



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 36 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/CV/21/0383 and FTS/HPC/PR/21/0384

Re: Property at 21 Strathmore Gardens, Glasgow, G73 5JF (“the Property”)

Parties:

Mr Jagjiwan Singh Jhammat, Mrs Prabhjot Kaur, Legal Services Agency Ltd, Fleming House, 134 Renfrew Street, Glasgow, G3 6ST (“the Applicants”)

Mr Harry Morris, 3/1 177 Clarkston Road, Glasgow, G44 3BS (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elizabeth Dickson (Ordinary Member)

Background

[1] The above Applications called for a Hearing to determine issues re any award of expenses to be made under Rule 40 and what, if any, award of interest should be made on the sum previously awarded in Application with reference FTS/HPC/PR/21/0384.

[2] Substantive decisions had already been made by the Tribunal and issued in a decision dated 30 August 2023.

The Hearing

[3] The Applications called again by video call at 10 am on 23 November 2023. The Applicants were once again represented by Legal Services Agency and Mr Anderson, Advocate. The Respondent was again represented by Mr Campbell of Campbell and McCartney Solicitors.

[4] Both parties addressed the Tribunal on the issue of expenses. Mr Anderson sought an order under Rule 40 finding the Respondent liable for the expenses for the Unlawful Eviction Application based on his allegedly “*unreasonable behaviour*”.

[5] Mr Anderson helpfully addressed the Tribunal on the cases of *Ramirez-Stich v Strachan* [2019] UT 64 and *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC).

[6] Mr Anderson also spoke to various procedural steps in the case which were described as accruing “*wasted costs*” and which were caused by the unreasonable conduct of the Respondent. In the event that the Tribunal were not with Mr Anderson in respect of making a global award of expenses, the Tribunal were asked to find that the Respondent should be found liable for the expenses of certain hearings along the way which Mr Anderson described as accruing wasted costs.

[7] Mr Campbell addressed the Tribunal and opposed any global order for expenses but also acknowledged that certain procedural difficulties may have arisen between the Respondent and his agents for financial reasons. There were also issues obtaining instructions.

[8] Rule 40 is in the following terms.

Expenses

40.—(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.

[9] The Tribunal considered the judgement issued by Appeal Sheriff Di Emidio in *Ramirez-Stich v Strachan*.

[10] The Tribunal could not accept Mr Anderson’s primary position, that by not accepting liability for the unlawful eviction, the Respondent could be said to have behaved unreasonably in the conduct of the case as per Rule 40.

[11] The Tribunal however found that the Applicant was put to unnecessary or unreasonable expense by the unreasonable behaviour of the Respondent in respect of the following.

[12] There was a Case Management Discussion (CMD) on 14 May 2021 which had to be continued to another CMD because the Respondent wasn't ready to proceed and was ill-prepared.

[13] There was a Hearing day scheduled for 3 May 2022 which was lost because the Respondent emailed the Tribunal on the day itself seeking a postponement. He explained that his solicitors had withdrawn from acting and he sought a postponement. There was no explanation about why that had to be brought to the Tribunal's attention at the last minute. The Respondent did not then attend that Hearing which had to call.

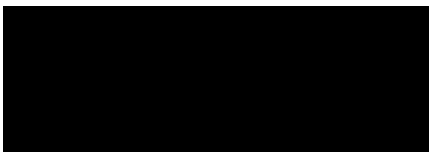
[14] When the Application next called on 16 June 2022, the Respondent had re-engaged agents, but the Tribunal was delayed until around lunch time because his counsel had not been supplied with the papers. Around half a day was lost due to a lack of preparation and organisation by the Respondent.

[15] The Tribunal finds that the Applicants were put to unnecessary and unreasonable expense by the unreasonable behaviour of the Respondent for the preparation and attendance at the CMD on 14 May 2021; the Hearing on 3 May 2022 and half of the expenses for the Hearing on 16 June 2022. This will be incorporated into the judicial order made.

[16] Having heard from parties and having regard to Rule 41A, the Tribunal also orders that interest should run on the sum awarded of £20,650.00 at the rate of 8 per cent per year from the date of the Tribunal's decision, being 30 August 2023 until payment.

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.



Legal Member/Chair

23 November 2023

Date