

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2016**

Chamber Ref: FTS/HPC/CV/24/0335

Re: Property at 53D Sandeman Street, Dundee, DD3 7LD (“the Property”)

Parties:

CERBS Properties Ltd, 59 Mains Loan, Dundee, DD4 7DD (“the Applicant”)

**Mr Barry Wilson, Ms Karen Downton, 53D Sandeman Street, Dundee, DD3 7LD
 (“the Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of NINE THOUSAND AND EIGHTY POUNDS AND TWENTY PENCE (£9080.20)

Background

1. By application dated 18 January 2024 the applicant sought an order for payment in respect of rent arrears.
2. The following documents were lodged with the application:
 - Tenancy agreement
 - Bank statements
 - Change of ownership letter
 - Disposition
 - Rent statements

3. The application was conjoined with application reference number FTS/HPC/EV/24/0334 in terms of which the applicant sought an order for eviction relying on section 33 of the Housing (Scotland) Act 1988.
4. A case management discussion (“cmd”) took place on 3 June 2024 in respect of both applications.
5. At the cmd the applicant was represented by Cilmi Eldho, Director of Cerbis Properties Ltd. The respondent Karen Downton was represented by Ms McLanders, solicitor from Dundee Law Centre. Barry Wilson the second respondent was not present or represented. The Tribunal was satisfied that Mr Wilson had been properly notified of the cmd and proceeded in his absence.
6. At the cmd Ms Eldho stated that the amount of rent arrears outstanding had increased to £9080.20.
7. At the cmd Ms McLanders confirmed that it was not disputed that the amount sought was due in respect of unpaid rent. She stated that there had been issues with the respondents’ application for universal credit housing costs which remained unresolved. She stated that the respondents were taking action to resolve the universal credit issue and also apply for discretionary housing payment which may reduce the outstanding amount.
8. The Tribunal issued a note following the cmd requesting the respondents lodge documentary evidence showing the status of the application for universal credit and discretionary housing payment. The note also requested that respondents submit an application for a time to pay direction if they sought to enter into an arrangement to pay the amount due. A hearing was assigned to consider both conjoined applications.

Hearing – 29 October 2024 - teleconference

9. Ms Eldho, Director of Cerbis Properties Ltd attended for the applicant. The other Director of the company, Eldho Matthew, Ms Eldho’s partner was also in attendance. The respondent Karen Downton was represented by Mr Marshall, solicitor from Dundee Law Centre. Barry Wilson the second respondent was not present. Mr Marshall explained that the respondents were in a relationship and that Mr Wilson would not be attending the hearing. The Tribunal was

satisfied that Mr Wilson had been properly notified of the hearing and proceeded in his absence.

10. Ms Eldho stated that the that the company had purchased the property on 2 December 2022. The property was purchased as an investment and she had been aware that there were sitting tenants. The monthly rent due under the pre-existing tenancy agreement was £600. Ms Eldho advised that after purchasing the property she had contacted the tenants to advise them that rent should now be paid to the applicant. A letter was confirming the change of ownership and providing bank details for rental payments was sent on 29 December 2022. A copy of the disposition showing that the property had been sold was provided to the respondents with the letter. Ms Eldho subsequently visited the property on 8 January 2023. She stated that the respondents stated that they did not believe that the applicant was the landlord and advised that as they had no lease with the applicant they would not pay rent to the applicant. Ms Eldho advised that prior to buying the property she was not aware that the respondents were in receipt of universal credit to cover the cost of the rent charge. Ms Eldho stated that after some months of non payment of rent, in the interests of resolving the benefits issue a fresh tenancy agreement had been prepared and provided to the respondents in or around April 2023. Ms Eldho stated that this agreement was not signed by the parties.
11. Mr Eldho stated that since the previous cmd rent arrears had continued to increase. The amount of rent outstanding at the date of the hearing had increased to £11480.20. Ms Eldho accepted that the increased figure had not been intimated to parties as required in terms of rule 14A and sought an order for payment in the restricted amount of £9080.20.
12. Mr Marshall confirmed that it was not disputed that no rent had been paid to the applicants since February 2023. Ms Downton confirmed that she had been in receipt of universal credit when the property changed ownership. She stated that the previous owner had not told the respondents that the property had been sold and she had been surprised when the applicant contacted her to advise that there was a new owner. Mr Downton stated that when Ms Eldho attended at the property on 8 January 2023 to advise that she should arrange for rent to be paid to the applicant she was not prepared to accept that they

- were the landlords. She stated that the absence of a new lease made her concerned that there was no legal entitlement for the applicant to collect rent.
13. Ms Dowton confirmed that from February 2023 until February 2024 payment of the housing costs portion of universal credit of £600 per month was paid directly to her rather than the applicant. She stated that she kept the money separate until the position with her new landlord was clarified however, at some point she spent the money on various items.
 14. From February 2024 Ms Downton stated that she had been trying to progress a universal credit housing costs application which would reinstate payment of that benefit. She confirmed that she had been receiving assistance from Dundee Law Centre and a money adviser. A letter had been provided to universal credit confirming the current lease arrangement however there had been no progress since the cmd. She confirmed that as at the date of the hearing no rent had been paid to the applicant since February 2023.
 15. Ms Downton stated that she accepted that she should now pay the outstanding debt and stated that £100 per month was the most she could pay towards the debt.
 16. Mr Marshall stated that there was some prospect of a backdate of housing benefit possibly to February 2024 which could be applied to the outstanding arrears however no evidence in support of that application or the likely level of award was provided.

Findings in fact

17. The respondents entered into a short assured tenancy agreement with a commencement date of 16 January 2017.
18. The applicant purchased the property from the previous owner on 2 December 2022.
19. The applicant became landlord at the date they took ownership of the property.
20. The applicant wrote the respondents on 29 December 2022 advising them of the change of ownership and providing a copy of the Disposition relating to the sale of the property.
21. The respondents were advised in the letter dated 29 December 2022 that they should commence payments of rent to the applicant.

- 22. The property was purchased as an investment property with sitting tenants.
- 23. The rent payable in terms of the short assured tenancy is £600 per calendar month.
- 24. Ms Eldho attended at the property on 8 January 2023 to discuss the change of ownership and arrangements for payment of rent to the applicant.
- 25. Prior to the change of ownership universal credit housing costs to cover the rent charge was paid directly to the landlord.
- 26. In January 2023 the previous owner transferred payment of the rent for that month to the applicant.
- 27. From February 2023 to the date of the hearing the applicant has received no payment of rent.
- 28. Outstanding arrears at the date of the hearing were £11480.20.

Reasons for the decision

- 29. The Tribunal had regard to the application and the documents lodged on behalf of the applicant and respondents. The Tribunal also took into account the information provided at the cmd and the evidence of Ms Eldho and Ms Downton at the hearing.
- 30. The Tribunal took into account that the respondents did not dispute that the amount sought was lawfully due.
- 31. The Tribunal had specified in the note issued following the cmd on 3 June 2024 that it was open to the respondents to apply for a time to pay direction. The respondents had not submitted an application. At the hearing Ms Downton stated that she would be prepared to repay the outstanding sum at the rate of £100 per month. In the absence of a request to the grant a time to pay direction the Tribunal makes no determination in relation to the offer.
- 32. The Tribunal was satisfied that arrears in the amount of £9080.40 were lawfully due as at the date of the hearing.

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.

Mary-Claire Kelly

Legal Member/Chair

29 October 2024
Date