

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

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**First-tier Tribunal for Scotland (Housing and Property Chamber) Under the Housing (Scotland) Act 2014 (“The Act”)**

**Reference Number: FTS/HPC/LA/23/1666**

**Re: Property at 67 Falcon Road Morningside “The Property”.**

**The Parties:**

**Dr Sarah Rennie, 47 Weston Way, Northampton, NN3 3BN (“the Applicant”)**

**Belvoir Edinburgh, 28-28a Dundas Street, Edinburgh, EH3 6JN (“the Respondent”)**

**Tribunal Members**

**Andrew McLaughlin: Legal Member**

**Elaine Munroe: Ordinary Member**

**Decision**

[1] The Tribunal finds that the Respondent has not breached the Letting Agent Code of Practice (“The Code”).

## **Background**

[2] The Applicant seeks an order under Section 48 of the Act for a determination that the Respondent has failed to comply with the Code.

[3] The Application is defended on the basis that the Respondent contends that no breaches of the Code have occurred.

[4] There had been a previous Case Management Discussion and The Tribunal had made case management orders in the form of Directions regulating the further conduct of the case.

## **The Hearing**

[5] The Application called for a Hearing by conference call at 10 am on 18 January 2024. The Applicant was personally present. The Respondent was represented by their own Ms Strand.

## **Preliminary matters**

[6] Neither Party had any preliminary matters to raise. Both parties indicated that they would be their sole respective witness.

[7] The Tribunal thereafter began hearing evidence. The Tribunal heard from the Applicant, Dr Rennie.

*Dr Rennie*

[8] Dr Rennie gave evidence in support of her Application. She considers the Respondent to have breached standards, 17,18,19, 26, 32H and 96 of the Code. Dr Rennie

explained that her complaint primarily involved an allegation that the Respondent failed to disclose that a commission was payable to the Respondent from a third party in respect of the outsourcing of the repair of a bathroom basin. Dr Rennie also alleged that the Respondent failed adequately to manage her complaints. After Dr Rennie concluded her evidence, the Tribunal considered whether they had any questions in order to fully understand the evidence given. Ms Strand had the right to ask questions of Dr Rennie.

Ms Strand

[9] The Tribunal thereafter heard from Ms Sophie Strand. Ms Strand is a business development executive at Belvoir Edinburgh. She responded to the allegations and drew the Tribunal's attention to the terms of business entered into between the Applicant and Ryden, whose interest in managing the Property had been acquired by Belvoir. Belvoir had subsequently sent their new terms of business to the Applicant but Dr Rennie had declined to sign these. Ms Strand spoke to the handling of the Applicant's complaints and addressed those aspects of the Application. Again, the Tribunal asked certain question of Ms Strand to ensure it properly understood her evidence. Dr Rennie also had the opportunity to ask Ms Strand questions.

[10] At the conclusion of evidence each side had the opportunity to make closing submissions. The Tribunal asked each party to focus on the specific standards of the Code alleged to have breached by the Respondent and to address the Tribunal as to how the evidence heard would support such a finding.

[11] The Tribunal thereafter adjourned to consider its decision. Having done so, the Tribunal made the following findings in fact.

## Findings in fact

- I. The Applicant owns the Property known as 67 Falcon Road Morningside;
- II. The Applicant had instructed Rydens Lettings to let out and manage the Property on her behalf. She had signed written terms of business which set out the contractual relationship between the parties at that time;
- III. Those terms of business provide, in a section headed "*External Services*" the following: "*Where Ryden lettings arrange external services such as insurance we may earn commission from these service providers.*";
- IV. The Respondent had latterly sent out their own updated terms of business to the Applicant, but the Applicant had refused to agree to those terms. Nevertheless, those terms provide at condition 3.4 that "*The Agent shall be entitled to retain any interest on any monies collected while held in their account; and any commission earned or paid by third parties to the Agent while acting on behalf of the Landlord. Details of any financial interest in providing third party services is available to The Landlord in (sic) request.*"
- V. The Property required a replacement basin in a bathroom. The Respondent obtained quotes and asked the Applicant if she wished to proceed with the best quote. The Applicant confirmed her instructions to the Respondent to proceed with the quote to have the basin replaced;
- VI. By email dated 9 March 2023, the Applicant emailed Zoe Thomson, her then property manager, outlining her complaints about the matter to the Respondent. This was responded to by Zoe Thomson in an email dated 15 March 2023 which addressed each strand of the complaint. This email was

unequivocal in stating that *“Yes, First Plumbing add a commission to their estimates and this is retained upon payment of the invoice.”*

- VII. Prior to this exchange of emails, the Applicant by email dated 5 March 2023 had stated that ... *“The bottom line is I feel I’ve been overcharged for the Heritgae bathroom basin and pedestal by around £100.00.... How can we resolve this? I doubt now you will get any further with the contractor, so perhaps you could arrange a refund of £100 of next months fees”;*
- VIII. In the email sent by Zoe Thomson on 9 March 2023, the Respondent had offered a reimbursement of £100.00. They had previously offered a goodwill gesture of 10 per cent of the invoice paid. The Applicant calculated this as being the sum of £57.61 and rejected it. The Respondent then offered the £100.00 referred to;
- IX. However, the Applicant then was not satisfied with that offer (despite it initially being her idea) and escalated further complaints and then raised this Application;
- X. The Respondent has acted reasonably and as per their contractual obligations at all times. They disclosed the existence of the possibility of commission in the legacy terms of business and they continue to do so in their current terms of business. They never tried to hide this from the Applicant;
- XI. The Respondent dealt with the Applicant’s complaints in a patient and professional manner;

- XII. The Applicant's complaints are bordering on the extremely trivial but in any event do not have any merit in them.

## **Decision**

[12] The Tribunal carefully considered the standards of the Code alleged to have been breached and having made the above findings in fact, conclude as follows:

### **Standard 17**

*You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).*

[13] The Tribunal considers that the Respondent has not breached this standard.

### **Standard 18**

*You must provide information in a clear and easily accessible way.*

[14] The Tribunal considers that the Respondent has not breached this standard.

### **Standard 19**

*You must not provide information that is deliberately or negligently misleading or false.*

[15] The Tribunal considers that the Respondent has not breached this standard.

### **Standard 26**

*You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.*

[16] The Tribunal considers that the Respondent has not breached this standard.

### **Standard 32 H**

*Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out: h) that where applicable, a statement setting out details of any financial interest in providing third-party services (for example, commission for using certain companies, products or services) is available from you on request;*

[17] The Tribunal considers that the Respondent has not breached this standard.

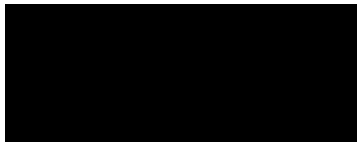
**Standard 96**

*On request, you must disclose to landlords, in writing, whether you receive any commission, fee, rebate or other payment or benefit and any financial or other interest you receive from a contractor/third party you appoint.*

[18] The Tribunal considers that the Respondent has not breached this standard.

**Conclusion**

[19] The Tribunal finds that the Respondent has not breached any of the alleged standards of the Code.



**Legal Member**

**Date 18 January 2024**