



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/24/0934

Re: Property at 13/2 Sandpiper Road, Edinburgh, EH6 4TR (“the Property”)

Parties:

Mr Alexander Mearns, 19 Palmerston Road, Edinburgh, EH9 1TL (“the Applicant”)

Mr Ali Barfatani, 13/2 Sandpiper Road, Edinburgh, EH6 4TR (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in the sum of Two thousand eight hundred and seventy pounds (£2870) Sterling

Background

- 1 On 26 February 2024 the Tribunal received an application from the Applicant for an order for payment in the sum of £3675 in respect of unpaid rent arising from an assured tenancy under section 16 of the Housing (Scotland) Act 2014 and Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure (“the Rules”). The application was later conjoined with a separate application for an eviction order under Rule 66 of the Rules as they pertained to the same property and the same parties.
- 2 By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President determined that there were no grounds to reject either application. A Case Management Discussion (“CMD”) was therefore assigned for the 4 November 2024.

- 3 Both parties were given notification of the CMD in terms of Rule 17(2) of the Rules. The Respondent received notification by sheriff officers on 27 September 2024 along with a copy of the application paperwork.
- 4 On 4 October 2024 the Tribunal received an email from BEAD Properties Ltd, as representative for the Applicant, requesting amendment of the sum sought to £4520. A rent statement was provided in support of the request.
- 5 On 17 October 2024 the Respondent emailed the Tribunal requesting that the application be dismissed as it was invalid. The Tribunal responded confirming that no decision would be made on the applications until the CMD, or until such time as any further procedure required for the Tribunal to reach a determination on the applications had concluded.
- 6 On 2 November 2024, following a request from the Tribunal, BEAD Properties Ltd, as representative for the Applicant, provided a copy of the notice pertaining to a rent increase in support of the rent statement provided.

The Case Management Discussion

- 7 The Case Management Discussion took place on 4 November 2024. Mr David Gibb of Bead Properties Ltd represented the Applicant. The Respondent was in attendance. Having heard submissions from the parties the Tribunal referred the matter to an evidential hearing. The Tribunal identified the issues to be resolved as whether the Applicant had title to bring the application and, if so, whether an order for payment should be granted. A Direction was issued to parties requiring the submission of documents and intimation of witnesses in advance of the hearing.
- 8 On 30 December 2024 the Applicant's representative submitted a list of documents to the Tribunal which included written submissions on the Applicant's title to bring the application. The Applicant's representative also provided as relevant to this application a copy of the title deeds for the property, proof of landlord registration, a copy of the tenancy agreement, email correspondence between the Respondent and Mr Gibb, and a rent statement.
- 9 On 7 January 2025 the Applicant's representative provided an updated rent statement and requested amendment of the sum sought to £2870.
- 10 On 23 January 2025 the Respondent provided written submissions on the Applicant's lack of title to bring the application. The Respondent also submitted as relevant to this application an excerpt from the landlord register.

The Hearing

- 11 The hearing took place on 30 January 2025 by videoconference. The Applicant was in attendance with his father Andrew Mearns as a witness. Mr Gibb appeared again to represent him. The Respondent was also present.

- 12 The Tribunal heard evidence from both parties and the witness present. The following is a summary of the evidence relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the proceedings.

The Applicant

- 13 Both the Applicant and his father gave evidence with assistance from Mr Gibb. The Applicant was the owner of the property as per the title deeds produced. The Applicant's father had been named on the tenancy agreement as the Applicant was working down south when the agreement was signed. The Applicant's father had contacted a letting agent he used to assist with the management of the tenancy. The property had been advertised and rented to the Respondent in the name of the Applicant's father. However he was acting as agent for the Applicant who was the landlord. The Applicant's father confirmed this. The letting agent had not asked whether the Applicant's father was the owner of the property. Mr Gibb pointed out that this was prior to the letting agent code of practice coming into force. When the Applicant returned to the area he took over responsibility for the tenancy. Mr Gibb referred to the extensive amount of correspondence that had been produced between the Applicant and the Respondent. They confirmed numerous interactions relating to tenancy matters. The Respondent recognised that he was dealing with the Applicant as the owner and landlord of the property. Mr Gibb referred to the rent statement produced which confirmed there were arrears outstanding in the sum of £2870.

The Respondent

- 14 The Respondent explained that the contract he had in place was with Andrew Mearns. Andrew Mearns had been identified as the landlord. He was not an agent. He was the registered landlord. The application was full of errors and should be dismissed.
- 15 The Respondent acknowledged that the Applicant was the owner of the property and had been since prior to the commencement of the tenancy. Accordingly it was not possible for the contract to have transferred to him. The Applicant was the son of Andrew Mearns and any arrangement in place was between them. Mr Andrew Mearns had misrepresented himself in the contract. The Applicant was not mentioned in any of the documents and there was no mention of Andrew Mearns acting as his agent. If Andrew Mearns was the Applicant's agent then the Respondent was of the view that no tenancy agreement was in place.
- 16 The Respondent confirmed that he had corresponded with the Applicant regarding the tenancy. He did this out of courtesy to Andrew Mearns. That was not however the basis of any contractual agreement. His contract was with Andrew Mearns. The Tribunal highlighted an email that had been produced in which the Respondent appeared to refer to the Applicant as his landlord. The Respondent did not recall this and was unable to comment. The Respondent acknowledged that there were rent arrears outstanding in the sum of £2870 in terms of the payments he was making to the letting agent.

- 17 Both parties were invited to make closing submissions. Mr Gibb moved the Tribunal to make an order for payment in the sum of £2870.
- 18 The Respondent explained that the rule of law should be respected. Insofar as common law was concerned the privity of contract was sacrosanct. He had seen no evidence that the Applicant was the landlord. The evidence supported his position that Andrew Mearns was the landlord. The application was invalid. The landlord registration number was not correct. The Applicant was not a registered landlord. He could not raise the application as he had no title to do it.
- 19 The hearing concluded and the Tribunal determined to issue its decision in writing.

Findings in Fact

- 20 The Applicant is the registered owner of the property in terms of land certificate MID135842.
- 21 The Applicant purchased the property on or around 20 May 2011.
- 22 The property was let to the Respondent in terms of a tenancy agreement, which commenced on 1 September 2015.
- 23 The tenancy agreement states the landlord is “Andy Mearns”.
- 24 Andy Mearns is Andrew Mearns and is the father of the Applicant.
- 25 Andrew Mearns was acting on behalf of the Applicant when he signed the said tenancy agreement. The Applicant was working elsewhere in the United Kingdom at the time.
- 26 The Respondent corresponds directly with the Applicant regarding matters arising from the tenancy.
- 27 The Respondent has referred to the Applicant as the landlord in said correspondence.
- 28 In terms of clause 4 of the said tenancy agreement the Respondent undertook to pay rent at the rate of £800 per month.
- 29 In August 2023 the rent was increased from £800 per month to £825 per month.
- 30 As at the date of the hearing rent arrears in the sum of £2870 are outstanding.

Reasons for decision

- 31 The Tribunal took into account the application paperwork, written representations from the parties and the evidence taken during the hearing and concluded that it had sufficient information to determine the application.
- 32 The Tribunal first considered the Applicant's right to make an application for a payment order in respect of the property.
- 33 The Applicant's ownership of the property was not in dispute. The Respondent had acknowledged that the Applicant had been the owner since 2011. The Respondent's argument was that the Applicant could not bring the application because he was not named as landlord on the tenancy agreement.
- 34 In defining the identity of the landlord for the purpose of determining who is entitled to exercise that right the Tribunal considered that it would be appropriate to look at the definition provided in the Housing (Scotland) Act 1988 which is the statute that governs assured tenancies. The definition includes any person who is entitled, or would be so entitled were an assured tenancy not in place, to have possession of the house. As the registered owner of the property, the Applicant has a right to possession. The Tribunal therefore concluded that he was the landlord for the purpose of the tenancy in place between the parties.
- 35 The Respondent had sought to rely upon the principle of privity of contract, stating that only those party to the contract could enforce the contractual rights and obligations. His position was that the Applicant was not a party to the contract and could not seek to recover the rent. The Tribunal was however aware that the privity of contract is a complex concept in Scots law. The Tribunal was not persuaded that it applied in this case insofar as overriding the Applicant's right to recover unpaid rent as the owner and landlord of the property and the Respondent had provided no legal authority in support of this. Furthermore it would appear unjust and illogical to conclude that an owner has no rights to recover rent that they are lawfully due as the owner of the property.
- 36 Even if the statutory definition did not apply in this case, the Tribunal was satisfied that Andrew Mearns was acting for the Applicant as his agent when he entered into the agreement back in 2014. Since then, the Applicant had been the primary contact for the Respondent. The Respondent did not dispute this. The correspondence between the parties reflects a relationship between a landlord and tenant. In one email dated 19 April 2018, the Respondent mentions receiving a call from a contractor "*on behalf of the landlord (whose name I didn't recognise – it wasn't your or the agency's name)*". In another email dated 24 April 2019 when referring to a notice received following unpaid rent he states "*the agency email me saying: "on behalf of our landlord I hereby give you two months notice to leave the flat". I was not given the chance of paying on the 23rd. And you are wrong to say it was the agency's decision. Their email made it clear that it was done at your request.*" Accordingly the evidence before the Tribunal all pointed to the fact that the Applicant had held himself out as the landlord, despite not being specifically named in the tenancy paperwork. The Tribunal did

not therefore accept that the Respondent was unaware of the Applicant's status as landlord of the property.

37 The Respondent had made reference to the landlord registration of the Applicant. The Tribunal considered this was irrelevant to the determination as to whether the Applicant was a landlord under the provisions of the 1988 Act. However the Tribunal was satisfied that the excerpt provided by the Applicant from the landlord register was suitable proof of his registration.

38 Accordingly having concluded that the Applicant had title to bring the application, the Tribunal determined that he was entitled to a payment order in the sum of £2870 based on the evidence before it. The Respondent had not disputed that the arrears were due.

39 The Tribunal therefore made an order for payment in the sum of £2870. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

6 February 2025

Legal Member/Chair

Date