



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

Decision with Statement of Reasons by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an Application under Section 48 of The Housing (Scotland) Act 2014 ("The Act")

Reference number: FTS/HPC/LA/23/1895

Re: Property at Flat 3, 20 Friars Street, Stirling, FK8 1HA

("the Property")

The Parties:

Ms Kate O'Donovan, Ms Kate Mundy, Ms Teale Robertson, Ms Erin O'Donnell

("the Applicants")

Sandstone Management, 14 Coates Crescent, Edinburgh ("the Respondent")

The Tribunal comprised:-

Mr Andrew McLaughlin-

Legal Member

Mr Sandra Brydon -

Ordinary Member

Background

[1] The Applicant seeks a finding that the Respondent has breached their obligations under the Letting Agent Code of Practice "The Code". The Application alleges that the Respondent has breached their obligations in respect of:

"The Overarching Standards of Practice;" (Standards, 17, 21, 24, 26, 27, 28)

“Management and maintenance;” (Standards 87, 88, 90, 91,93, 94, 95)

“Ending the Tenancy;” (Standard 100)

“Communications and resolving complaints;” (Standards 108, 111, 112)

[2] The substance of the alleged breaches ostensibly relates to alleged failures by the Respondent properly to manage ceiling repairs at the Applicants’ Property between August 2022 and May 2023. However, what the Applicants specifically say in their Application at part 6 C is that:”

“ As per the complaints letter which explains the promises made to us as the tenants with regards to rent reimbursement and the gas and electric reimbursement, they stated we would be reimbursed the daily rate of rent until the roof was fixed, and even up to the 3rd and 10th of May of their employees emailed us to say the ceiling was still damp and (sic)“

[3] The Applicants also go on to say at Section D of their Application that they also seek an apology as well as a re-calculation of the reimbursement they were offered by the Respondent. It is therefore apparent that the Applicants’ case is centred on taking issue with how it is proposed that they are to be reimbursed for certain sums whilst tenants at the Property during the period of the leaks.

[4] It is to be noted that this is neither an application for a payment order against the landlord for these sums and nor is it an application for a repairing standard enforcement order against the landlord. It would have been open for such an application to be made during the currency of the tenancy. The Tribunal is only therefore obliged to consider whether the Respondent has breached their obligations under the Code and what is to be done if it is found that they have. It is therefore not necessary for the Tribunal to forensically analyse the respective arithmetic of both sides regarding what sums may or may not be due and then to make an order that reflects that. That would be outwith the competence of the Tribunal in a case such as this.

[5] A previous Case Management Discussion took place on 27 October 2023. It had been decided that a Hearing would be required to determine matters. The Respondent had set out their formal response to the Application denying breaching the standards founded upon in the Application and attaching various documents they wished to rely on. The Tribunal had before it the Application itself and a large volume of emails and attachments submitted by the Applicants and a formal written response from the Respondent with emails and documents that the Respondent wished to rely on.

The Hearing

[6] The Application then called for an Evidential Hearing at 10 am on 30 January 2024 at Wallace House, Maxwell Place, Stirling. The Applicant was personally present. The Respondent was represented by their own Ms Leona Forshall.

[7] Neither party had any preliminary matters to raise. The Tribunal began hearing evidence. The Tribunal heard evidence from Ms Forshall and each of the Applicants. Each party had the opportunity to cross-examine the other and the Tribunal asked questions throughout. After hearing evidence each party then had the chance to make closing submissions. After hearing parties, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicants moved into the Property on 22 March 2021. They were tenants under a Private Residential Tenancy Agreement. An entity described as “The Iron Bridge Trust” was their landlord. The Respondent was their Letting Agent within the meaning of The Housing (Scotland) Act 2014. The Respondent was known as Grant Property Management Solutions Ltd at the time the tenancy was entered into. They later changed their name to Sandstone. The tenancy agreement notes that the Respondent were providing a fully managed service.*

- II. *Around 6 August 2022, The Applicants phoned an out of hours emergency phone line provided by the Respondent and reported a leak in the ceiling of the bathroom of the Property.*
- III. *This leak was dealt with by the Respondent and ultimately resolved by 29 October 2022.*
- IV. *The issues were with the roof of the tenement building in which the Property was situated. The landlord required the consent of all other proprietors in the building as the roof was owned in common. This caused delays in having the necessary repairs effected by the landlord.*
- V. *The Respondent must have taken action as extensive roof repairs were completed on the Property in October 2022 at a cost to the landlord of £7,380,86.*
- VI. *Further repairs were necessary to replace the felt on the roof at a further cost to the landlord of £4,726.48*
- VII. *The roof repairs however failed to prevent further water ingress and in March 2023, a second company of roofing contractors was hired to survey the roof. They concluded that further works were necessary as there were inadequacies in the first repairs carried out. The Respondent advised the Applicants that the Landlord was willing to pay for hotel accommodation for them for a temporary period. The Applicants declined this offer.*
- VIII. *The previous roofing company then attended again and attempted to resolve matters.*
- IX. *The Respondent was led to believe that the roof was finally free from any defects by 11 April 2023.*
- X. *The Respondent then received a further report of water ingress into the hallway of the Property and another roofing contractor had to attend once again to try and fix this on 20 April 2023.*

- XI. *All throughout this period, the Property suffered from leaks which caused disruption and inconvenience to the Applicants.*
- XII. *On 17 April 2023, the Respondent's Ms Forshall emailed the Applicants to update them on matters and explain what was happening.*
- XIII. *Ms Forshall had also been in communication with the Applicants by email on 10, 11, 13 and 14 April 2023.*
- XIV. *Ms Forshall's one time colleague, Diane Simpson has also been in email contact with the Applicants in a series of emails exchanged on 6 April 2023 about the roofing issues.*
- XV. *Diane Simpson was in touch with the Applicants by email on 3 and 4 April 2023.*
- XVI. *On 31 March 2023, Diane Simpson had also fully updated the Applicants by email as to the ongoing issues with the roof.*
- XVII. *On 30 March 2023, The Respondent's Hilary Ollason, had emailed the Applicants with an update about an electrician checking the kitchen electrics. There were also further emails sent that day by Diane Simpson about the roof repairs.*
- XVIII. *On 28 March 2023, the Respondent's Diane Simpson was in email communication with the Applicants about the roof repairs.*
- XIX. *On 28 March 2023, the Applicants had emailed Diane Simpson and had written "We raised the kitchen leaking again on 10th JANUARY and nothing was done to fix this other than a roofer came out to "check" and said everything "looks fine" so he didn't know why the water was coming in."*

- XX. *It appears therefore that the Respondent had also arranged for a contractor to inspect a further leak then at some point after 10 January 2023.*
- XXI. *On 3 February 2023, the Respondent's Hilary Ollason had been in email touch with the Applicants regarding a contractor attending at their property "to check the living room and kitchen leaks".*
- XXII. *On 18 January 2023, the Respondent's Hilary Ollason text messaged the Applicants confirming that "she had chased the roofer again this morning". Further text messages were exchanged that day.*
- XXIII. *Hilary Ollason also texted updates to the Applicant on 30 January 2023 and 3 February 2023.*
- XXIV. *The Applicants have also produced a chain of correspondence between the Respondent and the Applicants throughout March 2023.*
- XXV. *One of the Applicant's fathers, Christopher O'Donovan, regularly contributed to the emails exchanged between the parties. His communications were not always appropriate.*
- XXVI. *In an email sent on 12 May 2023, Christopher O'Donovan, sent an email which included the following "court proceedings and/or social media can destroy a company's reputation- let's not let this situation get to that. Be under no illusion, this is not just 4 students sandstone/landlord is dealing with. It is 4 very well educated families who will stop at nothing to ensure justice is done for our girls. This does not have to get any uglier, but sandstone needs to act to not start throwing process and rules and governing bodies in the ring."*
- XXVII. *This email was within the context of a broader email effectively asking the Respondent to make the Applicants an increased award of compensation. The reference to social media destroying a company's reputation is a thinly veiled threat and in the context of a*

negotiation over money is akin to an attempt to extract payment from the Respondent under threat of deliberately attempting to destroy their reputation on “social media”.

- XXVIII. *On 12 May 2023, Ms Forshall continued to email the Applicants with updates regarding her own recent inspection of the Property.*
- XXIX. *Throughout May 2023, Ms Forshall communicated with the Applicants in a business-like manner and negotiated an offer of compensation to the Applicants on behalf of the landlord and also in respect of the ongoing issues regarding the roof.*
- XXX. *The Respondents feel they should have been offered more money.*
- XXXI. *The Respondent has an appropriate complaints procedure and made this available to the Applicants on request. This has been submitted to the Tribunal.*
- XXXII. *The Respondent has been open, transparent and fair in their dealings with the Applicant.*
- XXXIII. *The Respondent has provided its services to the Applicants using reasonable care and skill and in a timely way.*
- XXXIV. *The Respondent has maintained appropriate records of their dealings with the Applicants. They have retained and produced copies of emails and documents regarding the issues germane to the Application.*
- XXXV. *The Respondent has responded to enquires and complaints within reasonable timescales.*
- XXXVI. *The Respondent has informed the Applicants promptly of any important issues or obligations on the use of the property that they became aware of, such as a repair or breach of the tenancy agreement.*

- XXXVII. *The Respondent has not communicated with the Applicants in a way that is abusive, intimidating or threatening.*
- XXXVIII. *The Respondent has in place procedures for dealing with emergencies (including dealing with out-of-hours incidents) and for giving contractors access to properties for emergency repairs.*
- XXXIX. *The Respondent did give the Applicants clear information about who will manage any repairs or maintenance, and which were set out in the tenancy agreement. This included giving the Applicants relevant contact details and the Respondent informed the Applicants of any specific arrangements for dealing with out-of-hours emergencies.*
- XL. *The Respondent did deal with repairs promptly and appropriately having regard to their nature and urgency and in line with your written procedures.*
- XLI. *The Respondent did inform the tenant of the action they intended to take on the repairs necessary and its likely timescale.*
- XLII. *The Respondent did inform the Applicants about any delays in carrying out the repair and maintenance work.*
- XLIII. *The Respondent did pursue the contractor to remedy the defects in any inadequate work or service provided.*
- XLIV. *The Respondent did take reasonable steps to ensure that the contractors used held appropriate professional qualifications and the necessary public and professional liability insurance.*
- XLV. *The Respondent did not try to persuade or force the tenant to leave without following the correct legal process.*
- XLVI. *The Respondent did respond to enquiries and complaints within reasonable timescales. (*

XLVII. *The Respondent did not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.*

XLVIII. *The Respondent does have a clear written complaints procedure that states how to complain to their business and made it available on request. It included the series of steps that a complaint may go through, with reasonable timescales linked to those set out in the terms of business.*

Note:-

[8] The Applicants experienced leaks in the Property which caused a great deal of frustration and disappointment. The Respondents offered a fully managed service and were effectively the one and only point of contact for the Applicants. It may therefore have been tempting for the Applicants to treat the Respondent as if they were the Applicants' landlord. They were not. That was an entity known as "Iron Bridge Trust".

[9] The Application makes clear that the Applicants are not happy with the offers of compensation proposed by the Respondent to resolve the issues. The Tribunal however cannot competently impose upon a Letting Agent what the correct offer of compensation is that they should make or how they should calculate it. The Letting Agent acts as an agent for the landlord and has a duty to put forward their client's settlement proposals. There is nothing to suggest that the Respondent has done anything wrong in respect of how they have gone about their business in that regard. The Applicants appear to be effectively complaining about the letting agent because they think the Respondent ought to have communicated a higher settlement offer on behalf of the landlord.

[10] The Applicants are under no obligation to accept the Respondent's proposals, but the more obvious means of seeking vindication of their legal rights would be by raising proceedings of some sort against the landlord. This might have included an application for a repairing standards enforcement order on the basis that the Property was not wind and watertight, an application for a rent relief order, or an application for a payment

order seeking reimbursement of certain sums allegedly improperly retained by the landlord under the tenancy between the parties. In the latter case, the Tribunal may very well be expected to determine what sums, if any, are then lawfully due to the Applicants. The evidence points to the Respondent carrying out their duties competently by liaising with the Applicants and the landlord to try and resolve matters.

The Standards

[11] Taking each alleged breach in turn, the Tribunal finds 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)”.*

[11] This is not upheld. The situation at the Property was very unfortunate but there is no basis for saying that the Respondent breached this standard.

Standard 21. *“You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way”.*

[12] This is not upheld. The Respondent appears to have gone about its business of trying to resolve a difficult situation in a reasonable manner. Just because the leaks were hard to fix, it does not follow that the Respondent did not act reasonably in trying to have them fixed.

Standard 24. *“You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code’s requirements.”*

[13] This is not upheld. The Respondent has produced invoices showing the works done on the roof and numerous emails exchanged between the Respondent and the Applicants.

Standard 26. *“You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement”.*

[14] This is not upheld. There is ample evidence of the Respondent communicating with the Applicants regarding the issues involved.

Standard 27. *“You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement”.*

[15] This is not upheld. Again, there is ample evidence of the Respondent communicating with the Applicants regarding the issues involved.

Standard 28. *“You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening”.*

[16] This is not upheld, Again, there is ample evidence of the Respondent communicating with the Applicants regarding the issues involved.

Standard 87. *“If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents if that is part of the service) and for giving contractors access to properties for emergency repairs.”*

[17] This is not upheld. There is clear evidence of the Applicants using an out of hours emergency line and the Respondent acting reasonably to deal with each issue as it arose. That’s not to say that each time the issue was resolved, but that is not the test in assessing whether the Respondent as been responsive and proactive.

Standard 88. *“You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g.you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies”.*

[18] This is not upheld. The Applicants knew fine well how to report repair issues to the Respondent. There was an online portal and also they used to text their point of contact regularly and receive responses.

Standard 90. *“Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures”.*

[19] This is not upheld. Again, there is clear evidence of the Applicants using an out of hours emergency line and the Respondent acting reasonably to deal with each issue as it arose.

Standard 91. *“You must inform the tenant of the action you intend to take on the repair and its likely timescale”.*

[20] This is not upheld. The emails and letters show the Respondent doing their best to resolve matters. It was clearly not easy to identify and resolve the problems with the roof and the Respondents were no doubt similarly in the dark about what was happening given the difficulties ascertaining the precise technical issues with the roof.

Standard 93. *“If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible”.*

[21] This is not upheld for the same reasons as standard 91.

Standard 94. *“You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided”.*

[22] This is not upheld. The evidence shows the Respondent doing just that to get the original contractor to resolve matters.

Standard 95. *"If you use a contractor or a third party, you must take reasonable steps to ensure they hold appropriate professional qualifications and the necessary public and professional liability insurance. You should hold copies of all relevant documents."*

[23] This is not upheld. The Respondent appeared to instruct contractors in a reasonable manner and there is no basis to conclude that they instructed contractors who were obviously not up to the job.

Standard 100. *"You must not try to persuade or force the tenant to leave without following the correct legal process".*

[24] This is not upheld. There is no merit in this at all. There was naturally a discussion at one point about the Applicants leaving the Property and all the Respondent did was suggest that as a potential option. It would have been odd if it hadn't been discussed given the Property was suffering from leaks. One might wonder why the Applicants didn't actually move out earlier.

Standard 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".*

[25] This is not upheld. The Respondent has been in active communication with the Applicants. The issue here is primarily that the Applicant's don't like the Respondent's proposal. That has been misrepresented as an alleged breach of this standard.

Standard 111. *"You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening".*

[26] This is not upheld. The Respondent's communications with the Applicants do not even come close to breaching this standard.

Standard 112. *“You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business”.*

[27] This is not upheld. The Respondents clearly do have a policy and have submitted it to the Tribunal.

[28] The Tribunal does have some sympathy with the Applicants in that there were a number of periods in which the Property suffered from leaks which caused disruption and inconvenience. If the Respondent had escalated the ongoing issues with the roof leaks to more senior staff at an earlier stage and treated the matter as a complaint then the management, communications and the coordination of the repairs to the roof could have been improved. But the Tribunal cannot conclude that the Respondent has breached the Code.

Decision

[29] Having made the above findings in fact and having considered the Standards of the Code, the Tribunal finds that the Respondent has not breached any of the standards of the Code.

[30] 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.

[31] Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the

decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Andrew McLaughlin

25 February 2024

Legal Member

Date