

VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; section 6 Local Government Finance Act 1992;  
hierarchy of liability; appeal dismissed.*

RE: Ground Floor Flat, 18 North Pitt Street, Rotherham, South Yorkshire, S61 2LX

APPEAL NUMBER: VT00014892

BETWEEN: IW Appellant  
and  
Rotherham Borough Council Respondent  
(Billing Authority)

PANEL: Mrs A Fielder (Presiding Senior Member)  
Mr P Blythe-Bartram (Senior Member)

CLERK: Jan Smith IRRV Tech

SITTING ON: Remote Hearing 2 on 7 September 2023

APPEARANCES: RJ - on behalf of the Appellant  
Miss A Wardle - on behalf of Billing Authority (Respondent)

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## Summary of Decision

1. Appeal dismissed. The panel found that the Billing Authority (BA) had been correct in holding the appellant liable for the council tax at Ground Floor Flat, 18 North Pitt Street, Rotherham, South Yorkshire, S61 2LX for the period 16 March 2022 to 1 July 2022.

## Introduction

2. This was an appeal made under section 16 (1) of the Local Government Finance Act 1992 (the 1992 Act). The appellant was aggrieved by the billing authority's (BA's) decision dated 18 January 2023 to hold him liable for council tax as owner of the appeal property for the period 16 March 2022 to 1 July 2022.

3. The appellant was the landlord of the appeal property. The property had been let to tenants A on a twelve month fixed term Assured Shorthold Tenancy (AST) from 11 November 2021 and subsequently let to tenants B on a 6 month fixed term AST from 2 July 2022.
4. The dispute was regarding council tax liability for the period 16 March 2022 to 1 July 2022 when the appeal property was unoccupied.
5. The BA maintained that tenants A were unable to gain access to the ground floor flat from 16 March 2022 when the appellant had entered the property and changed the locks.
6. The BA had determined that from 16 March 2022, the appellant, as owner, held a material interest in the dwelling that was not subject to a material interest inferior to his and therefore he was liable for council tax until the property was relet to tenants B on 2 July 2022.
7. The appellant argued that the contractual term of the tenancy agreement for tenants A was for 12 months commencing 11 November 2021. He maintained that tenants A held a material interest in the appeal property until it was relet to tenants B on 2 July 2022 and that the BA should have made the tenants liable for council tax.
8. This hearing was held remotely via Microsoft Teams.
9. With the agreement of the parties, and in order to assist the appellant's representative (who was not a professional), the panel varied the Tribunal's model procedure (Practice Statement 8) and invited the respondent's representative to present his evidence first.
10. This document is not and does not purport to be a full verbatim record of proceedings.

## **Issue**

11. The issue before the panel was whether the appellant had been correctly held liable for the council tax charge for the period 16 March 2022 to 1 July 2022.

## **Evidence and submissions**

12. The evidence bundle included documents relating to a Section 8 Notice, tenancy agreements and various communications between the appellant, the tenants, and the BA.

## **Decision and reasons**

13. Liability for council tax is determined by section 6 of the 1992 Act. Section 6 provides the following hierarchy of who is liable to pay the council tax on a dwelling on any day:
  - (1) The person who is liable to pay council tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.
  - (2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day—

- (a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;
- (b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident;
- (c) he is both such a resident and a statutory, secure or introductory tenant of the whole or any part of the dwelling;
- (d) he is such a resident and has a contractual licence to occupy the whole or any part of the dwelling;
- (e) he is such a resident; or
- (f) he is the owner of the dwelling

14. The definitions of resident and owner were contained in section 6(5) of the 1992 Act as follows:

“resident”, in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling.

“owner”, in relation to any dwelling, means the person as regards whom the following conditions are fulfilled –

- (a) he has a material interest in the whole or any part of the dwelling; and
- (b) at least part of the dwelling, or as the case may be, of the part concerned is not subject to a material interest inferior to his interest.

15. Section 6(6) defines a “material interest” as a freehold interest or a leasehold interest which was granted for a term of six months or more.

16. In this case the BA had held the appellant liable for council tax from 16 March 2022 on the assumption that his actions by entering the property and changing the locks on 16 March 2022 brought the fixed term tenancy to an end. The BA therefore took the view that the property was vacant and the appellant, as owner, held the material interest and was liable for council tax in accordance with section 6 (f) of the 1992 Act.

17. The appellant stated that since tenants A had not paid any rent, he had commenced possession proceedings by serving a Section 8 Notice on 24 January 2022. He maintained that this notice was never actioned and that tenants A subsequently left the property of their own volition. He had entered the flat on 16 March 2022 to ensure it was safe and to undertake gas and electricity checks. He had changed the locks to the communal front door to provide security to the tenants of the first floor flat. He stated that the locks to the kitchen door at the rear of the property remained unchanged and this, he argued, supported his assertions that he had not denied tenants A access to the property. He was unable to explain how the upstairs flat could be considered secure if tenants A could still enter the building through the back door.

18. The BA, in its submission, had provided a copy of a handwritten document which stated that tenants A had paid £100 in cash to the appellant on 19 March 2022 to release their

belongings from 18 North Pitt Street. The BA asserted that this note supported its view that tenants A could no longer gain entry to the property and that the appellant had taken back possession. At the hearing, the appellant's representative stated that in his view the note could have been fraudulent, and he suggested that the appellant's signature might not have been genuine. The panel asked the appellant's representative about this issue and found there was a lack of confidence in the responses, and the appellant who was also present, did not interject to give reassurance on this matter.

19. The appellant had placed the property for sale on 23 May 2022 and let the ground floor flat to tenants B for a term of six months from 2 July 2022. He had provided the BA with a copy of the signed tenancy agreement which was dated 29 June 2022 and the BA had ended the appellant's council tax liability from 1 July 2022. The property was subsequently purchased from the appellant on 23 September 2022.
20. The panel recognised that it was unfortunate that the appellant had been faced with tenants who had failed to pay him any rent, but it was not for the panel in this appeal to make any judgement regarding their conduct. The panel considered the appellant's actions were not consistent with those of a landlord that truly believed there to be a valid tenancy in place. By his own admission, he had entered the property on 16 March 2022, without written notice to the tenants, to carry out works to prepare the property to be sold and relet. His arguments for changing only the locks at the front of the property were not plausible and his comments regarding the authenticity of the handwritten note were not substantiated.
21. Having considered all the evidence the panel concluded that the appellant had behaved in a way which was inconsistent with the continuation of the existing tenancy and that this implied a surrender by operation of law. These actions commenced on the date the appellant entered the property on 16 March 2022. The BA decision to hold the appellant liable for council tax, as owner, from 16 March 2022 until 1 July 2022, when the property was re-let, was therefore correct and the panel dismissed the appeal.

**Date:** 5 October 2023

**Appeal number:** VT00014892

### **Right of further appeal**

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.