

Housing and Property Chamber
First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision: Section 43 Tribunals (Scotland) Act 2014 and regulation 39 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017.

Chamber Ref: FTS/HPC/LA/22/3604

Re: Property at Robert Owen House, 87 Bath Street, Glasgow, G2 2EE (“the Property”)

The Parties:

Mary Azubuike-Ndukwe, 88 Rissells Ride, Cheshunt, Hertfordshire, EN8 8TZ (“the Applicant”)

Xenia Lettings, Bank House, Old Market Place, Altrincham, WA14 4PA (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) considered the application for review submitted by the Respondent and determined that it would exercise its discretion to review the decision made by it and dated 25 September 2023.

Background:

1. The Tribunal considered an application submitted by the Applicant under Section 48 of the Housing (Scotland) Act 2014 (“the Act”) for a determination that the Respondent had failed to comply with the Letting Agent Code of

Practice ("the Code") as set out in the Letting Agent Code of Practice (Scotland) Regulations 2016, as amended.

2. The Tribunal held a Hearing on 12 June 2023 and issued a decision on 3 July 2023. The Tribunal granted a Letting Agent Enforcement Order ("LAEO") against the Respondent, ordering payment to the Applicant by the Respondent in the sum of £1,115. The Tribunal thereafter issued a Certificate of Compliance dated 25 September 2023 (hereinafter referred to as "the Decision") following receipt from the Respondent of evidence that the sum of £1,115 had been applied to the Applicant's rent account to offset against a debt due by the Applicant.

Application for Review:

3. On 6 October 2023 the Applicant submitted an email to the Tribunal requesting that the Tribunal review the Decision.
4. The Applicant's reasons for review are summarised as being that she disputes that there are any rent arrears due by her and therefore the payment due under the LAEO should not be offset against a debt in dispute.

Findings

5. The Tribunal considered matters in terms of the provisions of Section 43 of the Tribunals (Scotland) Act 2014 and Regulation 39 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 and determined that it would exercise its discretion to review the Decision and that the Certificate of Compliance dated 25 September 2023 is revoked.

Reasons

6. The Tribunal issued the Certificate of Compliance on the basis that it was satisfied that the Respondent is entitled in law to offset any credit due to the Applicant under the terms of the LAEO against any debt due to them by the Applicant. That position remains unchanged. However, upon review, the Tribunal notes that the debt referred to by the Respondent as being due by the Applicant is a debt in respect of rent arrears accrued under a tenancy agreement. In terms of the tenancy agreement entered into by the Applicant and under which rent fell due, that contract is between the Applicant on the one part and the Landlord, named as Valerie Clarke, on the other part. The Respondents acted as managing agents for the Landlord. Therefore, any debt due as a result of rent arrears is a debt due by the Applicant to the Landlord, Ms Clarke, and not due to the Respondent as the landlord's agent. The LAEO

creates a liability for payment by the Respondent to the Applicant. This cannot be offset against rent arrears which are not contractually due to be paid by the Applicant to the Respondent, but are contractually due to be paid by the Applicant to a 3rd party, namely the landlord.

7. Whilst the Tribunal notes that the Applicants disputes that any arrears are due at all, that is not a matter for the tribunal to determine under the terms of this application.
8. The Tribunal accordingly revokes the Certificate of Compliance dated 25 September 2023 and requires the Respondent to confirm within 14 days of intimation of this decision on them that the LAEO has been complied with.

Legal Member/Chair

Date: 15 November 2023