



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

Chamber Ref: FTS/HPC/CV/22/1871

Re: Property at 63 Fintry Road, Dundee, DD4 9EY (“the Property”)

Parties:

Euan Cumming, 10 Balmossie Meadow, Dundee, DD5 3GG (“the Applicant”)

Gary Mitchell, Flat 1L, 27 Finlow Terrace, Fintry, Dundee, DD4 9NA (“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 28th August 2020 the Applicant Let the Property to the Respondent;
2. The start date of the tenancy was 1st September 2020;
3. The rent payable was £600 per calendar month payable in advance;
4. Since December 2020 the Respondent has been in arrears of rent. As at 1st June 2022 the arrears of rent amounted to £3,501.36;
5. The Lease, at paragraph 37, provides, “the Landlord shall be entitled to pursue the tenant for any reasonable costs incurred as a result of the tenants failure to pay rent including but not limited to any charge for

returned cheques or any reasonable costs incurred in pursuing the tenant for payment of unpaid rent.”

6. At paragraph 37.2 it provides “If rental payment is not received from the tenant and the landlord is required to instruct Debt Recovery Agents/Sheriff Officers then the tenant will be liable for “all fees and outlays charged by Debt Recovery/Sheriff Officers instructed by the Landlord in respect of rent arrears and other outstanding charges, such fees may be charged up to the rate of 30% of the outstanding rent plus VAT.””;
7. The Lease, at paragraph 37.3, provides that if rent is 10 days overdue interest will be chargeable from the date it was due until it is paid at the rate of 2.5% over Bank of England base rate. As at the date of the Case Management Discussion (25th November 2022) Bank of England base rate is 3%;
8. The application to the Tribunal sought “interest at the rate deemed appropriate by the Tribunal;
9. The application to the Tribunal contained a paper apart. The paper apart contained a sentence “the Respondent also agreed to be liable for the reasonable cost of the landlord incurred through the Respondent’s failure to pay rent on time including but not limited to any legal fees incurred by the applicants in pursuing the tenant for payment.”

THE CASE MANAGEMENT DISCUSSION

10. The Applicant did not participate personally in the Case Management Discussion but was represented by Miss Bell of Messrs Gilson Gray, Solicitors, Dundee. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs;
11. Miss Bell moved the Tribunal to grant an order for payment of rent arrears in the sum of £3,501.36. A rent statement had been provided showing those arrears to be outstanding. In the circumstances, and considering there was no participation in the proceedings by the Respondent, the Tribunal indicated it would make a Payment Order in that amount;
12. In relation to the matter of interest, the lease made provision for interest to be paid in relation to overdue rent. The Lease made provision for interest at 2.5% above Bank of England base rate. At the date of the Case Management Discussion, Bank of England base rate is 3% and, therefore, in terms of the Lease, interest is payable at the rate of 5.5%. The Tribunal made an order for payment of interest in that amount;

13. In relation to expenses, an invoice had been forwarded to the Tribunal by solicitors for the Applicant. This invoice was in the sum of £450.00 plus VAT being £540.00 in total. The invoice did not contain a detailed breakdown of the work undertaken. It stated “This bill includes items up to and including 18 Oct 2022.” The Tribunal asked Miss Bell to address it in relation to this, having particular regard to Regulation 40 of the FTT Regs. Regulation 40 provides as follows:-

40.— Expenses

(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)

14. The Tribunal pointed out that, while the lease made provision for recovery of costs in relation to “Debt Recovery Agents/Sheriff Officers” solicitors are separate and distinct from “Debt Recovery Agents/Sheriff Officers”;

15. Separately, the Tribunal was aware an application was initially submitted to the Tribunal on 15 June 2022. That particular application did not proceed and a further application was submitted on 4th August 2022. A Case Management Discussion was assigned for 25th November 2022. As noted, the invoice covered work up to and including 18th October 2022. This clearly covered a period in relation to the work of making an application to the Tribunal. Miss Bell advised that she was not the principal agent dealing with the case and, therefore, the Tribunal allowed an adjournment to enable her to confer with colleagues in relation to this particular matter. When the Tribunal reconvened Miss Bell advised that she was instructed to seek an order from the Tribunal in relation to this invoice but no further submissions were made beyond that.

16. In the circumstances, in relation to the claim for legal expenses, the Tribunal was not willing to make an order for payment of that. Regulation 40 of the FTT Regs make it clear that an award of expenses can only be made if there is unreasonable behaviour by a party in relation to the conduct of proceedings before the Tribunal. The Respondent had not participated in the proceedings at all and, therefore, there had been no unreasonable conduct by the Respondent in relation to the proceedings themselves. The invoice was not itemised. It appeared, on the face of it, to cover work in relation to the application to the Tribunal and, having regard to the terms of Regulation 40, the Tribunal was not in a position to make an award in relation to those legal expenses;

DECISION

The Tribunal granted an order against the Respondent for payment of the undernoted sum of THREE THOUSAND FIVE HUNDRED AND ONE POUNDS AND THIRTY SIX PENCE (£3,501.36) STERLING to the Applicant, with Interest thereon at the rate of 5.5 PER CENTUM PER ANNUM running from 25th November 2022 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

25 November 2022

Legal Member/Chair

Date