



Amended 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/20/0792

Re: Property at 7 The Fold, Whiterashes, Aberdeen, AB21 0LU (“the Property”)

Parties:

Mr Peter Brown, c/o Aberdeen Considine, 2nd Floor Elder House, Elder Street, Edinburgh, EH1 3DX (“the Applicant”)

Miss Margaret Evelyn Simpson, Mr Oscar Cornelis Sinjorgo, 7 Burleigh Court, Glenrothes, Fife, KY7 4SY; 7 Burleigh Court, Glenrothes, Fife, KY7 4SY (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of £5981.30 together with interest at the rate of 8 per cent above the Royal Bank of Scotland plc base lending rate, running from the date of this order until payment, should be made against the Respondents and in favour of the Applicant.

Background

This is an application for a payment order in the sum of £5981.30 with a request for interest on that sum at a rate specified within the lease between the parties.

The application was received by the Tribunal on 5th March 2020 and was accepted by the Tribunal on 7th May 2020.

Case Management Discussion

The Case Management Discussion was attended by Miss Duff solicitor of Aberdeen Considine who represents the Applicant. There was no appearance by or on behalf of the Respondents. The Tribunal had sight of executions of service of the application

and supporting papers on the Respondents by Sheriff Officers on 15th July 2020 which had been achieved by posting these papers through the letterbox at their address. Miss Duff invited the Tribunal to proceed in the absence of the Respondents and the Tribunal agreed to this motion in terms of Rule 29 of the Tribunal Rules given that the terms of Rule 24 regarding notice to the Respondents had been complied with.

The Tribunal had sight of the Application, a paper apart, a lease, correspondence from Aberdeen Considine, a Notice to Quit, a Form AT5, a Notice in terms of section 33 of the Housing (Scotland) Act 1988, a check out report, letters regarding rent arrears, a tenancy statement, an invoice issued by Aberdeen Considine stamped as paid, correspondence with a tenancy deposit scheme and an email to the Tribunal dated 11 June 2020 requesting to amend the rate of interest being requested to be attached to the payment order. This last email had been sent by the Tribunal with the materials and other case papers to the Respondents for the Case Management Discussion and the Respondent had therefore been given the appropriate notice of an amendment to the Application other than a new issue as set out in Rule 14A of the Tribunal Rules

Miss Duff requested a payment order in relation to what she described as rent arrears and fees which she said were incurred as a result of the Respondents' breaches of the lease agreement, namely the non-payment of some of the rent which was due.

The parties had entered into a lease agreement for the property signed on 9 August 2017 with rent of £950 per month payable monthly in advance. In terms of a document headed up as "tenancy statement" Miss Duff pointed to arrears building up starting in October 2018 and noted that the last payment of rent was in January 2019 although the tenancy did not end until 10th August 2019, the date by which the tenants were required to leave the property in terms of the Notice to Quit served. The arrears of rent said to be due were £6050 and some of these arrears had been met by a payment to the landlord from a tenancy deposit scheme. The rent arrears less that sum paid from the deposit scheme amounted to £5291.30. Miss Duff had no information to suggest that the rent arrears had accrued due to any issue with benefit payments for either Respondent.

Miss Duff advised the Tribunal that other costs were incurred by the landlord at the end of tenancy in the form of what were said to be dilapidations, oil costs, cleaning and repairs, amounting to £556.30. Miss Duff accepted that these costs had been met in full from the deposit returned to the landlord and the Tribunal did not require to consider these further.

The final claim was for an invoice paid to Aberdeen Considine of £550 plus VAT and an outlay, amounting in total to £690. Miss Duff indicated that this was for professional legal services rendered to the Applicant between June 2019 and March 2020 and had been stamped as paid by the Applicant. Miss Duff explained that this covered legal services provided by her firm's dispute resolution team who took instructions, entered into correspondence with the Applicant, explained the process to deal with the breach of the tenancy agreement and drafted an application to the Tribunal. Miss Duff pointed to Clauses 21 and 22 of the lease and indicated that this cost was directly referable to the Respondent's breach of the tenancy agreement ie the failure to pay rent that had fallen due under the lease agreement.

The Applicant was seeking interest on the payment order at the rate of 8 per cent above the Royal Bank of Scotland plc base lending rate and Miss Duff referred to clause 21 of the lease which made reference to interest at this rate being chargeable in respect of sums due arising from the lease.

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

Findings in Fact

- 1.The parties entered into a lease agreement at the property with the Respondents which was signed on 9 August 2017 and ended on 10th August 2019.
- 2.The rent was £950 per month and was payable monthly in advance.
- 3.Arrears of rent started to build in October 2018 and as at 14th August 2020 stand at £5291.30 which includes a sum returned to the landlord from a tenancy deposit scheme, some of which was able to be set against rent arrears.
- 4.As a result of the rent arrears which accrued over a number of months, in breach of the lease agreement, the Applicant required to pay for professional legal services over a period of some 9 months which cost him £690, a bill he has paid.
- 5.The sum sought by way of rent arrears is lawfully to the Applicant by the Respondents.
- 6.The sum sought by the Applicant which relates to solicitors' fees referable to the breach of the lease by the Respondents appears reasonable.
- 7.The total sum of £5981.30 is due by the Respondents to the Applicant.
- 8.The lease agreement allows the landlord to claim interest on all sums due arising from the lease at the rate of 8% per annum above the Royal Bank of Scotland plc base lending rate.

Reasons for Decision

The Tribunal was satisfied that the sums requested by way of the payment order were lawfully due by the Respondents to the Applicant as a result of their breach of the lease agreement with him. The interest rate requested on the outstanding sums was permitted within the lease agreement.

Decision

The Tribunal made a payment order in the sum of £5981.30 together with interest at the rate of 8 per cent above the Royal Bank of Scotland plc base lending rate, running from the date of this order until payment, against the Respondents and in favour of the Applicant.

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

14 .8.20_____
Date