



Decision with statement of reasons of a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(6) of the Housing (Scotland) Act 2014 and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (“the Procedure Rules”) Rule 95

Chamber Ref.: FTS/HPC/LA/23/1131

**Re: Property at 21 Dunnikier Way, Edinburgh, EH17 8HJ
 (“the Property”)**

Parties:

Ms Wai Ying Cecillia Lai and Mr Tai Chu Ko, Flat 3, 8/F Cables Wynd, Edinburgh, EH6 6DU (“the Applicant”)

Zone Letting Lt, 30 St Stephen Street, Edinburgh, EH3 5AL (“the Respondents”)

Tribunal Members: Melanie Barbour (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The tribunal finds that there has been a breach of paragraph 85 of The Letting Agent Code of Practice; and that there has been no breach of paragraph 108 of the Code. The Tribunal makes a Letting Agent Enforcement Order that the letting

agent shall pay the sum of £200 to the Applicant as compensation for the breach within a period of 28 days following service of the order.

Background

1. On 12 April 2023 the Applicant lodged an application with the Tribunal seeking to enforce the Letting Agent Code of Practice against Zone Letting Ltd.
2. The Application was accepted on 5 May 2023.
3. The Applicant alleged two breaches of the Letting Agent Code of Practice, namely.
 - a. Management and maintenance paragraph 85
 - b. Communications and resolving complaints paragraph 108.
4. A case management discussion took place on 18 July 2023. In attendance was Mr Ms Lai and Mr Ko the applicants. Mr Ross Winton on behalf of the letting agent. Also in attendance was Mr Chan who was appointed as an interpreter for the applicants.
5. The applicants had submitted written representations on 14 June 2023. The letting agent confirmed that he had had sight of those representations. The letting agent had submitted written representations on 13 June 2023. The applicants confirmed that they had had sight of those representations. The tribunal heard from both parties in respect of the application during the case management discussion.
6. At the end of the hearing the tribunal issued a direction seeking the following information: - The letting agent shall submit to the tribunal and at the same time copy to the other party the following documents: -

- a. The tenancy agreement
 - b. Any complaints procedure which the letting agent has.
 - c. Any equality procedure which the letting agent has.
 - d. Any communication procedure which the letting agent has.
 - e. Any policies regarding checking-in, and inventories which the letting agent has.
 - f. The letting agent provided this documentation by email on 27 July 2023.
7. The letting agent complied with that direction. The tribunal decided that it did not require to hear further from the parties on the further documents submitted.

Discussion

8. At the case management discussion, the following discussion took place.

Para 85: if you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (...) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.

9. The applicants advised that they considered that there had not been pre-tenancy checks in place because, the photographs show a lot of personal possessions in the home or the property. They advised that photos show the garage with a King size bed mattress, bag of cushions, 3 plastic boxes, and other items. There were other boxes in the garage, which were taped up. The applicants did not know what was in these boxes. These boxes and items were substantial in size. There was also a used lawnmower. Beside the boiler, there were other bulky items, including flooring and tiles. There were other items. This was not a comprehensive list. There was also a cabinet in the house which had a number of items in it, and they should not have been there either. There were items of cutlery and crockery.

10. None of these items were in the inventory.
11. They had viewed the property in January 2023. It had been occupied at that time. The landlord was still living there. The viewing took place with the letting agent. The applicant had asked what would be left in the property when they took entry. The letting agents had advised them that it would be whatever was said on Rightmove website (see applicant's production pages 6-7) those written materials determined what would be in the property. On the Rightmove website, it said large garage included. It was said to be fully furnished.
12. The applicants had not understood the meaning of "fully furnished" as they had just arrived from China. They had asked the agents about this. They were told that what they saw on the Rightmove website was what they would get, and that there would not be additional or unnecessary items. But this was not the case, there were personal items in the property, not included in the literature and they took up a lot of space in the property.
13. When they took entry and saw what these items, they emailed the letting agent on the 15th of February 2023. Their solicitors also contacted the letting agents twice. They were advised that they had to "properly safeguard" the items in the property.
14. In an email received with the inventory, it says that when the property is returned it should be intact. They could not tell what some of the items were in the garage. They advised due to this they could not obtain house and content insurance, as they do not know what they were asking the insurance company to cover: they don't know if these items might be a fire and safety hazard. They asked to be told what the items were. They advised that they did not agree to storing the landlord's personal items for the landlord. They advised that deprived them of their right to use the space.

15. They had received the tenancy agreement on the 15th of February 2023. They asked if the items in the garage were included in the inventory. [See pages 33-55] The inventory had been sent to them on 16th of February 2023.
16. Mr Winton from the letting agents advised that the letting agents were responsible for pre-tenancy checks' and for complying with regulations. They were responsible for issuing the inventory and had done this before or at the start of the tenancy.
17. The letting agent advised that they carry out pre-tenancy checks. The letting agent also take pre-tenancy photographs. The photographs are sent separately from the inventory.
18. He advised that it appeared that the tenancy agreement commenced on 15 February, and this inventory was sent out on 16 February 2023.
19. The letting agent advised in response to the statements that the property was not as per what was shown on the Rightmove website, he said that the website shows the key features of the property, and it does not set out a list of every item in the property.
20. He advised that when the letting agents do a viewing and the property is occupied, they are not always aware of what the tenants want to know, but if asked they will find out.
21. They present tenants with the inventory and if they find any unwanted items, they will discuss this with the landlord.
22. The letting agent was asked if the email from the applicant on 16 February at 12.00 was not an instruction of the items they wanted removed. The applicants advised that they had been told that they had to provide a specific list of items they wanted removed from the property. He advised that he did not receive a specific list.

23. The letting agent was asked if the landlord was prepared to remove any items. The letting agent advised that they were removing the large mattress and bath seat; they were also willing to attend to remove other belongings as well; they were flexible about removing unwanted items.
24. He advised that the tenant did not allow time for the complaint to be resolved.
25. The tenants noted that in some boxes, they had no idea what was inside. The letting agent was asked if the letting agent had been prepared to remove those. He advised if they were things that the tenant decided were not of use and the landlord agreed, then they could be removed. He advised that the letting agent had tried to assist them living in the property, but they were met with responses from the tenants that they did not need the letting agents' help.
26. He referred to his email of 20 February 2023. He had offered to meet them, but they were not met with a response, he believed that they were not happy with the property. The agents had tried to find a reasonable resolution.
27. He was asked about the statement that he had been seeking a resolution, but the landlord was not agreeable to items being removed. The letting agent advised that he was not aware of such correspondence, and he was not privy to it. He said that by email of 20 February 2023 at 10.34 it showed the letting agents had been willing to remove small unwanted items and to make the property more comfortable to live in. He had indicated that they were not trying to mislead the applicants, and they were trying to find solutions to assist them.
28. The letting agent was asked why the emails and photos were not sufficient to make up the list of unwanted items. The agent said he would have preferred a bullet-pointed list, but the applicants took photos. He would have preferred it to be set out in writing.

29. The applicants advised that there were a number of items not listed on the inventory. The letting agent advised that the applicants were issued with an inventory which included a list of items in the property and there were photos attached as well. He advised that he did not know which items the applicants were referring to and making comments about. An amendment could have been to the inventory if necessary, so if there were any discrepancies, the agents would have looked at it.
30. The agent was asked should the boxes of tiles, mattress, and chairs had not been on the inventory. He advised that they were shown the pre-tenancy photos.
31. The letting agent was asked to explain the process followed where tenants do not agree with the inventory. He advised that tenants are asked to respond or make comments. If they respond to the inventory the agents will review what is in the inventory. If there are discrepancies in the inventory, then they could agree to amend the inventory and re-sign it.
32. The applicants thought it was not reasonable or professional to say that submitting photos was not a sufficient way to provide a list of unwanted items. They thought it was enough. The items they wanted removed were not on the inventory. The applicants said they were not able to communicate in English and therefore had to use email to communicate. They had spent time preparing the list of evidence to show to the tribunal and spent time and money dealing with the agent. They were new immigrants in Scotland and they needed extra time and effort to settle in. Dealing with the agent had been very time-consuming and had affected the applicants' sleeping patterns.
33. The applicants said that both the landlord and the agents had not provided a decent service and the punishment had been on the applicants, they have lost their deposit and lost money.
34. They said that the agents' service is not free, and it's paid for as part of the tenancy agreement, and their role should have been to serve both parties and

the service should be fair and equal to both parties. They considered that the service was unfair and had financially penalised them.

35. The letting agent had no questions for the applicants. He submitted that the tenants' deposit had been returned to the tenants in full. In terms of having to pay for their legal fees, he noted that the housing and property tribunal is a free service.

36. The letting agent said that their service had not been unprofessional, when they met the applicants, they had been very pleasant, friendly and polite. As soon as they had found out that the applicants had issues, they tried to deal with them, but they had not been given time to do so, and the applicants were not happy with the accommodation. They have not been misleading through the process. The tenants had signed a contract, that provided that they had to give notice of 28 days, the letting agents acted in accordance with the terms of the notice. He did not consider that they were in breach of the code.

Para 108: you must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

37. The applicants advised that they were not familiar with the letting agents' regulations. However, when they were at the property, there were items there, and they did not know what these items were.

38. They were asked if they had received information from the agents about their complaints policy. They were not sure about the regulations, however, when they had had one month's rent deducted, they had consulted their lawyer and took advice. They considered the deduction of one month's rent was unfair.

39. The letting agents advised that there was no evidence that the agent had not responded in a reasonable timescale. He advised that they had replied in a

timely manner, and he did not consider that there was any breach of this part of the code. They had been quick to respond to the tenants' queries and complaint.

40. The agent was asked to confirm when the tenancy agreement had been signed by the applicants, he advised that it had been issued to the applicants on 31 January 2023, and had been signed electronically on 1 February 2023. The applicants both agreed that this was correct.
41. The applicants confirmed that they did not lose their deposit, but they had lost their rent. They also had to pay council tax for the month. They submitted that while the letting agent had said that he had not been given the time or the opportunity to deal with matters, they had faced a problem and had not been sure what action to take. They had followed instructions in the email with the inventory and responded in the timescales, and they were not happy with what the letting agent had said that the letting agent had not been given time to deal with matters.
42. The agent advised that the applicants had referred to the loss of rent and council tax, they were charged with rent until the tenancy agreement ended, this was as part of the contractual agreement. The obligation to pay council tax is also in the tenancy agreement.
43. The agents advised that his reference about not being given time to deal with issues, he advised that they had returned the keys quickly and the agents were not given a chance to resolve the problems and give the applicants a comfortable residence.
44. The applicants' statement notes that within a week of them returning the keys the owner had signed a new tenancy agreement for the same rent and period and this indicated no loss substantial enough to warrant confiscating their rent.

Findings in Fact

45. The letting agent is Zone Letting Limited. The letting agent was appointed by the landlord to carry out letting agency work in relation to the house occupied by the tenants.
46. The applicants are Ms Wai Yang Cecillia Lai and Mr Tai Chu Ko.
47. The applicant signed the tenancy agreement on 1 February 2023.
48. The property in the tenancy is 21 Dunnikier Way, Edinburgh.
49. The date of entry was 15 February 2023.
50. Clause 8 deals with rent which starts on 15 February 2023.
51. Clause 25 deals with condition and contents and provides that “the tenant will receive a copy of the inventory no later than the start date of the tenancy. The tenant has a period of 7 days from the start date of the tenancy to ensure that the inventory is correct and either 1. To tell, the landlord of any discrepancies in writing after the inventory will be amended as appropriate or 2) to take no action and ... then at will be deemed fully satisfied with the inventory.
52. The tenants viewed the property before entering into the lease. The landlords lived in the property at that time.
53. On 15 February the applicant collected the keys for the property. They asked the letting agent if they checked the inventory and condition of the house with the letting agents when moving in. On 15 February 2023 the letting agent advised that they would issue an inventory and the applicant would have 7 days to go through it and check it over. The letting agent does not do a walk round.

54. On 15 February 2023 the applicant advised the letting agent by email that the property was dirty, with scratches and there were a lot of items in the house which should be removed, that she did not have enough space to store her belongings or park her car in the garage due to there being lots of items in the garage. The applicant attached pictures of the items and requested that the owner remove the items.
55. The garage had items stored in it on 15 February 2023 which included a mattress, boxes of tiles, flooring, plastic boxes, a lawnmower, strimmer and some garden furniture and other items.
56. On 15 February the letting agent asked the applicants to provide a list of the items that they wanted to have removed. On 15 February 2023 the applicant advised that they wanted to have the items in the garage, the dishes and bedding removed. They also attached photos to the agent showing the items.
57. On 16 February 2023 the letting agent emailed the applicant to advise that they had to return the inventory signed within 7 days of receiving it or they would be assumed to have accepted the inventory. The inventory made reference to "wooden storage unit with cutlery, toasters, utensils inside, check inv pics". The email stated that the landlord had indicated that he was not willing to have anything removed from the property, except for a bath seat.
58. On 16 February 2023, the applicants emailed the letting agent to advise that this was not reasonable. The applicant advised that they were unable to use the garage and couldn't use the cabinet due to items being left in both. The applicant sent a further email, asking the landlord to remove the belongings and asking that it be resolved by Friday.
59. On Friday, 17 February 2023 the letting agents advised that they would come to the house to investigate the matter on Monday, 20 February.

60. On 17 February 2023 the applicants advised the letting agent that they had not moved into the property. She asked that the matter be resolved that day, or they were terminating the tenancy.
61. On 17 February 2023 the applicant advised that they wished to terminate the lease.
62. On 17 February 2023 the letting emailed the applicants noting that they were terminating the tenancy and confirming that 28-day notice had to be provided
63. On 17 February 2023 the applicant disagreed that notice had to be provided, as she had advised that she had not gotten vacant possession, and she could not use the garage. They considered that there were also fire and insurance risks in storing boxes when they did not know what their content was.
64. On 21 February 2023 the letting agent emailed the applicant advising that the landlord did not agree with the tenants' issues. If the tenants were unhappy, they could give notice to terminate.
65. One month's rent was retained by the landlord.

Reasons for Decision

66. The tribunal found both parties to be credible and reliable in their submission at the case management discussion. We thought that both parties did their best to give a full account of what was asked of them, and both submitted documents in support of their case.
67. This application involves two alleged breaches of the code of conduct. The issues in summary relate to items left in the property by the landlord, should those items have been there, and should they have been noted during pre-tenancy checks.

68. It appears that the offending items included cutlery and dishes left in a cabinet and some bedding, these items were in the main part of the house, and various items in the garage, which included bulky items.

69. The applicants assert that these items were of concern to them. They were not included in the inventory of items they were given. The items were unexpected, given the terms of the discussions which had taken place with the letting agents when they viewed the property. The items in the garage meant they were unable to store their own furniture there and use the garage to park their car in it. They also asserted that they did not know what was in some of the boxes, and this posed a risk to them. They were unable to insure the property as the property contained unknown items.

Para 85: if you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (...) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.

70. The applicants' complaint is that the letting agent did not have appropriate systems in place and controls to ensure that the pre-tenancy checks were done to an appropriate standard. When the applicant took entry to the property there were unexpected items in the property. The applicants consider that the letting agent had therefore failed in its duty to properly carry out the pre-tenancy checks. If they had done it properly these items would not have been there or they would have been listed on the inventory. The letting agents disagree.

71. We note that the inventory makes reference to items in the wooden cabinet. These items were small, and while the applicants advise that they had no notice that these items would be left in the property when they had asked about what fully furnished meant at the viewing, we do not consider that there has been any failure on the part of the pre-tenancy checks by the letting agent for these

items. They are referred to in the inventory and this would appear to be appropriate.

72. It appears to us however that some of the items in the garage should have been referred to in the inventory and therefore should have been highlighted during the pre-tenancy checks. The only reference in the inventory to the garage is in the following terms *“appliances for the maintenance of the garden are kept in the garage.”* The photographs show a number of items in the garage, not all of which are for garden use, there are a number of boxes and other items shown. We consider that some of the items may have impacted on the tenant’s use of the property as they were taking up space. It would seem reasonable that the applicants would have been concerned to find these items in the property when they got the keys for the property on 15 February 2023. If the applicants were told to look after the boxes and not told what was in them, then it is difficult to understand how that could have formed any part of the tenancy agreement. If the applicants were unable to use the garage to store their own property and to park their car in the garage, then again it would appear that this would not have formed part of the tenancy contract that they considered that they were entering into. There is no reference to any of these items in the inventory.

73. We consider that the letting agents in carrying out the pre-tenancy checks should have either arranged with the landlord to have the items removed or should have alerted the tenants to those items by having them set out in the inventory.

74. Further, from the correspondence from the letting agents it is clear that the landlord was not prepared to have the garage items removed. Given this also, these items should have been included in the inventory. We note that the applicants had asked what items would be left in the property when they had viewed it and had been referred to the Rightmove Website. There was no reference to any items on that website. We consider that these items should have been listed in the inventory. The failure to notify the applicants about these

items or include them in the inventory does appear to us to be a failure to carry out pre-tenancy checks in an appropriate manner.

75. We do note that the letting agent provided an inventory together with photographs of the property on 16 February 2023. We consider that they do have a system in place which appears appropriate, however it did not include all items on this occasion.

76. The tribunal considered it relevant that the applicants had recently moved from China to Scotland. They did not speak English and they communicated using email or text messages. This meant that they were not familiar with the letting regime in Scotland and it would be reasonable to assume that some extra time would be required to ensure that the applicants understood the letting process. We consider that this point may have been overlooked by the letting agents. We think that the letting agent could have taken more time to discuss with the applicants what would be left in the property. We note that the letting agent has no procedures dealing with Equality matters, we consider that ensuring equality matters were in place, is a requirement whether or not there is any specific reference in the code of conduct, and we would recommend that the letting agents review this part of their business going forward. While not referred to in the application we would draw to the letting agents attention that there is reference to the Equality Act at paragraph 51 of the Code.

Para 108: you must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

77. The correspondence submitted shows the applicants to be diligent in raising issues with the letting agents and having done so in a timeously manner. On the date of entry, they asked if the letting agents did a walkaround check with the applicants; they reported issues regarding the items on the 15th of February 2023. Thereafter there was a body of correspondence over the next few days between both the applicants and the letting agents about the unwanted items.

78. It appears to the tribunal that the letting agents were prompt in responding to the applicants when they raised their concerns.

79. The tribunal finds that the letting agent was trying to resolve the complaint and had been doing so quickly. We note the emails from the letting agent advised that they would come and box up and remove the smaller items. What appears to have happened however is that the landlord was not prepared to remove any of the items from the property, other than the mattress and the bath seat. We note that there is correspondence from the landlord that they would not remove anything else. On receipt of that correspondence, it would appear that there would have been little further that the letting agent could have done to resolve the issue.

80. We do not find that there has been a breach under this section, while we appreciate that the applicants were unhappy with the outcome, we find that the letting agents dealt with the complaint promptly.

Letting Agent Enforcement Order

81. The Tribunal made the following letting agent enforcement order:-

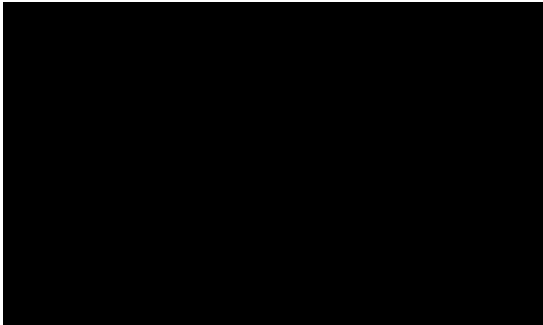
82. The Letting Agent shall pay the sum of £200 to the Applicant as compensation for the breach within a period of 28 days following service of the order.

Observed

83. The tribunal notes that this application seeks repayment of rent. We would highlight that this application has been brought against the letting agent for a breach of the code of conduct. The contract entered into by the applicants was with the landlord. If recovery of rent is sought, then an action against the landlord should be considered by the applicants.

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.



Melanie Barbour Legal Member

Date 06/11/2023