



2022UT27
Ref: UTS/AP/22/0008

DECISION OF

Sheriff Ian Hay Cruickshank

**ON AN APPLICATION TO APPEAL
IN THE CASE OF**

Umali Limited, Umali Limited, 77 Victoria Street, Larkhall, ML9 2BL

Appellant

- and -

Ms Abbey-Louise Sneddon, 64 Camelon Crescent, Blantyre, Glasgow, G72 0BD; Mr Dylan Traynor, 64 Camelon Crescent, Blantyre, Glasgow G72 0BD, Caitlin Murray, 12 Wilson Street, Hamilton ML3 0NH

Respondent(s)

FtT case reference FTS/HPC/CV/21/1341

22 July 2022

Decision

Upholds the appeal and quashes the decision of the First-tier Tribunal for Scotland Housing and Property Chamber dated 4 October 2021; thereafter re-makes the decision and grants an order for payment by the respondents to the appellant in the sum of £5,288.60.

Introduction

[1] The appellant is Umali Limited (“the appellant”). The Company appeals the decision of the First-tier Tribunal for Scotland Housing and Property Chamber (“the FtT”) dated 4



October 2021. The FtT granted an order in the appellant's favour in the sum of £4,338.60 which represented various repairs and losses which the FtT determined were recoverable from the tenants. Certain component parts of the appellant's claim were refused. In particular, the FtT refused to award the appellant the sum of £950 representing the cost of a replacement door to the property following the same having been damaged by officers of Police Scotland whilst executing a drugs search warrant.

[2] The FtT refused permission to appeal and issued its written reasons on 16 March 2022. Permission to appeal was granted by the Upper Tribunal following a hearing on 7 June 2022. The decision to grant permission to appeal was intimated to the parties. No response was received from the respondents. The appellants indicated they were content for the Upper Tribunal to determine the appeal without the necessity of a hearing. I have decided this case on the basis of the appellant's written submissions.

Grounds of appeal

[3] The grounds of appeal can be summarised as follows:

1. The FtT erred in law in refusing the appellant's claim for the cost of replacing a door damaged at a tenanted property during the period of lease to the respondents.
2. The FtT erred in law in reaching the conclusion that there was no legal basis upon which the respondents, as tenants, could be held liable for the damage caused by Police Scotland whilst executing a lawfully obtained search warrant at the property.

Discussion

Upper Tribunal for Scotland



[4] I refer to the appellant's submissions as outlined in my written decision to give permission to appeal dated 7 June 2022. It is not necessary to repeat these at this time other than to state that, in conclusion, it was submitted the FtT had erred in law in finding that as the damage was caused by police officers and not the tenants, the damage had not been caused as a result of any identifiable fault or negligence on the part of the tenants and they were therefore not responsible for the replacement cost of the door (finding-in-fact (p) of the decision).

[5] In its written decision dated 21 October 2021 the FtT provided reasons for the decision it reached. Paragraph 15 of the reasons provided by the FtT states as follows:

"...the Tribunal could not identify any legal basis upon which the respondents were responsible for this cost. The lease required the tenants to take reasonable care of the property (Clause 17) and also contained a provision to the effect that the tenant will be liable for the cost of repairs where the need for them is attributable to his or her fault or negligence or that of any person residing with him or her or any guest of him or hers (Clause 18). This damage, however, was caused by police officers. It was not caused by the tenants. While the applicant's representatives attempted to persuade the Tribunal that an inference could be drawn that the police actions were justified and were due to criminal behavior on the part of the tenants, there was no information to support that nor to enable the Tribunal to draw such an inference. There was no information in relation to any items which were recovered as a result of any search by police officers nor any criminal offences committed by the respondents. In the circumstances, there was no legal basis for the respondents being liable for this cost."



[6] The respondents did not participate in the hearing at which the FtT considered matters prior to reaching its decision. They provided no evidence for the consideration of the FtT. The FtT reached its decision based on the evidence provided by the appellant. This was to the effect that the appellant had established there had been forced entry to the property by Police Scotland acting under a drugs search warrant. Mr. Murray, a director of the appellant Company had spoken with a neighbor who had witnessed police officers removing bags from the property. It was believed that one of the respondents had been charged with an offence. There was no contradictor and the FtT appear to have largely accepted this evidence.

Conclusion

[7] The rights, duties and obligations which subsist between landlord and tenant are principally governed by the terms of the lease between the parties. In addition, at common law, a tenant can be liable for damage caused as a result of fault or negligence. Damage may be caused as a result of the direct acting's of a tenant or indirectly at the hands of another. Whether liability flows in the latter circumstance will be governed by the evidence and whether there is a causal link which brings into play the tenant's responsibility for the damage either under a strict interpretation of the lease or as a result of a wider breach of the tenant's general duty of care.

[8] I disagree with the reasoning of the FtT that there was no legal basis for the respondents being liable for this cost. Based on the evidence provided by the appellant, and in the absence of any contrary evidence to explain why the police had obtained a search warrant



for the property based on reasons which did not involve any actions, or suspected actions, on the respondents' part, there was before the FtT sufficient evidence for appropriate inferences to be drawn. In the absence of contradictory evidence the appellants in my view established a causal link that, on the balance of probability, there had been fault on the part of the respondents which was sufficient to find them liable for the replacement costs of the door.

[9] Accordingly, I uphold this appeal. In terms of section 47(1) of the Tribunals (Scotland) Act 2014 I quash the decision of the FtT on the points of law in question. In terms of section 47(2) it is appropriate for me to re-make the decision and grant an order for payment by the respondents to the appellant in the amended sum of £5,288.60

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.

Sheriff Ian Hay Cruickshank
Member