sent by the Respondent immediately after the exchange set out in paragraphs 13 and 14 above; yet it begins by saying, "Thank you for updating about the rent for the flat (increased 25%)...". That makes no sense in that context. Page 1 of the letter is also in a different font from what was presented as page 2 of the same letter, adding to the impression that these are not part of the same document. Finally, further reinforcing that conclusion, there is an error in the Respondent's letter, in that it states that it is offering to purchase the Property for £105,000, being £50,000 less than the £200,000 valuation. Set out in context there, that error is understandable simply as a mistype of the figure for the offer by switching two of the figures. The version of the letter produced by the Applicant only gives the figure of £105,000. The Tribunal considers it more believable that this figure was taken from the true, although erroneous, offer letter; than that an error was deliberately placed in a counterfeit letter by the Respondent, but the same offer figure retained.

37. For his part, the Applicant questioned why, if the offer letter was available to the Respondent, this was not produced at the beginning of the case. The Respondent answered candidly that he had mistakenly believed it had been. There being various cases proceeding between the parties, he had overlooked to produce it in this one. The Tribunal considered that explanation to be believable; but, in any event, did not consider the criticism capable of overcoming the strong indication that the Respondent's copy of the letter was genuine provided by the context. It could anyway also equally be a criticism levelled at the Applicant.

38. The Applicant also suggested that certain of the SMS messages produced by the Respondent were fabricated. He claimed that his messages from 14 February 2023 to 5 March 2023 were accurate; but that any others from him, and all of those from the Respondent, had been photoshopped into the productions. This claim did not bear scrutiny. The Applicant sought to support his claim by asking the Respondent why, after conducting their communication on WhatsApp, he had moved to this form of communication; but the answer was plain from the terms of the messages and the Respondent responded consistently when questioned. He had done this due to problems with WhatsApp on his phone. If the Applicant were to be believed, however, the same question presents itself: why move to SMS for the message of 14 February 2023? When asked, he was noticeably unsure in his response, which ultimately was that it was a separate system and it, “just felt more comfortable.” This was entirely unconvincing. It is equally unconvincing to suggest that the SMS messages that the Applicant admitted were genuine had been sent in isolation, without any response from the Respondent. They would only make sense when placed in the context of the other messages sent and received and the Tribunal considered that there was therefore no reason to believe that the conversation was not as recorded in the Respondent’s productions.

39. The Tribunal therefore concluded that the Applicant had indeed waived his right to receive rent for the period 1 February 2022 to 1 December 2023 and that the Respondent did not owe anything for that period.

- Decision

**Application refused.**

**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.**



**04 March 2024**

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**Legal Member/Chair**

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**Date**