



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/21/2461

Re: Property at 53 Canal Street, Saltcoats, KA21 5JA (“the Property”)

Parties:

Resolv Property Ltd, 63 Haslucks Green Road, Shirley, Solihull, B90 2ED (“the Applicant”)

Mr Ian Davidson, 28A Ardoch Crescent, Stevenston, Ayrshire, KA20 3PP (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of Two Thousand Seven Hundred and Forty-Three Pounds and Thirty-Three pence only (£ 2743.33) be made in favour of the Applicant and against the Respondent.

Background

1. This application for payment order in terms of Rule 111 of the Tribunal rules of procedure was first submitted to the Tribunal on 8th October 2021. The application was accepted by the Tribunal on 20th January 2022. A case management discussion was fixed for 1st April 2022, but this was postponed at the request of the Applicant’s representative. A further case management discussion was fixed for 13th May 2022 at 10am.

Case Management Discussion

2.The case management discussion on 13th May 2022 at 10am was attended by Miss Megan McDiarmid from the Letting Agent representing the Applicant. There was no appearance by or on behalf of the Respondent. Miss McDiarmid requested that the Tribunal proceed in his absence. The Tribunal member noted that the Respondent had been served with the original application and papers by Sheriff Officers having put the papers through the letterbox at his address on 28th February 2022.The Respondent had not made any contact with the Tribunal and the date of the case management discussion on 13th May 2022 had been sent by recorded delivery track and trace post by the Tribunal to the Respondent, but this had not been delivered. The date had then been intimated to the Respondent by first class post sent on 5th May 2022 and nothing had been returned to the Tribunal to suggest that this had not been received. In these circumstances the Tribunal was satisfied that fair notice of the case management discussion and the application had been made to the Respondent in terms of the Tribunal rules of procedure and that it was appropriate to proceed in the absence of the Respondent.

3.The Tribunal had sight of the application and a paper apart, tenancy statements of account, a tenancy agreement, email correspondence between the Applicant's agents and the Respondent, documentation regarding eviction, documentation regarding the Respondent's up to date address and a certificate of service of the application and supporting papers by Sheriff Officer for the first case management discussion. During the case management discussion, the Applicant's representative submitted a letter sent by Letting Agents to the Respondent regarding a change of landlord and an e mail thread which appeared to confirm the date when the new owner and landlord was entitled to collect rent at the property.

4.Miss McDiarmid indicated that there was a history of non-payment of rent by the Respondent. He had entered into a tenancy agreement initially with Hovepark Properties but the property had been sold as part of a portfolio sale in December 2020 and the application for a payment order was being made by the new owner and landlord Resolv Property Ltd who had taken over the tenancy with effect from 17th December 2020.The initial landlord had served a Notice to Leave due to rent arrears and a new tenancy agreement had not been signed although the Letting Agent had intimated the change of landlord to all tenants including the Respondent in November 2020 and the tribunal had sight of this letter. The Respondent had been requested to sign a new tenancy agreement in that letter but had not made any contact in order to do that.

5.Miss McDiarmid indicated that the sale of the property had been intended to complete on 7th December 2020 but had been delayed and had not taken place until 17th December 2020.The parties had agreed that any outstanding rent due from 7th December 2020, the date when the sale had been intended to complete was to be collected by the new Landlord Resolv Property Ltd. During the case management discussion Miss McDiarmid submitted an email from a Barry Hill, director of the initial landlords, Hovepark Properties which appeared to confirm consent for rent from 7th December 2020 to be collected by the new owners and landlords Resolv Property Ltd.

6.Miss McDiarmid was able to advise the Tribunal that to her knowledge the Respondent was in employment for most of the tenancy but there had been at least one occasion when indicated he had lost his job. She was aware that he had indicated from time to time that he was in receipt of universal credit, but this appeared to go directly to him. She had asked on three occasions for payment of rent to be made

directly to the letting Agent from universal credit. These requests were made on 11/8/20, 30/9/20 and 7/10/20. After her third request she received an email from universal credit to say that the Respondent was no longer eligible for this payment. No rent payments had ever been made directly from universal credit and any rent paid had come from the Respondent. Miss McDiarmid had no information to suggest that there had been any delay or issue with the payment of universal credit to the Respondent during the tenancy with the Applicant or the previous tenancy.

7. Miss McDiarmid was seeking payment order in the sum of £2873.53 which represented the rent arrears accrued between 7th December 2020 and 14th July 2021 when the Respondent vacated the property. She submitted an email from a director of the previous landlord company which appeared to confirm in terms of the sale agreement that the new owner and landlord should collect any unpaid rent with effect from 7th December 2020 when the sale of the property had been intended to take effect.

8. Miss McDiarmid advised that no rent at all had been paid during that period. She had produced a statement of the rent account which demonstrated this. She advised that a deposit had been recovered from a tenancy deposit scheme but this had been required to pay for damages and none of this was available to put towards rent arrears. She also advised that the initial landlord had required to apply to the Tribunal for payment of rent arrears during the initial tenancy.

9. During an adjournment of the teleconference call for Miss McDiarmid to obtain information the previous tribunal decision in respect of a payment order for rent arrears due by the same Respondent at the property to the initial landlord was brought to the Tribunal legal member's attention. It was clear that this previous decision had considered rent arrears up to 16th December 2020 and that a payment order had been made for arrears up to that date.

10. The Tribunal legal member explained that since an order had been made in relation to rent arrears accrued by the same Respondent at the property up to 16th December 2020 (HPC/CV/21/0895) that in this application an order could only be considered for rent arrears after that date. Miss McDiarmid requested to amend the claim to remove rent arrears said to have accrued between 7th and 16th December 2020. This amounted to £130.20 and reduced the sum being requested to £2743.33.

11. The Tribunal was of the view that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

12. The Applicant company bought the property with effect from 17th December 2020 when the Respondent was in occupation as a tenant in terms of a private residential tenancy entered into with the previous owner of the property.

13. The previous tenancy commenced on 29th March 2019 between Hovepark Property as landlord and the tenant was the Respondent in this application.

14. The Respondent was advised by letter of 17th November 2020 that a new landlord would be in place with effect from 7th December 2020 as the property was being sold

and that the terms of his tenancy would not change. He was invited to sign a new tenancy agreement but did not do so.

15. A private residential tenancy was in place between the Applicant company and the Respondent at the property between 17th December 2021 and 14th July 2021 when the property was vacated by the Respondent.

16. There was no written agreement in place between the parties and the tenancy continued on the same basis as the previous agreement between Hovepark Property and the Respondent.

17. The monthly rent payable in terms of this tenancy was £395 and no rent was paid by the Respondent at the property in terms of the agreement between 17th December 2020 and 14th July 2021.

18. The Applicant remained in occupation as a tenant using the property as his home after the property was sold to the Applicant in December 2020 and until 14th July 2022.

19. At all times during this tenancy and the previous tenancy at the property the same Letting Agent dealt with the Respondent in relation to all matters concerning the tenancies.

20. Rent arrears in the sum of £2743.33 accrued at the property from December 17th 2020 to July 14th 2021.

21. There were no known issues involving delays in payment of any benefit payable to the Respondent which might have affected the payment of rent.

22. Rent arrears in the sum of £2743.33 are lawfully due to the Applicant by the Respondent.

Reasons for Decision

23. The Tribunal had before it clear information that no rent had been paid at the property by the Respondent since the property was sold to the Applicant company which took over as landlord. The Respondent had been notified that the property had been sold and that there was a new owner and that a new tenancy agreement was requested to be signed. No such agreement was signed but the Respondent remained in occupation of the property as his home without paying rent until he chose to leave on 14th July 2021. A private residential tenancy was therefore constituted in terms of section 3 of the 2016 Act although not committed to writing and the Respondent was advised that the terms of conditions of his tenancy would remain the same. The Tribunal had sight of information confirming that the Applicant company were the owners of the property from 17th December 2020 and entitled to collect rent from the tenant Respondent. No rent was paid, and it was reasonable to grant the order.

Decision

The Tribunal made a payment order in the sum of Two Thousand Seven Hundred and Forty-Three Pounds and Thirty-Three pence only (£2743.33) in favour of the Applicant and against the Respondent.

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.

V Bremner

Legal Member/Chair

13.5.22
Date