



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/24/2552

Re: Property at 18 Glenshee Gardens, Glasgow, G31 4RF (“the Property”)

Parties:

Southside MD Investments Ltd, 20 Nicolson Street, Edinburgh, EH8 9DH (“the Applicants”)

Fiona McGeorge, Mark Regan, 18 Glenshee Gardens, Glasgow, G31 4RF (“the Respondents”)

Tribunal Members:

Steven Quither (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) UNANIMOUSLY determined that the Respondents are to pay to the Applicants the sum of FOURTEEN THOUSAND SEVEN HUNDRED AND FIFTY THREE POUNDS 14 PENCE (£14753-14) STERLING.

BACKGROUND

1. This is an application for payment of rent arrears arising out of a Short Assured Tenancy, commencing 13 May 2012 for 6 months and continuing thereafter by tacit relocation on a 2 monthly basis. Said Tenancy was between Roger McGill and John Davidson, c/o Southside Property Management, 20 Nicolson Street, Edinburgh and the Respondents, the Applicants having taken over and continued same in terms of their acquisition of the Property on or about 26 February 2021.
2. An associated application, under Tribunal reference EV/24/2548, to bring the tenancy to an end on account of the unpaid rent was considered together with this application.

3. The original application, made on 4 June 2024, was based on rent arrears then outstanding of £12,803-14.
4. After a request for further information from the Tribunal dated 24 June, primarily in respect of the associated application, responded to by the Applicants' agents on 1 July, both 2024, this application was accepted by Notice of Acceptance of 30 July 2024, by virtue of which a Case Management Discussion ("CMD") was duly fixed for 3 December 2024 in respect of both applications.
5. Prior to said CMD, on 7 November 2024, the Applicants' agents lodged an updated rent statement showing rent due as at 1 October 2024 of £13653-14, advising also that they anticipated this would rise to £14753-14 by the date of the CMD and indicating they would be seeking to amend accordingly.
6. In support of that part of this application for "reasonable costs," they also lodged copies of 3 invoices, all addressed to the Applicants, namely
 - a) Invoice Number 083658, dated 29 February 2024, for preparation and service of 2 Notices to Quit and 2 Forms AT6, in the total amount of £486-53, including VAT;
 - b) Invoice Number 092070, dated 31 July 2024, for preparation and submission of the 2 applications to the Tribunal above referred to and responding to the Tribunal's request for further information, in the total amount of £907-20, including VAT; and
 - c) Invoice Number 096849, dated 31 October 2024, for preparation and submission of "statement on reasonableness" (in respect of the associated eviction application) and attendance at "case management discussions" on 3 December 2024, in the total amount of £510, including VAT.
7. Accordingly, the Applicants sought to be awarded a total of £1903-73 in respect of "reasonable costs" for both applications, although the issue was only included in this application for payment of arrears of rent.

CASE MANAGEMENT DISCUSSION

8. Said CMD took place by teleconference on 3 December 2024, at 10am. The Applicants were represented by David Gray from Gilson Gray, Solicitors, Edinburgh. The Respondents were neither present nor represented.
9. Mr Gray advised and confirmed, in relation to this application and by submission and in response to questions from the Tribunal:--

- a) He did not know why the Respondents were not in attendance and had had no dealings at all with them.
 - b) He was seeking to amend the amount of outstanding rent to £14753-14 as at 1 December 2024 as previously referred to, the most recent payment of rent having been made on 2 October 2024, which did not materially affect the total sum due. The Tribunal was content to allow this amendment.
 - c) He referred to and founded upon his "Submission on Reasonableness" in the associated application, adding that so far as he was aware from the Applicants, the Respondents had not been in any sort of contact with them since about February of this year, although he thought there had perhaps been some email correspondence on or about 18 October 2024 in respect of a proposed safety check visit on 30 October, where the Respondents did not permit access.
 - d) So far as he was aware, the Respondents had accrued arrears between about January 2021 and November 2022 and had not made up arrears accruing from that period.
 - e) Sums received since then had been applied towards the oldest rent due ie payments made on 2 September 2024 were credited to rent due from September 2022, per the rent statement.
 - f) He did not know what, if any, benefits the Respondents might have been receiving.
10. He confirmed that the Applicants had provided the Respondents with detailed advice and information as to how they might address the difficulties they were facing regarding payment of rent by reference to email to them dated 4 June 2024, apparently and presumably to both Respondents under "names" used by them for email purposes.
11. In respect of that part of the application for "reasonable costs", the Applicants agents had made specific reference in their email of 7 November to that part of Clause 13 of the tenancy agreement, which states, so far as relevant:--
"If the tenant defaults on payment of any rent or invoice when due, the tenant shall indemnify the Landlord/Agents from and against all costs and disbursements incurred by the Landlord/Agents in pursuing the debt....".
12. When asked further about this part of the Application, Mr Gray submitted that both applications directly arose from the Respondents' failure to pay rent and therefore

the sums claimed in said invoices were recoverable under said Clause 13, since the associated eviction application arose from that failure also.

13. In respect of the specific invoices, he advised:--

- a) Invoice Number 083658 related to separate Notices to Quit and Forms AT6 for each Respondent (4 documents in total), comprising a fixed fee of £75 for each, to which was then added sheriff officer fees for service and VAT;
- b) Invoice Number 092070 similarly comprised a fixed fee for each application, being £250 for this application and £350 for the associated eviction application to which was then added £156 for correspondence with the Tribunal and VAT; and
- c) Invoice Number 096849 comprised £175 for preparation and submission of the "Statement on Reasonableness", the remainder (£250) being in respect of attendance at today's "case management discussions" with VAT then added.

14. He referred to previous Tribunal case of

Turner v Pursley FTS/HPC/CV/24/0803

where such an award had been made based on a broadly similar clause in the tenancy agreement as Clause 13 in this present agreement.

15. He confirmed that none of the fees in said invoices had been subject to taxation but felt sure they would be upheld at any taxation.

16. He accepted the suggestion from the Tribunal that "costs and disbursements" would normally relate to "fees and expenses" but submitted that a distinction had to be made, in that the sums sought were not expenses as such but sums contractually due from the Respondents under said Clause 13.

17. He did not accept the suggestion from the Tribunal that said provision might amount to an unfair term of the contract since the Respondents had willingly accepted it when signing up for the tenancy and, having done so, the Applicants were now simply seeking to recover what was contractually due to them.

18. In all of these circumstances and in the absence of any opposition either written or stated at the CMD, the amended sum of rent arrears and sums referred to in said invoices were due to the Applicants and the appropriate order should accordingly be made.

FINDINGS IN FACT

19. The Respondents are due and liable for arrears of rent up to 1 December 2024 in the sum of £14753-14 arising out of a Short Assured Tenancy for the Property between the Respondents and, initially, Roger McGill and John Davidson and now the Applicants, commencing 13 May 2012.

REASONS FOR DECISION

20. The Tribunal was prepared to accept the position as stated on behalf of the Applicants regarding accrual of rent arrears, there being no contrary position stated by the Respondents. Accordingly, the Respondents are due and liable for arrears of rent in the sum of £14753-14 up till 1 December 2024

21. In relation to the order for “reasonable costs” sought, the Tribunal took a different view from that advanced to it on behalf of the Applicants, having regard not only to the case helpfully referred to by Mr Gray but also to other Tribunal cases where a broadly similar point was considered, namely:--

Ross & Ross v Bradley FTS/HPC/CV/20/1625 (amendment of application to include additional claim for costs withdrawn after Tribunal advised it considered same to amount to a claim for expenses, as opposed to sums contractually due);

Chappell v Logan FTS/HPC/CV/21/0048 (claim refused where Tribunal not satisfied about clarity of clause in lease under which it purported to be made and, there not having been any unreasonable behaviour on the Respondent’s part, no expenses were due under First-Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017);

Sutherland v Kelly FTS/HPC/CV/23/4402 (2 related applications, for eviction and rent arrears, costs only allowed for rent arrears application) and

Balogun v Collins FTS/HPC/CV/24/2310 (claim for costs granted).

22. Quite properly and fairly, no argument was advanced by Mr Gray that there had been any unreasonable behaviour on the part of the Respondents, given their complete lack of opposition to both applications and, accordingly, Tribunal Rule 40 did not come into play.

23. The Tribunal considered the argument for “reasonable costs” very carefully in arriving at its decision not to award same. In particular, it considered that part of the sums sought did not properly relate to recovery of rent but to eviction proceedings, so would not be caught by Clause 13 in any event, since it makes no

reference to any costs being recoverable for eviction proceedings (the view taken in *Sutherland v Kelly*, previously referred to).

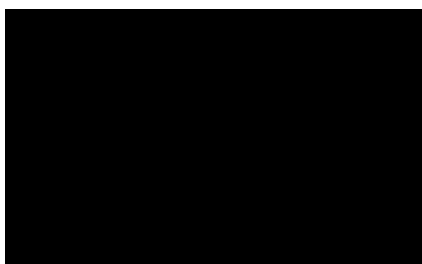
24. On a more general level however, the Tribunal considered its overriding objective to deal with proceedings justly, including dealing with proceedings in a manner proportionate to the complexity of the issues and resources of the parties, seeking informality and flexibility and using its special expertise effectively.
25. Having regard to same, the Tribunal did not consider it reasonable to make an award of costs for what are essentially 2 straightforward applications based on a failure to pay rent and of a type routinely lodged by Applicants acting on their own behalf and thereafter considered by the Tribunal throughout without representation on either side. There is no cost to any applicant applying to the Tribunal and accordingly this Tribunal does not consider it just to make an order in favour of an applicant choosing to instruct solicitors to do so. The Tribunal notes the Applicants' designation as an investment company as opposed to a private individual.
26. The Tribunal having decided no costs are payable does not then need to give more detailed consideration to whether it regards the sums sought in said invoices as reasonable or which proportion of them might relate to recovery of rent as opposed to the associated eviction application.

DECISION

27. To grant the order for payment of rent arrears sought by the Applicants in the amended sum of £14753-14.

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.



19 DECEMBER 2024
Date