



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/20/1876

Re: Property at 108F King Street, Aberdeen, AB24 5BB (“the Property”)

Parties:

James F Donald (Aberdeen Cinemas) Ltd, c/o Aberdeen Considine, 2nd Floor, Elder House, Elder Street, Edinburgh, EH1 3DX (“the Applicants”)

Mr Michael Gray, 45 Pennan Road, Aberdeen, AB24 2UA (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of £4,892.67 should be issued in favour of the Applicants

- Background

By application dated 4 September 2020 (the Application), the Applicants sought a payment order against the Respondent in relation to arrears of rent, contractual costs and interest.

- The Case Management Discussion

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 18 November 2020. Prior to the CMD the Respondent lodged an application for a time to pay direction, admitting the claim and seeking to pay the debt by way of instalments. The Applicants opposed the Respondent’s proposed instalments and indicated that they would be prepared to accept payments at the rate of £20 per week.

The CMD was conducted by way of conference call. The Applicants were represented by a Miss Duff, solicitor and the Respondent appeared and represented him self although he was supported by a Ms Marie Munro who took not part in proceedings.

The Respondent admitted that, upon vacating the Property, he had accrued £4,455.17 by way of rent arrears. The Tribunal then discussed the Applicants' claim for costs sought under clause 2.23 of the lease for the Property. Upon discussing further, it became clear that some of the potential costs sought may not be recoverable under the said clause. The Tribunal pointed this out to the parties and the possible reasons for this (for example matters unrelated to the enforcement of any breach of the tenancy by the Respondent). Miss Duff sought a brief adjournment to take further instructions. That request was granted. Upon her return, she confirmed that the Applicants were prepared to restrict their claim for costs to £437.50. Notwithstanding the discussions and the Tribunal suggesting that, if he wished to challenge any such costs a Hearing could be fixed, the Respondent indicated that he was prepared to accept that figure and agreed to a Payment Order in the sum of £4,892.67 being granted against him. Interest was also sought by the Applicants in terms of the Tribunal's discretion to grant interest (there being no specific contractual entitlement to charge interest on late payments). Following discussion, the Tribunal resolved to award interest based on a "use value" at the rate of 3% rather than the 4% sought by the Applicants. The Respondent's application for time to pay was thereafter discussed. Whilst the Applicants had rejected his initial offer of £5 per week, they had indicated they would accept £20 per week. The Respondent confirmed that this was acceptable and, by agreement, the Payment Order was made on the basis that the Respondent would pay at the rate of £20 per week.

- Findings in Fact and Law

- 1) The Respondent entered into a tenancy with the Applicants for the occupation of the Property.
- 2) The rent payable in terms of that tenancy was initially £2,700 for the period 17 April 2017 to 17 October 2017 and £450 per calendar month thereafter.
- 3) The Respondent vacated the Property leaving arrears of £4,455.17.
- 4) The Applicants incurred costs of £437.50 as a result of the Respondent's breach of the terms of the lease and, in terms of clause 2.23, are entitled to recover those costs.
- 5) Interest at the rate of 3% per annum from the date of the decision should be applied to the award.
- 6) That the Payment Order would be repayable by way of instalments at the rate of £20 per week.

- Reasons for Decision

The Respondent having agreed to a Payment Order being granted against him in the sum of £4,892.67, a Payment Order in that sum was granted with interest at the rate of 3% per annum from the date of this decision.

- Decision

A Payment Order in the sum of £4,892.67 be granted against the Respondent with interest thereon at the rate of 3% per annum from the date of this decision. That the Respondent would be allowed time to pay at the rate of £20 per week commencing no later than 4 weeks after intimation of the Payment Order.

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.

Rory Cowan

Legal Member/Chair

Date 18 November 2020