

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Written Statement of Reasons of the of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014.**

**Chamber Ref: FTS/HPC/LA/23/0511**

**Re: Property at 1 Connaught Place, Edinburgh, EH6 4QT (“the Property”)**

**Parties:**

**Miss Regina Alonzi, 1 Connaught Place, Edinburgh, EH6 4QT (“the Applicant”)**

**Colette Scanlon-Riach, 26 Carrick Road, Ayr, KA7 2RB (“the Respondent”)**

**Tribunal Members :**

**Karen Kirk (Legal Member) and Ann Moore (Ordinary Member)**

This Hearing was a Hearing fixed in terms of Section 48(1) of the Housing (Scotland) Act 2014 and concerned an application dated 19<sup>th</sup> February 2023 by the Applicant against the Respondents for failure to comply with the Letting Agency Code of Practice in terms of the Letting Agent Code of Practice (Scotland) Regulations 2016 (the code) at paragraphs 19, 62, 68, 73, 82, 83, 84, 85, 86, 88, 91, 92, 94, 107, 111 of the Code. The hearing took place by video conference.

**1. Decision of the Tribunal**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having made enquiries as it saw fit for the purposes of determining whether the Letting Agency has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that**

- 1. The Respondent failed to comply with the Code of Practice at Paragraph 68.**
- 2. It was appropriate to order the payment of compensation in respect of this breach of the code in terms of Section 48 of the 2014 Act by the Respondent to the Applicant for the sum of £100.**

## **2. Attendance**

The Applicant attended personally.

The Respondents were represented by Emma Ross, Factotum, 63 Dublin Street, Edinburgh EH3 6NS

## **3. Preliminary Matters**

- a) The Application called alongside an application in terms of the Tenancy Deposit Regulations 2011. Evidence for both applications were heard separately over a number of days by video conference.
- b) Chris Boisseau, Factotum, 63 Dublin Street, Edinburgh EH3 6NS, was a witness for the Respondent. The Tribunal requested he did not take part until he was to give evidence in the interests of fairness.
- c) The Applicant gave her own evidence and conducted her case.
- d) The Case had called for Case Management Discussion and directions were issued before proceeding to evidence.

There were no other preliminary matters.

## **4. Evidence Summary**

### *For the Applicant*

1. The Applicant gave evidence that she considered the Respondents to be in breach of Letting Agency Code of Practice in terms of the Letting Agent Code of Practice (Scotland) Regulations 2016 (the code) at paragraphs 19, 62, 68, 73, 82, 83, 84, 85, 86, 88, 91, 92, 94, 107, 111 of the Code. She took each alleged breach in turn and also referred to extensive written representations that she had lodged.

### *Paragraph 19*

2. The Applicant advised that the Respondents, Miss Ross had provided a number of emails which she advised were misleading and/or incorrect relating to the tenancy deposit information which she should have been provided in relation to her separate case. She said information sent was misleading as the document was signed when no information was provided. She explained that Ms Ross had attached the wrong gas safety check to an email when there had been an updated safety check. The Applicant received the gas safety check for July 2022 on 4th January 2023 which was not up to date and further a new boiler was known to have been fitted in September 2022. The email refers to latest gas safety check and prescribed information from Safe Deposit Scotland, which she said was correct. The Applicant lodged that email. She referred to

an email on 28<sup>th</sup> December 2022 where reference was made to all certificates again for records but that the latest certificate was not included.

3. The Applicant said that the Respondent's on 1<sup>st</sup> Feb 2023 said that the correct information was lodged "again". This was the first time that she had received these documents and she confirmed this to the Respondent's on 14<sup>th</sup> Feb 2023. She referred to an email saying that an inventory was attached but that this was incorrect and it contained a complaint.
4. The Applicant reiterated her evidence in regards case reference 0298 on the basis that the Respondent in that application did not, in her view, provide the necessary prescribed information in regards Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Applicant said the wrong tenancy deposit information was sent on multiple occasions but remained wrong in terms of the regulations. The Applicant said she was sent the same document twice, although both documents had the same title they contained different information . She felt that this was misleading.
5. The Respondent application approved tenant email and I signed this document and I raised 2 staff members have signed it saying I have received the documents but they were never sent those Ms Ross sent the documents after the date. Murrin and her signed documents but no documents – I believed it to be my confirmation of me moving in.
6. The Applicant submitted that the grievance points were not dealt with accurately. The Applicant said that on Thursday 9<sup>th</sup> March 2023 Ms Ross wrote to her landlord and was discussing and talking about Applicant in a false and misleading way. She said that she noticed the Respondents had given false and misleading communications to the landlord regarding things she had said.
7. The Applicant said she requested compensation but was told she no longer wanted compensation which she said was not the case. The Applicant said this was further evidence of deliberately misleading information. Ms Ross said the cleaners were in in the morning when the tenancy commenced and she had instead said to landlord that the cleaning would be a few days before the Applicant moved in.

8. The Applicant said that the information provided in the case by the Respondent's was misleading and negligently false. She said the date noted that Jake the plumber attended was incorrect. The applicant said that the plumber, Jake handed her an incorrect gas safety certificate and that she had asked him to come back with the correct information.

### *Paragraphs 62 and 68*

9. The Applicant said the Letting agency breached the code because her position was that the tenancy agreement was ambiguous and it did not meet all the legal requirements. It was not sent with supporting notes. The Applicant had no opportunity to be present and no request for her attendance or her signature was made. The Applicant said she did get a copy. The Tenancy on commencement was not cleaned and in disrepair. The Applicant had asked for changes to the tenancy agreement these were not sent back to her as requested. The Applicant referred to emails between her and Ms Ross one of which was on 15<sup>th</sup> December 2022 when Ms Ross explained some of the information that the Applicant was querying in the tenancy terms.
10. The Applicant said that she had received the inventory however she had never been asked to sign it. She asked for changes and more photos and she asked for it again and they had not added more photos. The Applicant said that the inventory showed the property dirty and not the condition it should be on exit. She said one of the points was a light not working at the time of the inventory. The Applicant's position was that if the inventory was accurate at the time then the condition of the property was not acceptable and it was reflected as such in the inventory. The Applicant considered the property was not meeting the repairing standard.
11. She referred to paragraph 69 of the code of practice which stated that the tenant must sign to say it is correct. She had not signed it. This paragraph was not noted in the application or pre-application letters to the Respondent.

### *Paragraphs 73*

12. The Applicant told the Tribunal that she has put down the code of practice for each point she says was breached and that the property did not meet the repairing standard. It did not meet the repairing standard due to the gas leak and various repairs needed. There was a crack on the door and the frame on the door to the back garden was broken.

## *Paragraph 82*

13. The Applicant said that there had been no notice given for the gas engineer visit and access was given without permission. Cleaners were given access without notice. There was a breach of reasonable notice and intention to visit in terms of paragraph 82. The Applicant said she was told the cleaners were attending very shortly before they were attending and was given minimal notice. She was not aware Ms Ross was carrying out the inventory. She had very little notice. The Applicant said Ms Ross attended the property after she had given her the property keys. Further access was given to a tradesman without the Applicant's knowledge. No notice of this was given and the Applicant knew of this as tools had been left and a boiler door was open. The Applicant said when she moved into the property she noticed there was a gas leak, this was on the Friday and she was sent me a message saying a gas engineer would be in touch shortly. She said she got a phone call from engineer and had his number from when he phoned her.
14. The Applicant said that the plumber knew from the statement lodged by the Respondent that the flat would be vacant on the 2<sup>nd</sup> Jan 2023. She said this was a breach of giving the applicant notification. She said she was never advised that keys would be given to a 3<sup>rd</sup> party and she has submitted emails asking when the keys were given out. The Applicant said she saw the plumber use the keys and she asked Respondents when the keys would be returned. They ignored all of the questions on this.
15. The Applicant said that her permission for access was not confirmed because access was not agreed. The Applicant said that if access had been agreed she would have been in attendance. It was an emergency but she understood the plumber would not be able to attend to the next day. The Applicant told the Tribunal that she phoned the emergency number given by the Respondent's on 30<sup>th</sup> December 2022 as she was moving things in with her friend and they went into the back bedroom and there was a smell of gas. She got a message that a plumber will be in contact very soon. The Applicant got the phonecall and she said the plumber said he understood there to be a gas leak but as it's a Friday night he asked if he had to come that night. The Applicant told the plumber she had somewhere else to stay that night. The Applicant did not feel it was safe to stay in the property with two small children. She returned to the property on the Monday to find the room in disarray and access having been allowed.

## *Paragraphs 85 and 86*

16. The Applicant considers that the Annual gas safety inspection was not properly managed as the incorrect gas safety certificate was sent to the Applicant timeously after a request. After the Applicant had been given keys for the property she had still had not received the correct certificate. The Applicant said she did have a copy from the plumber which was a paper copy he left in the property however she asked for a digital copy. The Respondents said they

had attached the most up to date gas certificate but it was instead a copy of the July 2022 certificate even though a January 2023 inspection had taken place.

17. The Applicant said the Respondent's were unable to tell her who was to do repairs, who would call and when. All they said to her was that the plumber would be in contact. The Applicant told the Tribunal that she should have been informed of who would carry out the repairs and given clear information about who will manage repairs.
18. The Applicant's said that the evidence showed that in her view the property did not meet the repairing standard at entry, because of various repairs needing doing such as the bathroom plug broken, shower door broken, gas leak, back door frame broken and bathroom wiring. She said she had telephoned the Tribunal considering a repairing standard breach but no application as lodged. The Applicant said she viewed the property with Ms Ross and also asked for a 2<sup>nd</sup> viewing and she was told she was not allowed another viewing. At that time it was the beginning of December 2022 and she requested to move in on 28<sup>th</sup> December 2022.

#### *Paragraph 107*

19. The Applicant considers that the Respondents do not include the letting agent registration number on some occasions such as the response to her complaint letter and on papers submitting to the court.

#### *Paragraph 111*

20. The Applicant told the Tribunal she considered the Respondent abusive as she felt forced to sign a tenancy agreement that she did not agree with, she advised she felt that if she did not sign she would lose the property. When she raised the queries about the tenancy there was no leeway on them and the tenancy was a take it or leave it. She said there was threats of eviction upon discovering someone had accessed the property without my knowledge but she did not record the call.

The Applicant referred directly to the written representations she made for further paragraphs of the code she submitted the Respondents had breached but that she did not provide further oral evidence on.

#### *For the Respondent*

21. The Respondents position was that they had explained that the entry day of the tenancy on the 28<sup>th</sup> December 2022 was the first day their office was open after the Christmas period. Ms Ross said she advised the Applicant about the cleaner and that it had been booked in. Ms Ross said that the property inspection was booked in for 10am and it was agreed the Applicant could collect keys for the property at 9am.

22. The Respondent set out that the Applicant acknowledged receipt of the inventory and that is enough to say she had received same. The Respondent said that on the issue of the plumbers access, that after she moved in the Applicant called the Respondent's emergency phone line to report a gas leak. They had a conversation about access and Ms Ross considered they were advised that the Applicant did not feel comfortable in property given the leak and she would stay with friends.
23. The Respondent's position was that they had written confirmation of the repair to be scheduled on the Wednesday. The Applicant had called the emergency phone over Christmas reporting a smell of gas and she spoke to an engineer after the message on the emergency phone was accessed. The Respondent's position was that the plumber said he could be there in 20 minutes and they were not told otherwise. The Respondent said the Applicant and the plumber had conversations directly with each other. Ms Ross said the plumber was able to pick up one office set of keys to attend as they have emergency keys and he was able to collect them and carried out the work to make the boiler safe.
24. Ms Ross spoke of the repairs addressed by the Applicant such as the back door, and the shower door. Ms Ross said she spoke to contractors immediately after she carried out the move in inspection. She said she did not specify when the repairs were needed but there were often repairs needed following the moving in inspection.
25. Ms Ross said she agreed she had attached the wrong gas safety certificate. She said admitted attaching the last year's gas safety. It was not the correct one and she said she accepted and acknowledged that. Ms Ross said the Landlord arranged that the boiler be refitted directly by a company called Heatibles and not through the Respondents. Ms Ross said she chased up the certificate for the boiler but they are normally left in the property. She had been chasing it and Heatible had not been able to provide it to her. Ms Ross said there was a gas safety check in January 2023 and this was signed by the tenant and a copy given to her. Ms Ross did thereafter send incorrectly the wrong certificate. She told the Tribunal she has tried to take responsibility and apologised for it. Ms Ross said the boiler was under guarantee but Heatible did not provide the paperwork required.
26. Ms Ross said there was no specific legal timescale to send the inventory to the tenant and the tenant made her comments in addition to the inventory. She doesn't ask the tenant to be present in the inventory check. Ms Ross said the Applicant's comments and additions to the inventory are added to the file and kept on record for future.
27. Ms Ross said that she disputed that the Applicant did not receive the necessary tenancy deposit information. She said that it was the Applicant's decision to sign the tenancy agreement. The tenancy was a legally binding document and

she could not make that many amendments to it. She said she had advised the the Applicant that is she did not want to proceed to let her know. She said she was not abusive and was giving her the option to not proceed.

28. Ms Ross said that in terms of the grievance that the the Applicant had not been provided keys for the window lock and internal second door. Ms Ross said she had emailed the landlord who confirmed she did not have keys as she had not had them installed. The Applicant asked if this was a safety issue. Ms Ross said she asked about this but it was not something they needed to get the locks changed to do. Ms Ross said she fed back all the information and she was not misleading. She referred to the emailed lodged between 13<sup>th</sup> March to 16<sup>th</sup> March 2023.
29. Ms Ross explained that an inspection was to be carried out on the morning of 28<sup>th</sup> December 2022. It was booked at 10am. When Ms Ross came to office she was made aware the Applicant had been on phone from 22<sup>nd</sup> December 2022 asking to collect keys for moving. Ms Ross said timing was tight but they allowed the early move in and agreed to give out keys advising we were going to do final checks. Ms Ross carried out the inspection. The cleaners had not been in yet due to the Christmas period and because Ms Ross thought they would have had till 12 noon to get the cleaning done. Ms Ross made a note of everything not cleaned and she said she phoned the contractor and raised issues for repairs and noted them in the inventory.
30. Ms Ross asked the cleaner to remove a few things from the property which is why he had to go back. She said there was an email on the 28<sup>th</sup> December 2022 where there was a missed call from the Applicant. She called and mentioned bags of rubble for garden and Ms Ross asked if she was happy for the cleaner to have her number and the Applicant had said that would be preferable to have her deal with it directly. Ms Ross said that the Applicant was happy for her number to be given out.
31. Mr Ross said in evidence that all appropriate procedures for repairs were undertaken. All of the repairs were noted and she said all have been attended to apart from the crack on the cupboard door. Ms Ross said due to the festive period she understood the plumber was unable to get parts to resolve the boiler issue. Ms Ross said she provides a company name only and as for timescales contractors will given a time and how to make arrangements, this is often done direct with the tenant and it can be faster. Ms Ross said repairs are reported to them and they deal with it immediately or let the landlord know. The Landlord needs to give permission such as for the back door surround and the fridge was reported as broken but it was a crack in the shelf which Ms Ross got ordered. Ms Ross said that the plug in the bathroom sink was dealt with and in a timely manner.
32. Ms Ross said they disputed any breach of paragraphs 91 and 92 and give reasonable notice for access and if it is an emergency they will try and get access immediately. Ms Ross said it was as fast as they could have obtained



and followed up on numerous occasions to confirm the Applicant was happy with the relevant works on a few occasions.

33. On inventory check Ms Ross said was a little bit of rubbish from contractors on the job sheet to remove, the living room had not been cleaned and she could not see evidence of cleaning. She made notes on everything requiring to be attended to. The issues picked up on were not emergencies but she tried to prioritise cleaning.
34. Ms Ross said that on 14<sup>th</sup> December 2022 the Respondent asked why the lease was different to a model tenancy and asked a few questions. The Applicant sent a link to the model tenancy agreement. The next morning Ms Ross said she answered all the questions and explained the obligations and that they don't use the model tenancy. She said points were clarified but the Applicant did not understand why the model tenancy was not used.
35. Ms Ross said that they have not penalised the Applicant and that she knew it was not an ideal situation that the Applicant moved in and it was not cleaned and up to standard but Ms Ross got it rectified. Colleagues have experienced rude conversations with the Applicant with facebook posts found on the 1<sup>st</sup> Jan 2023 at 7.30am on the morning with bullet point lists all the things the Applicant considered the Respondents had failed to do.
36. Ms Ross said the tenancy was on for a few days and the office was closed and she had not had a chance to respond to emails. She felt the amount of complaints received made it hard to keep on top off with formal complaints made on 4<sup>th</sup> Jan and then on 28<sup>th</sup> Jan 2023. The Respondents advised that the landlord felt that the Applicants behaviour and communication felt threatening..

*Witness for the Respondent*

37. Christopher David Boisseau aged 71 years gave evidence for the Respondent as the Director. He said that the landlord for this property had contracted to replace the boiler. They were opted out of the work. Her plumber did not include an increase for the gas supply pipe. The problem was the new plumber and the pipes were too small when the gas safety check took place. This was out of their hands he said. Mr Boisseau said that Ms Ross had been requesting from the landlord details of the new installation.
38. He said that as soon as his plumber had disconnected the gas supply the situation became void as gas was turned off and it was safe but they were trying to get it fixed as quickly as possible. The plumber had to lift floors to replace an upgraded gas supply.
39. Mr Boisseau said that they do these things within hours. The gas safety engineers were being asked for previous certificate. It is normally left in the flat and we send an electronic version to the tenant. Mr Boisseau said that according to their plumber the fact you have fitted a new boiler and you have

the product guarantee it is open to question when another plumber goes in and makes alteration and immediately nullifies the gas safety check as another contractor has gone in.

40. Mr Boisseau said complaints started days into the tenancy. He said over the Christmas period he had the emergency phone for a while. The call to report a gas leak in the property came in and he got the plumber round within hours. It was all dealt with promptly. Mr Boisseau said that matters may not have been dealt with to the tenants satisfaction but there is an inference throughout the whole dialogue when we have dealt with it.
41. Mr Boisseau said he was aware of the letting agent code of practice and that repairs and maintenance mostly involves the repairing standards legislation. He said legislation is that a property has to be within the standard and if there is a complaint there is a time period for any reparations or complaints to be attended to. The tenant should be kept informed.
42. Mr Boisseau said that his response to the gas leak was to arrange that a plumber will be in touch. He said there had been communication between the Applicant and the plumber before and they had direct contact. Mr Boisseau said the Plumber cannot go and get materials without getting permission and this would be reasserted as to why he came back. Mr Boisseau said the emergency practice was to take note of the emergency and they phone the responsible person who can deal with it. In this case a plumber was contacted and they report back to tenant and we act on information. Mr Boisseau said he explained if the Applicant was worried to turn the gas off but they would try and get a plumber out as an emergency.
43. Mr Boisseau said there was negotiations afterwards on the inconvenience caused to the Applicant. There would be negotiated days between parties with a full rent rebate for no use of the boiler with £245.20 was returned. Mr Boisseau's position was that the fault was an emergency. Mr Boisseau said he had a conversation with the plumber to go back on Monday to start to lift the floors to repair the pipes. Mr Boisseau said it was an open job sheet. The plumber switched the gas off and he was going back. Mr Boisseau said it was not something to do at leisure but this was an open job with urgency to get it fixed to get it back with full use of the boiler. Mr Boisseau said there was an ongoing arrangement that the plumber can pick up keys for emergency.
44. Mr Boisseau said in cross examination that they had a tacit agreement that the Applicant wanted the work done and the plumber was to go and get this work done and finished. Mr Boisseau said permission for keys were given minutes after his conversation with the Applicant on the emergency phone regarding access to fix the plumbing.
45. Mr Boisseau said that in terms of documentation and communications going out the firm must have the letting agent registration number. He said that it was on all the footers of our emails. Mr Boisseau said the letter on 21<sup>st</sup> April 2023 referred to may have had the registration missed because it was a PDF attachment. He refuted any suggestion that this was the case.

46. Mr Boisseau refuted that there had been any intimidating behaviour towards the Applicant and said that Ms Ross had been under constant personal attack from the Applicant. Mr Boisseau said that their manner and how they have conducted themselves had been under huge personal attack with ongoing relentless nit-picking of the finest details from the Applicant. Mr Boisseau said that the installation of the gas pipes was because the landlord chose to do their work themselves as their plumber quoted increased costs than her own plumber so she went for the cheaper quote which was £400-£500 less. The landlord confirmed the work had taken place and the new boiler had been fitted. Mr Boisseau said that the Respondent's chased the landlord for the documentation, and the plumber had not fitted it properly and had not provided a larger pipe. He had instructed to isolate the boiler to have cooking facilities. A new gas safety check was provided, one for the interim gas hob and one to include the boiler. He said there was only one in January. They had left messages for the plumber and with the landlord for the certificate after the installation.

47. Mr Boisseau said it was a brand new boiler in the property at let and it was assumed to be fine by them. He said they were not to know the installer had not installed it properly but it became apparent there was a smell of gas when in use. Mr Boisseau said the Applicant sought entry on the first day back from holiday and this was earlier than would be the case. They were obliging when she asked to get moved in earlier. Mr Boisseau said the changes to the lease sought by the Applicant prior to entry did not have any merit and they did not seem relevant as they did not make any difference. Mr Boisseau said that he had been working with a lot of his tradesman for 30 years and there is an ongoing arrangement if there is an emergency then they can seek keys at the office. Mr Boisseau said that there had been a legacy post covid which allowed contractors to come in for keys, sign then out and in. Mr Boisseau said that the office has an electronic sign in and out database for keys and access. Individual property managers give permission. Mr Boisseau said it was himself that authorised keys on this system for the Applicant's property.

## **5. Submissions**

### *For the Applicant*

The Applicant set out that the Respondent's by their own admission confirmed that the property was empty from September 2022 to the move in day of 28<sup>th</sup> December 2022. She submitted that her application to move in was made on 22<sup>nd</sup> November 2022 and accepted on 7<sup>th</sup> December 2022. She said that the Respondents had plenty time to make efforts to get the property ready before the morning she was due to move. She submitted there was no reason for work to take place that morning.

The Applicant submitted the Respondents had breached the code and she referred to her timeline lodged dated 25<sup>th</sup> May 2023. She asked that the Tribunal put weight on that document and the evidence highlighted within it. She submitted the Respondent's conceded that more care has to be taken, that they blamed heatable for the gas safety check errors and they blamed Safe Deposit Scotland for the tenancy deposit matters.

She said they had not adequately addressed the issue of the keys given out and no notice was given to her the tenant.

She submitted further that there was a breach of the letting agency code of practice and defamatory things had been said about her. Having considered the evidence there are parts of email chains that are missing from those lodged by the Respondent and later being referred to, as well as oral phone calls not recorded. The Applicant said evidence has been submitted incorrectly and has been misleading to herself and others including the Tribunal.

For the Respondent

Ms Ross referred also to her written representations. She said it showed clearly the Respondent chasing gas safety certificates, chasing heatable, apologising for errors and trying to deal with matters regarding the tenancy quickly. The Applicant had put lies in facebook posts to the contrary. Ms Ross said that the Respondent's responded to the Applicant's complaint, to making repairs as quickly as possible but that it was never enough for the Applicant. The Respondent said that the Applicant continues to bring tribunal cases against them. They had resolved the gas leak matter with sending £241 in February 2023 to her for the days without heating. She had accepted compensation and that even to this day they have had an email from the landlord who has had documents to her personal door asking for advice as they have received another application from the Tribunal sent to the landlord.

## **6. Findings in Fact and Law**

### *Tenancy Commencement*

1. On 21<sup>st</sup> December 2022 the Applicant entered into a Private Residential Tenancy for the Property. Prior to that execution the Applicant had sought to negotiate and change some of the draft tenancy terms without success before she entered into same. The Applicant had viewed the tenancy in November 2022 and subsequently made an application to rent the tenancy.
2. The deposit for the PRT was £950. This was paid by bank transfer by the Applicant to the Respondents letting agency on 20<sup>th</sup> December 2022 at 12:18.
3. The Respondent on 4<sup>th</sup> January 2023 in terms of the Tenancy Deposit Regulations send to the Applicant an email with the prescribed information.
4. The prescribed information correctly noted the landlords details, the registration of the landlord and the address of the property.
5. The prescribed information incorrectly noted the date of the deposit being received as the 20<sup>th</sup> November 2022 and not the 20<sup>th</sup> December 2022 as well as the deposit amount being zero rather than £950.
6. The Respondent did not provide the prescribed information as necessary to the Applicant in terms of Regulation 3.
7. The Applicant has taken separate proceedings regarding the prescribed information but she relied on the failure to provide the correct prescribed information in this application.

8. The agreed move in date was the 28<sup>th</sup> December 2022.
9. Prior to the said tenancy commencement the landlord arranged directly with her own plumber to replace the boiler in the property.
10. The Applicant asked to move in on 28<sup>th</sup> December 2022. Permission was granted.
11. The Respondent's would normally release keys for a property to allow final checks and the inventory to be done at 12 noon on the entry date. They had been unable to complete final checks before the 28<sup>th</sup> December 2023 as this was the first office day back for staff after the festive period. The Respondents released the keys but carried out the inventory and directed their cleaner to make good issues within the property and to carry out the necessary clean before entry.
12. On the 28<sup>th</sup> December 2022 there was email communication between the Applicant and the Respondent about the instruction of the cleaner and the steps taken to clean and complete the inventory.

#### *Tenancy Entry*

13. On Friday 30<sup>th</sup> December 2022 the Applicant attended the property with a friend and immediately smelled gas. She reported same to the Respondent's emergency line. The Respondent's indicated they would call a plumber who called the Applicant directly. The plumber made arrangement with the Applicant and the plumber visited the property the next day. The fault was noted to be an incorrect installation of the new gas pipes to the new boiler that the landlord's own contractor had carried out before the tenancy commencement. Replacement of the pipes were required and the plumber made safe the flat in the meantime.
14. The Applicant considered that she would continue to be present and to authorise the works done. She had not yet moved into the property and given the position regarding the property decided to stay elsewhere with her children until the works were done.
15. On 2<sup>nd</sup> and 4<sup>th</sup> January 2023 the plumber visited the property. He considered having met the Applicant and on the basis she was not yet residing at the property until the urgent works were carried out that he continued to have authorisation from her and from the Respondents to access the property and carry out the urgent works. The Respondents by digital sign out system authorised keys to the Respondent for the property for this purpose.
16. The Applicant attended at the property during this period and became aware the plumber had gained access. She was not aware that there had been an authorised release of keys to him. She took steps to clarify when the keys were authorised and by whom as she had not authorised direct access.

#### *The Code*

#### Paragraph 19.

17. The Respondents did not provide information that is deliberately or negligently misleading or false. Whilst it is accepted by them that they provided the incorrect gas safety certificate to the Applicant this was neither deliberately or negligently misleading or false. The Tribunal notes that the Respondent's did not provide the correct prescribed information and this has been dealt with in a separate application this was also not deliberately or negligently misleading or false. The Respondent's believed themselves to have provided the necessary information on the deposit having lodged same in the correct timescales. They later found out given IT changes this was not the case.

#### Paragraphs 62 and 68

18. The tenancy agreement provided meets the relevant legal requirements and the Respondents did not breach Paragraph 62.
19. The Inventory carried out by the Respondent's out with the presence of the Applicant on 28<sup>th</sup> December 2023 was subsequently produced. The Applicant reports repairs and made notes. The inventory was not signed or returned and there was therefore a breach of Paragraph 68 of the code.

#### Paragraph 73

20. The Respondent's did not breach paragraph 73 of the code on the evidence before the Tribunal. There was no formal evidence before the Tribunal that the property did not meet the repairing standard and no application had been separately made in that regard.

#### Paragraph 82

21. There was no breach of Paragraph 82. The Applicant reported an urgent and emergency matter concerning the presence of gas out of hours. She received a call from the Respondent's plumber directly and she made arrangements to meet the plumber at the property the next day. Arrangements were made to repair the fault urgently despite the new year period. The Applicant confirmed she would not move into the property and reside elsewhere until the urgent matter was dealt with. The Respondent's authorised release of the keys of the property thereafter to the plumber on the 1<sup>st</sup> January 2023 on the basis that this authorisation had been agreed by the Applicant on the 31<sup>st</sup> December 2022 at the property. They digitally authorised the keys in and out of the system. The tenant was given reasonable notice of entry, she was directly in communication with the plumber and she sought the repair urgently before she moved in. The Applicant authorised the access and repair of the urgent fault.

#### Paragraph 83.

22. The Applicant did not refuse access and no warrant was necessary the Respondent's did not breach paragraph 83.

Paragraph 84

23. The Respondent did not breach paragraph 84 as the only third party allowed access was the plumber whom the Applicant met and spoke with regarding arranging the urgent gas repair.

Paragraph 85

24. The Respondents complied with the relevant statutory duties regarding gas safety and such as noted in the code but they struggled to obtain a digital copy of the latest annual gas safety inspection as the plumber who carried it out was directly instructed by the landlord and not them. They were not responsible for that gas safety check and as such this paragraph was not breached.

Paragraph 86

25. The Respondents responded to the request for the urgent repair appropriately and took action regarding issues noted by the Applicant and by their completion of the Inventory and the Respondent's accordingly did not breach Paragraph 86 of the code.

Paragraph 88

26. The Respondent's arranged for an urgent plumber request to be carried out and for the plumber to contact the Applicant urgently. The work was carried out urgently and the Respondent passed the necessary details to parties, in doing so they did not breach paragraph 88 of the code.

Paragraph 91

27. There was no breach of paragraph 91 as the Applicant was aware the urgent repair was being undertaken.

Paragraph 92

28. There was no breach of paragraph 92 as the Applicant was aware the urgent repair was being undertaken and access was given.

Paragraph 94

29. There was no breach of paragraph 94 as the Respondent's when they became aware of a defect in the work instructed by the landlord arranged for an urgent repair by their plumber.

Paragraph 107

30. There was not a breach on balance of this paragraph of the code, for the purposes of legal correspondence with the Tribunal after the Applicant's application this was not relevant. There was no evidence that this was the practice of the Respondent to not include their registration but they had accepted by PDF or if an email was copied in their correspondence then the footer may have been removed by this was not the substantive communication.

#### Paragraph 111

31. The Respondent's did not communicate with the Applicant in any way that is abusive, intimidating, or threatening. The communication regarding the tenancy terms before the tenancy was entered into was not abusive, intimidating, or threatening

### **7. Reasons for Decision**

The Tribunal had the benefit of written representations from both parties and evidence in the form of what appeared to be email communications between both parties during the relevant time period, as well as copy of complaint correspondence and screenshot pictures. The Tribunal also had the benefit of oral evidence of the Applicant, Ms Ross and Mr Chris Boisseau. The Applicant's evidence on dates and factual matters concerning the relevant time period was credible. Her evidence was solely focused on establishing that the Respondents had breached the code. She minimised the compensation given and accepted by her in regards the material matter of the urgent gas supply. She maintained she gave no authorisation for the keys but had directly arranged and communicated herself with the plumber and sought the repair urgently in order for her to safely move into the property herself. She on the one hand sought that the matter be dealt with urgently but on the other retrospectively sought to establish that the same plumber did not have authorisations to complete the repair.

The Tribunal determined that the Ms Ross and Chris Boisseau were credible and gave honest evidence which was straight forward and consistent with each other. Chris Boisseau had significant experience in the field and he was clear that he dealt with the matter of the urgent repair seriously and assisted the Applicant appropriately. Ms Ross gave the most credible evidence in the face of difficult challenges and consistent constant complaints from the Applicant directly. She conceded she had made a mistake regarding the gas safety check and despite the criticism of her in cross examination ad throughout the case her evidence remained reasonable, measured and appropriate.

The breach of the code which the Tribunal established may have caused some inconvenience and difficulty for the Applicant on the basis she did not have the signed and agreed inventory.

It was the view of the Tribunal that the significant distress and disputes which affected both parties was due to the animosity and lack of relationship between them rather than any clear breach, on a balance of probabilities, in respect of the code. The

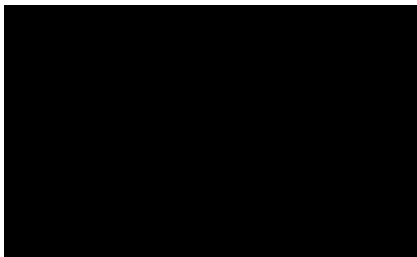


Tribunal felt that much of the disputes and disagreements could have been avoided or minimised had both parties been receptive to finding reasonable ways to resolve issues which had occurred.

Nevertheless one breach of the code was found to be established by the Applicant and accordingly the Tribunal considers in their discretion having regard to all the factors in this case it is appropriate that the Respondent's make payment of the sum of £100 to the Applicant in terms of S48 of the Housing (Scotland) Act 2014.

### **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.**



20/10/2023

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**Legal Member**

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**Date**