

Judicial Communications Office

21 December 2017

COURT ORDERS LETTING AGENT TO RETURN ADMINISTRATION FEE TO TENANT

Summary of Judgment

District Judge Gilpin, sitting in Belfast County Court, today ordered Piney Rentals Limited (the letting agent) to return a £30 administration fee to Paul Loughran (the tenant).

The background to the case is that the plaintiff, Paul Loughran, with two others entered into a Tenancy Agreement dated 6 May 2014 in respect of property at 24 Ridgeway Street. Piney Rentals Ltd acted as the letting agent for the landlord but did not continue thereafter as his managing agent.

The parties to the 2014 agreement were the tenant and the landlord and the agreement contained at clause 11: -

“A one off Administration fee of £30 per Tenant is due within 1 week of signing this agreement.”

This was paid by the tenant along with a deposit and the first month's rent. In July 2016 the tenant unsuccessfully sought the return of the fee. The tenant argues that he is entitled to recover these monies under provisions within The Commission on Disposals of Land (Northern Ireland) Order 1986.

The judge referred to this order and indicated that if the tenant were to succeed he must satisfy the court that the agreement came within reach of Article 3(1) of the Order: -

“3(1) Where, on a disposal of land, an agent acting for the person making the disposal is entitled to be paid a commission, any stipulation made on the disposal to the effect that the person acquiring the land shall pay the whole or any part of the commission shall be void.”

The judge noted that the parties were in disagreement over two essential elements of Article 3(1): -

- the stipulation element; and
- the commission element.

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The stipulation element

The tenant argued that the stipulation element was met because clause 11 of the 2014 agreement imposed an obligation on him to pay the fee and states this was also orally conveyed to him as a requirement he must meet to lease the property. The letting agent argues that it was not a party to the 2014 agreement and that this clause was in the agreement in error as it was not referred to in their contract with or invoice to the landlord.

The judge concluded that in this case there had been a stipulation to pay monies imposed on the tenant as part of the letting of the property.

The commission element

The parties took differing views on the definition of “commission” however, the judge’s view is that “it is the remuneration paid to an agent for the work they have been commissioned to do”.

The judge concluded that this definition of commission seemed to allow a tenant to recover any monies he had had to pay towards the remuneration of a letting agent for work carried out on behalf of the landlord.

The letting agent listed which services the administration fee covered which appears to be:

- reviewing an application form provided by a tenant;
- checking references provided by a tenant;
- drafting a Tenancy Agreement;
- ensuring Standing Order forms were set up by the tenant;
- ensuring guarantors were in place;
- negotiating about the terms of the tenancy agreement prior to its execution ;
- providing additional copies of the tenancy agreement to the tenant after its commencement;
- providing proof of the address of the tenant if they seek a Hardship Loan;
- providing future estate agents/landlords with references if requested; and
- providing spare key services to any tenants who have lost theirs.

The tenant argued that these services were provided for the landlord in letting out the property but the letting agent countered that landlords do not provide these services and so this must mean the service was provided for the tenant.

Conclusion

The judge concluded that while some of the above services were concerned with the letting of the property, some were to do with issues that might arise during its term, but all were services that only the landlord could have done if the letting agent had not been involved.

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He said he was satisfied that the services were carried out on behalf of the landlord in the letting of the property. In paying the administration fee the tenant was contributing in part towards the costs of the services the letting agent had been commissioned by the landlord to do. He concluded that such a payment is void under the provisions of the Order and he found that the tenant was entitled to have the monies returned to him.

The plaintiff, Paul Loughran, has a second similar case against F5 Property Limited, letting agents, which the parties agreed would be stayed while the case above was determined.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

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