

# Judicial Communications Office

29 June 2018

## COURT ORDERS LETTING AGENT TO RETURN ADMINISTRATION FEE TO TENANT

### Summary of Judgment

District Judge Gilpin, sitting in Belfast County Court, today ordered F5 Property Limited to return a £36 administration fee to a tenant but declined to make a declaration that any fees levied by letting agents whilst retained as agents for landlords should be recoverable.

The background to the case is that the plaintiff, Paul Loughran (“the tenant”), with two others entered into a Tenancy Agreement dated 6 May 2014 in respect of property at 24 Ridgeway Street, Belfast for his use while he was a student at Queen’s University. The tenant paid a “one off administration fee of £30” to Piney Rentals Limited in accordance with the terms of the letting agreement. In July 2016, he unsuccessfully sought the return of the fee which he argued he was entitled to recover under the Commission on Disposals of Land (Northern Ireland) Order 1986 (“the 1986 Order). On 21 December 2017, District Judge Gilpin held that in paying the fee the tenant was contributing in part towards the costs of the services Piney Rentals Limited had been commissioned by the landlord to do in letting a property. He concluded that such a payment was void under the provisions of the 1986 Order and ordered Piney Rentals to return the fee to the tenant.

The tenant subsequently sought to proceed with a claim against a second letting agent, F5 Property Limited, in respect of a rented property at 23 St Albans Gardens Belfast. In this instance, the tenant had paid F5 Property an administration fee of £36 in August 2015. F5 Property Limited did not defend the proceedings brought against them.

### **The Law**

The judge said that if the tenant is to succeed in his claim against F5 Property he must satisfy the court that what occurred in 2015 came within the reach of Article 3(1) of the 1986. If so, then any stipulation requiring him to pay the whole or any part of the letting agent’s commission is void and shall be recoverable. It was a matter for the tenant to prove that there was evidence of a “stipulation” that he pay a fee and that the fee paid was for work that a letting agent was doing for the landlord in letting the property to him (“the commission element”).

The tenant submitted evidence in the form of an email from F5 Property dated 24 April 2018 in which it confirmed that the impugned fee was charged “to successful

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applicants only.” The judge said he was satisfied, therefore, that there was an obligation on the tenant to pay the fee sought by F5 Property as he was a successful applicant and that this amounts to a “stipulation” as required by the 1986 Order.

F5 Property also suggested in its email that part of the services offered, and which the tenant availed of, were an online tenancy application service and an electronic document signing service. It was claimed that both services were of benefit to a tenant and not directly to a landlord. The judge, however, said there was no evidence before the court that the tenant was told of the online services and that he could chose to contract directly with F5 Property to avail of these if he wished. He said the court was left with the impression that the tenant was required to pay the administration fee as part of the process of acquiring the property and as part of that process the online services were provided as a matter of course.

The test applied by the judge was “if F5 Property were not involved would the online services be performed by the landlord or the tenant?” The judge concluded that it would be a matter of choice for the landlord as to how he wished to receive an application and how he wished the tenant and any guarantor to commit to the offer, therefore if there were no letting agent, the online services would be performed by the landlord. District Judge Gilpin held that the payment of the fee was therefore void under the terms of the 1986 Order and the tenant is entitled to have the fee returned to him.

The tenant also sought a declaration against F5 Property that:

*“Any fees, charges, disbursements, expenses or remuneration levied by letting agents whilst retained as an agent for a landlord upon tenants or prospective tenants of that landlord whether termed ‘administrative fees’, ‘application fees’ or otherwise....constitute a commission for the purposes of the Commission on Disposal of Lands (Northern Ireland) Order 1986 and their levying constitutes a breach of that Order rendering it void and recoverable by the tenant if paid.”*

District Judge Gilpin said this would require the court to consider matters such as the need to do justice to the parties, whether the declaration serves a useful purpose and whether there are any other reasons why a declaration should be made. The tenant submitted that a declaration would be preferable to a reasoned judgment as it would provide “maximum legal certainty”. District Judge Gilpin did not agree. He said his judgment set out clearly what a tenant needs to prove if he is to succeed with a claim under the 1986 Order against a letting agent.

## **Conclusion**

District Judge Gilpin ordered that F5 Property Limited should return the fee paid by the tenant in 2015 but declined to make a declaration that any fees levied by letting agents are recoverable.

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## 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](http://www.judiciary-ni.gov.uk)).

ENDS

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