



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/21/0086

Re: Property at 20 Herries Court, Heathhall, Dumfries, DG1 3TL (“the Property”)

Parties:

CALMAC DEVELOPMENTS LIMITED, NETHER BROOKFIELD, CRAIGS ROAD, DUMFRIES, DG1 4UT (“the Applicants”)

Mr Jamie Murdoch Rowan, 20 Ashgrove, Heathhall, Dumfries, DG1 3TG (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of £7,977.20 with interest at the rate of 4% above the base lending rate fixed by the Bank of Scotland from time to time and to make a Time to Pay Direction at the rate of £200 per month.

- Background

By application dated 14 January 2021 (the Application), the Applicants sought a Payment Order against the Respondent in relation to rent arrears and damage relative to the Property. In addition, the Applicants sought interest to be applied to such a Payment Order at the rate of 8% per annum. In response to the Application, the Respondent admitted the claim and submitted an application for a Time To Pay Direction, offering to pay at the rate of £200 per month. Following receipt of that application, the Applicants wrote to the Tribunal accepting the Respondent’s offer.

- The Case Management Discussion

A Case Management Discussion (CMD) was arranged for 4 April 2021 and was held by way of conference call. The Applicants were represented by a Mr McCartney,

solicitor. The Respondent did not appear or arrange for representation. Notwithstanding, he was clearly aware of the CMD and had submitted an application for a Time to Pay Direction. Mr McCartney confirmed that interest was sought based on the judicial rate of interest (something that had been detailed in an email dated 12 February 2021) despite there being a contractual provision in the underlying tenancy for the Property which applied a rate of “4% per annum above the base lending rate fixed by the Bank of Scotland from time to time” on “rent or any other sum due hereunder” (clause “FIVE”). The Tribunal explained to Mr McCartney that they did not have the authority to apply the judicial rate of interest to any awards and that their power to award interest was as detailed in Rule 41A of the Tribunal’s procedure regulations. Following discussion, Mr McCartney confirmed that he would therefore seek interest at the contractual rate and from the date of this decision.

- Findings in Facts and Law

- 1) The Applicants and Respondent entered into a lease for the Property on or around 1 September 2016.
- 2) The rent payable under that lease was £355 per calendar month.
- 3) In terms of the lease between the parties the Respondent owed certain contractual duties to the Applicants in relation to taking care of the Property (fair wear and tear excepted).
- 4) The Respondent vacated the Property on or around July 2020 leaving arrears of £8,185.
- 5) As a result of the Respondent’s breach of contract to take care of the Property, after the Respondent had vacated the Property the Applicants required clean the Property and carry out redecoration at a total cost of £147.20.
- 6) Following the Respondent vacating the Property the security deposit in the sum of £355 was awarded to the Applicants and recovered by them.
- 7) The total sum therefore due by the Respondent to the Applicants by way of rent arrears and breach of the terms of the lease is therefore £7,977.20.
- 8) In terms of clause “FIVE” the Applicants are entitled to interest at the rate of “4% per annum above the base lending rate fixed by the Bank of Scotland from time to time on the sum of £7,977.20.

- Reasons for Decision

In his application for a Time To Pay Direction, the Respondent admitted that he was due to pay the Applicants the sums claimed by way of rent arrears and in relation to cleaning and decoration of the Property. In terms of clause “FIVE” of the lease for the Property, the Applicants were entitled to interest at the rate of 4% per annum above the base lending rate fixed by the Bank of Scotland from time to time on such sums. The Respondent having submitted an application for a Time to Pay Direction and the Applicants having agreed to same, the Tribunal granted same and made a Time To Pay Direction at the rate of £200 per calendar month.

- Decision

A Payment Order was issued in the sum of £7,977.20 with interest at the rate of 4% above the base lending rate fixed by the Bank of Scotland from time to time. A Time to Pay Direction was granted allowing the Respondent to pay at the rate of £200 per month.

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: Rory Cowan

Date: 4 April 2021

Rory Cowan