

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision and Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 50 of the Housing (Scotland)
Act 2014**

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)

Background

1. In this Decision the Housing (Scotland) Act 2014 is referred to as the "2014 Act"; the Letting Agent Code of Practice as set out in the Letting Agent Code of Practice (Scotland) Regulations 2016 is referred to as “the Code.”
2. The Tribunal considered an application submitted by the Applicant under Section 48 of the 2014 Act for a determination that the Respondent had failed to comply with the Code as set out in the Letting Agent Code of Practice (Scotland) Regulations 2016.
3. The Tribunal held a Hearing on 12 June 2023 and issued a decision on 3 July 2023. The Tribunal unanimously agreed that the Respondent had failed to

comply with paragraphs 21, 26, 85, 90, 91, 93 and 108 of the Code. The Tribunal thereafter granted a Letting Agent Enforcement Order (“LAEO”) against the Respondent, ordering payment to the Applicant by the Respondent in the sum of £1,115.

4. The Tribunal thereafter issued a Certificate of Compliance dated 25 September 2023 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.
5. Following an application by the Applicant for review of the decision to issue the Certificate of Compliance, the Tribunal revoked the Certificate of Compliance by way of a Decision dated 15 November 2023.
6. The Tribunal had 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. However, upon review, the Tribunal noted 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 on the other part. The Respondents acted as managing agents for the Landlord. 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.
7. Accordingly, the Tribunal revoked the Certificate of Compliance and required the Respondent to confirm within 14 days of intimation on them of the Decision to do so dated 15 November 2023, that the LAEO had been complied with. The Tribunal has received no such confirmation.

Decision

8. The Tribunal considered matters in light of the Overriding Objective set out in Regulation 2 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that in all the circumstances, the Respondent has not complied with the Letting Agent Enforcement Order.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014 a homeowner or property factor 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.

Legal Member/Chair

Date: 17 January 2024