

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/19/0646

Re: Property at 27 3F2 Parsons Green Terrace, Edinburgh, EH8 7AF (“the Property”)

Parties:

Mr Michael Johnston, C'O D J Alexander Lettings Ltd, 1 Weymss Place, Edinburgh, EH3 6DH (“the Applicant”)

Mr James McFarlane, 83 Inchmyre, Kelso, TD5 7LH (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By lease dated 16 June 2018 the Applicant let the Property to the Respondent;
2. The rent was £585.00 per calendar month;
3. The Respondent vacated the Property on 15 January 2018 and the tenancy ended then;
4. As at that date, the outstanding rent was £1,008.52;
5. Subsequent to the Respondent vacating the Property a payment of £270.00 was made by him and, in addition, the Applicant recovered the tenancy deposit of £300.00 to be applied to outstanding sums due. These amounts reduced the rent due to £438.52;

6. At the termination of the tenancy the Property was in a poor state of repair and various carpets and soft furnishings had a strong smell of cigarette smoke. This resulted in cleaning of various items being required;
7. The lease contains a prohibition on smoking by the Respondent;
8. The cost of cleaning and repairs was restricted to £149.80;
9. Three separate rental payments, which were being taken by the letting agents by direct debit, were not paid, presumably as a result of insufficient funds being available. The lease contained a provision that a charge of £25.00 would be applied for each such failed direct debit payment. This amounted to a further £75.00;
10. The lease contained a provision that late payments attracted interest at the rate of 4% above Bank of England base rate (currently 0.75%). Interest is payable on the amount due at the rate of 4.75% as a result;

THE CASE MANAGEMENT DISCUSSION

11. The Applicant did not attend the Case Management Discussion but was represented by Mr D Gibb of DJ Alexander Lettings, Edinburgh;
12. The Respondent failed to attend. The Tribunal was in receipt of an execution of service by sheriff officers confirming that the place, date and time of the Case Management Discussion had been intimated to the Respondent, together with a copy of the case papers. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;
13. Discussion took place in relation to whether or not the charge for unpaid direct debits amounted to an "unlawful premium" in terms sections 82 and 90 of the Rent (Scotland) Act 1984 (the 1984 Act) and section 27 of the Housing (Scotland) Act 1988. Section 82 (1) of the 1984 Act provides:-

"Any person who ,as a condition of the grant, renewal, or continuance of a protected tenancy, requires the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section"

The definition of an unlawful premium is contained within s90 (1) of the 1984 Act which states:-

"premium means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge";
14. The Applicant's representative argued that the charge for a failed direct debit was not a "premium" but was a recognised type of business charge to cover various costs, including banking charges, arising from a failed payment. In the absence of a contradictor, and having regard to the relatively low amount claimed, but without reaching a concluded view on the matter, the Tribunal allowed the charges in this instance;

15. The Applicant's representative provided the Tribunal with a "Check Out Report" which disclosed various items within the Property which required cleaning or repair at the termination of the tenancy. When the application was made to the tribunal the amount claimed for this was £449.80. At the Tribunal this was restricted to £149.80. That appeared to be a reasonable amount having regard to the various issues disclosed.
16. In the circumstances, the Tribunal made an order for payment in the sum of £663.32 with interest thereon;

FINDINGS IN FACT

17. The Tribunal made the following findings in fact:-
 - a) By lease dated 16 June 2018 the Applicant let the Property to the Respondent;
 - b) The rent was £585.00 per calendar month;
 - c) The Respondent vacated the Property on 15 January 2018 and the tenancy ended then;
 - d) As at that date, the outstanding rent was £1,008.52;
 - e) Subsequent to the Respondent vacating the Property a payment of £270.00 was made by him and, in addition, the Applicant recovered the tenancy deposit of £300.00 to be applied to outstanding sums due. These amounts reduced the rent due to £438.52;
 - f) At the termination of the tenancy the Property was in a poor state of repair and various carpets and soft furnishings had a strong smell of cigarette smoke. This resulted in cleaning of various items being required;
 - g) The lease contains a prohibition on smoking by the Respondent;
 - h) The cost of cleaning and repairs was restricted to £149.80. This was a reasonable amount for the same;
 - i) Three separate rental payments, which were being taken by the letting agents by direct debit, were not paid. The lease contained a provision that a charge of £25.00 would be applied for each such failed direct debit payment. This amounted to a further £75.00;
 - j) The lease contained a provision that late payments attracted interest at the rate of 4% above Bank of England base rate (currently 0.75%). Interest is payable on the amount due at the rate of 4.75% as a result;

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of SIX HUNDRED AND SIXTY THREE POUNDS AND THIRTY TWO PENCE (£663.32) STERLING to the Applicant, with Interest thereon at the rate of 4.75% running from the date of the decision of the First-tier Tribunal to grant this order, being 29 April 2019, 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.

V Crawford 

29 April 2019

Legal Member/Chair

Date