

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014

Chamber Reference: FTS/HPC/LA/23/1087

Property address: Flat 0/1, 61 Munro Place, Glasgow, G20 2BD (“the Property”)

The Parties

Miss Sharon Campbell, c/o 41 Currie Place, Glasgow, G20 9EQ (“Applicant”)

Property Bureau, Mellville House, 70 Dryman Road, Glasgow, G61 2RH (“the Respondent”)

Tribunal Members

Ms H Forbes (Legal Member)

Mrs E Dickson (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has not complied with paragraphs 21, 26, 37(a), 74, 102 and 108 of the Code of Practice for Respondents (“the Code”) as required by the Housing (Scotland) Act 2014 (“the Act”) and issues a Letting Agent Enforcement Order (“LAEO”).

The decision is unanimous.

Background

1. By application dated 5th April 2023, the Applicant applied to the Tribunal for a determination on whether the Respondent had failed to comply with paragraphs 21, 26, 32(j), 37(a), 74, 102, 104, 108 and 112 of the Code.
2. The Applicant indicated that she was seeking compensation from the Respondent as she had spent £5000 to get the Property back into letting condition after their contract ended.

3. By decision dated 1st June 2023, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.
4. By letter dated 7th July 2023, the Respondent made written representations and lodged productions.
5. A Case Management Discussion (“CMD”) was scheduled to take place by telephone conference on 10th August 2023. The Applicant was not in attendance. The Respondent was represented by Mr Paul McCluskey. The CMD was continued to a further CMD to allow the Applicant to attend.
6. A CMD took place by telephone conference on 16th October 2023. The Applicant was in attendance. The Respondent was represented by Mr Paul McCluskey. The application was continued to a hearing.
7. By Direction dated 16th October 2023, the following was requested from parties:

The Respondent must provide:

1. All documentation relating to the tenancy deposit scheme claim at the end of the tenancy, including details of evidence sent to the tenancy deposit scheme on behalf of the Applicant, and the outcome of the adjudication.
2. Any email or other evidence of notification to the Applicant during the period of managing the Property that re-decoration of the Property was recommended between tenancies.
3. Information to show the dates of individual tenancies of the Property over the 9-year period.

The Applicant must provide:

1. Vouching for any costs of repairing damage to the Property.
8. By email dated 6th November 2023, the Applicant responded to the Direction and lodged invoices in respect of works carried out to the Property. The Applicant also lodged witness details.
9. By email dated 26th January 2024, the Respondent responded to the Direction and lodged representations and productions.

The Hearing

10. A hearing took place by telephone conference on 6th February 2024. The Applicant was in attendance. The Respondent was represented by Mr Paul McCluskey.

Preliminary Issues

- 11.** Mr McCluskey explained that the Respondent's documents were lodged late because he had been unwell. The Applicant indicated she had no objection to the Tribunal accepting the documents late. The Tribunal decided to accept the documents.
- 12.** Mr McCluskey confirmed that the Respondent accepted breach of paragraphs 32(j) and 37(a) of the Code. The Tribunal decided to hear evidence in respect of paragraph 37(a).
- 13.** The Applicant indicated she would call her witness after discussion on each paragraph.
- 14.** The Tribunal heard from both parties in respect of each alleged Code breach.

The Applicant's position

- 15.** The Property was the Applicant's former home. She decided to let it as she was living abroad. The Respondent managed the Property on her behalf for a period of 9 years. The Applicant was initially happy with the Respondent. Communication was initially good, but later, she had to continually chase the Respondent for information. The property declined during the last tenancy. It was her position that routine inspections did not take place. She was distressed at the condition of the Property when the last tenancy ended. She spent around £5000 repairing damage.
- 16.** At the start of the agreement, the Respondent had indicated verbally that there would be quarterly inspections of the Property. The Applicant was to be made aware if work was required after inspection. There were eleven inspections over a period of nine years, during which there were three tenancies. The early inspections were every three to four months. With regard to the last tenancy, which lasted from 31st July 2019 to 10th October 2022, there were only two inspections. The Respondent had attempted to arrange an inspection for 24th December 2019 but access was not provided. No further inspection was arranged. The Covid-19 pandemic affected the situation from March 2020. On 29th September 2021, an inspection was cancelled and never rescheduled. On 1st June 2022, an inspection had taken place and dampness was found. This was not followed up. A return inspection was delayed, and then the tenant gave notice on 10th September 2022 of their intention to end the tenancy. The Applicant had initially been sent inspection reports by email, but the Respondent then stopped providing reports, or indicating when an inspection had been carried out. The Applicant was not informed that there were difficulties in getting access to the Property for inspections. The Applicant asked on two occasions if she could visit the Property when she was in the area, but she was told this was not possible while the Property was tenanted.

- 17.** After the tenant handed in their notice, the contractor appointed by the Applicant to carry out works during the periods of let attended at the Property and saw the extent of the damage. He did a video walk-through with the Applicant and provided her with photographs. The Applicant's position was that the photographs lodged showing the condition of the Property did not do justice to how bad the Property was. The check out report from the Respondent failed to reflect the issues within the Property, including failing to state that all radiators required to be replaced. The radiators were falling off the walls, and they were rusted. The walls were black with mould. The blinds were broken. The wooden floor had risen three inches. There were broken tiles. The Applicant would have expected the Respondent to have picked up on these things at an earlier stage during the tenancy. Although she accepted no inspections were possible during the pandemic, no inspections had taken place after the ban was lifted. The inspections were not timeous or robust, as the Applicant would have expected. She was told the heating had been on full with no windows open. The walls had to be treated and decorated. It was not general wear and tear.
- 18.** The Applicant said she had not been asked to decorate the Property during the nine-year period, and she had never been told that it should be decorated every three to four years. She would have done so if asked. If access had been permitted to her as requested, she would have assessed if this was required. She had to rely on the Respondent as property manager. She was diligent in dealing with any recommended repairs. She was keen to keep the Property in good condition as she intended to return to live there. There had been some damage between the second and third tenancies, such as de-railed wardrobe doors and missing items.
- 19.** The Applicant had to insist that the Respondent made a claim to the tenancy deposit scheme. The Applicant asked the Respondent to show her the documentation provided to the tenancy deposit scheme, but this had not been provided. She was kept informed of the progress of the claim. Initially, it was proposed that the sum of £800 be allocated to the Applicant. The Respondent's staff member recommended that the Applicant accept that decision or they would have to provide more information. She was unable to tell if enough information had been provided by the Respondent to the tenancy deposit scheme. After a request for a review by the tenant, who provided evidence that damage to a door had been there at the start of the tenancy, the sum of £600 was allocated to the Applicant with the remainder returned to the tenant. The Applicant said, although there were some issues within the Property at the end of tenancy that she would not have been too concerned about, she would have ensured all the relevant information was provided to the tenancy deposit scheme, including damage to blinds and the condition of the radiators. The Applicant said she had not considered taking action against the tenant, and would have expected guidance on that from the Respondent.
- 20.** The photographs lodged show the following: Dampness close to the window, stains and marks on the walls, a rusty toilet roll holder, deterioration and degradation of walls, black ceilings, rusted radiators, damaged blinds, risen

flooring and scratching to floorboards. In respect of the flooring, the contractor had told the Applicant he had never seen this kind of lift after a ten-year period. He checked and found no leak underneath. He could not determine what had caused it. There had been email communication about this matter between the Respondent and the contractor.

21. The Applicant said she was not informed of the outcome of the last inspection of the Property. Emails indicated she had asked for an update in July 2022. It was her position that the reason she had not asked for an update after 1st June 2022 was that she was probably busy. She felt she always had to be proactive in order to gain any information.

22. The Applicant took the Tribunal through the invoices lodged, as follows:

- (i) Cleaning - £185
- (ii) Replacement bulbs - £20
- (iii) Removal and disposal of two mattresses - £67
- (iv) Two mattresses - £228
- (v) Decoration - £1570
- (vi) New keys - £29.66
- (vii) Sparkle clean - £35
- (viii) Plumbing - £69
- (ix) Replacement blinds, radiators, toilet seats, reseal kitchen worktop area, supply and fit alarms and detector – £1980
- (x) Joinery work to flooring and pipe insulation – £432

23. The Applicant said multiple cleans had been required due to the level of dirt and grease. The new Letting Agent had asked for another clean after the main clean. One of the mattresses had been new before the previous tenancy. It was badly stained and needed replaced. The Applicant was not informed of this by the Respondent. The Property had to be decorated throughout due to the staining. There were not enough keys returned to the Respondent so more had to be cut. The Applicant could not say the plumbing issues were the fault of the tenant. The Applicant said she understands there are costs involved with letting a property, but some of the costs could have been avoided if she had been told about the issues sooner. This was not general wear and tear. She had also incurred costs during the void between the last tenancy and the next tenancy with the new Letting Agent appointed by the Applicant.

24. The service provided by the Respondent was inadequate. It is not clear what the Applicant was paying for. The evidence shows a deterioration in the service provide. The Property was in a prime location. There was a lack of inspections and the Applicant should have been told of problems with access. The communication was poor from the Respondent.

The Respondent's position

- 25.** Mr McCuskey said the Applicant could not have been denied entry to the Property even when it was tenanted. Perhaps the times suggested were unsuitable, as entry would have to be arranged with the tenant.
- 26.** The terms of business provide for regular inspections and do not specify quarterly inspections. Quarterly may have been agreed verbally but there is no record of this. Regular means as and when required. There could be as many as three inspections in a month. The fact that initial inspections were four-monthly suggests there were probably no issues. Since the pandemic, routine inspections have changed. The terms of business states at paragraph 6(i) that the Respondent cannot guarantee that tenants will provide access for routine inspections where requested to do so. The landlord could go through government bodies to get access if it was denied. The contractor appointed by the Applicant had difficulty getting access. There were real issues with the tenancy.
- 27.** The terms of business state at paragraph 6(g) that the Respondent does not guarantee that the tenant will leave the Property in a satisfactory state on termination of the tenancy. The Respondent brought issues with two radiators to the attention of the Applicant, although no evidence was available to prove this. The issue of mould had been flagged up. The tenants were told to ventilate the Property. The Respondent cannot police this. It seems that more and more tenants do not open their windows.
- 28.** The Scottish Association of Landlords recommends that landlords redecorate a let property every three to five years. The Respondent does not necessarily recommend this to landlords. This Property was last decorated in 2009. The Applicant has to take wear and tear into account. The Respondent did not consider the Property required decoration until the end of the last tenancy and this was pointed out to the Applicant in the pre-market inspection report. There was no available evidence that it had been pointed out between tenancies, but it could have been done by email. The last tenants appeared to have used candles in the Property, which caused marks on the walls. Their cooking methods may have contributed to issues. There was mould in one area near the living room window where the tenants' computer was situated. It appeared to be due to a lack of ventilation. The tenants cleaned it off. Otherwise, the black marks on the wall were not mould.
- 29.** Mr McCuskey said he was surprised when the Applicant sent what he described as a furious email. He did not think the Property was in too bad a condition. He was unable to say if inspection reports were sent to the Applicant, stating that the Respondent usually sends an email stating the outcome of an inspection. He had tried to call the Applicant on several occasions and she was not always able to answer calls due to the time difference. The check out report was provided two days after completion
- 30.** The tenants had reported the rise to the floorboards at the start of the tenancy. It had then settled down, and worsened again in March 2022. The

Applicant's contractor was supposed to attend and did not. It was noted on 10th March 2022 in an inspection report that there was moisture on a pipe in the small hall cupboard. This was not caused by the tenants. The tenants had not complained about the Property not meeting the repairing standard during the tenancy. The bedroom shown in the photograph on p97 was the most affected area, presumably due to the use of candles and no ventilation. This was not seen at inspection. The situation appeared to have deteriorated from the inspection in March 2022, with more issues raised in June 2022. That was when the Property seemed to become neglected slightly. All the issues seem to have appeared in the later stages of the tenancy.

- 31.** The Respondent usually tries to reschedule if an inspection is cancelled or access is not provided. They would like to go back as soon as possible, but that is not always possible because they manage 1600 properties. The inspection will take place at the next available slot. A 'dirty letter' is usually sent to tenants if there are issues flagged up at the inspection. The Respondent had tried to reschedule inspections after June 2022. A report is sent to landlords after inspection, but it is not the same as the reports lodged with the Tribunal. The relevant information would be put into another report. The Applicant would have received a check-out report after the last tenancy, but it would not be a copy of the check-out report with hand-written notes as lodged with the Tribunal.
- 32.** Mr McCuskey said he would have hoped the Applicant would have been sent the information she had requested in relation to the tenancy deposit scheme claim. Perhaps it was not sent out as quickly as she would have liked. The claim is made online, so it is not easy to print out what is sent. Three pages of photographs were provided to the tenancy deposit scheme. Safe Deposits Scotland now favour description over photographs. There was no mention of the decoration, the flooring or the mould because the Respondent looks at other cases to decide what they are likely to be able to recover. If they had asked for any money for decoration, the tenancy deposit scheme would have asked if the Property was decorated at the start of the tenancy. They did not think such a claim would be successful. The Respondent considered the issue with the floor was not the tenants' fault. They reported it at the start, and it had got better. The Respondent thought it was linked to the moisture on the pipe in the cupboard. The Respondent does not recommend the landlord to accept a proposal for return of the deposit. They just tell the landlord what has been offered. Mr McCuskey did not think the damage was as significant as has been made out. The sum of £200 was deducted because the door frame was damaged before the tenancy commenced. The tenancy deposit scheme do not award like for like. In relation to the blinds, they could be twenty years old. A couple of the radiators had been rusting previously. The Respondent has to present the best possible case and there is no way the Applicant would have been awarded money for all the radiators and blinds. The Respondent considered they had made the best claim for the Applicant. It was possible that the Respondent had told the Applicant £800 was the most she was likely to be offered.

33. The property manager who had dealt with the Applicant has since passed away and left a huge hole in the office. This has caused some difficulty in providing answers in this application.
34. The Respondent noted one mattress was damaged in the check-out inventory, but it was six years old. The tenancy deposit scheme would not award the cost of a new mattress. The Applicant could have pursued the tenants in respect of the issues. The timeline shows the decline towards the end of the last tenancy. The Respondent's terms of business make it clear this is not their responsibility.

Witness for the Applicant

35. Mr David Wynne is a joiner. He has owned his own joinery company for 22 years. He has looked after the Property for years.
36. The witness said he had never seen a floor go as high as the floor in the Property. Three or four boards were affected. They were lifted up and pushing against the wall. He cut 20mm off it. He did not think the issue was caused by moisture from the pipe in the cupboard, as it was three metres away. There was no water pouring out that could have caused the problem. The problem with the pipe seemed to be condensation. The Property was not getting aired. The doors were expanding. He was unable to suggest any reason for the floor problem. The floor eventually settled.
37. The witness did not remember problems with other tenancies prior to the last tenancy. He had raised issues with the last tenancy because there was a smell in the Property, washing on the radiators, which were on full belt, and the Property was unclean. It was his position that there had been a decline during the pandemic, when the Property was not inspected. He had been in the Property two or three times towards the end of the tenancy and had raised issues with the Respondent's property manager. These were not repairing issues; they were cleanliness issues that should have shown up on spot checks. The witness described the Property at that time as 'manky' and 'minging'. He said he had never known a situation like it and did not understand why the tenants were not getting pulled up. One of the tenants was awkward to deal with and a bit rude. There were always lots of phone calls before access was allowed and access had to be on the tenant's terms.

Findings in Fact and Law

- 38.
- (i) In or around 2014, the Respondent was contracted to manage the Property as letting agent on behalf of the Applicant.
 - (ii) At the start of the agreement between the parties, the Respondent agreed to inspect the Property quarterly.

- (iii) A tenancy agreement with a tenant in respect of the Property was entered into, commencing on or around 7th January 2014 and ending on or around 6th September 2019.
- (iv) A tenancy agreement in respect of the Property was entered into, commencing on or around 9th September 2015, and ending on or around 1st June 2016.
- (v) A second tenancy agreement in respect of the Property was entered into, commencing on or around 8th June 2016, and ending in or around July 2019.
- (vi) A third tenancy agreement in respect of the Property was entered into, commencing in or around July 2019, and ending on or around 10th October 2022.
- (vii) Routine inspections took place at regular intervals initially.
- (viii) There were no inspections of the Property from March 2020 until June 2021.
- (ix) Prior to 27th May 2021, the Respondent was advised that the Property was dirty.
- (x) A routine inspection of the Property took place on 2nd June 2021. There were no issues noted on the inspection report.
- (xi) An inspection scheduled for 29th September 2021 was cancelled due to illness. It was not rescheduled.
- (xii) A routine inspection of the Property took place on 10th March 2022. The flooring in the hallway was found to have risen, and there was moisture on pipes and walls within a cupboard.
- (xiii) The Respondent delayed in informing the Applicant of the outcome of the 10th March 2022 until 28th April 2022.
- (xiv) The contractor appointed by the Applicant attended on or around 16th May 2022 and cut the flooring back. No reason was found for the lifted flooring.
- (xv) By email dated 17th May 2022, the Respondent informed the Applicant of the outcome of the contractor's visit.
- (xvi) The contractor considered that the moisture in the cupboard was due to condensation from the cold water main.
- (xvii) The contractor provided photographs of the damage to the flooring to the Applicant in or around May 2022.

- (xviii) A routine inspection of the Property took place on 1st June 2022. The flooring was found to be loose, blinds in the lounge were marked and broken, sealant was marked, a radiator was flaking, and there were damp patches in the living room.
- (xix) The Respondent delayed in notifying the Applicant of the outcome of the inspection on 1st June 2022, and had to be prompted by the Applicant to do so on 27th July 2022.
- (xx) The Respondent delayed in notifying the tenant of issues following the inspection on 1st June 2022, and had to be prompted by the Applicant to do so on 27th July 2022.
- (xxi) An inspection of the Property set down for 31st August 2022 was cancelled.
- (xxii) In early September 2022, the contractor attended at the Property to check the floor and insulate pipes.
- (xxiii) In early September 2022, the contractor sent photographs of the Property to the Applicant.
- (xxiv) On or around 12th September 2022, the tenants gave notice to end the tenancy.
- (xxv) A pre-market inspection of the Property was carried out on 16th September 2022.
- (xxvi) An inspection at the end of the last tenancy, on or around 10th October 2022, found heavily rusted radiators, broken door handles, damaged blinds, scuffed and marked walls, damage to a bath panel, cracked tiles, dropped worktop, and damaged floors.
- (xxvii) A check-out report was provided to the Applicant by email on 12th October 2022. The email stated that further cleaning and some maintenance was required.
- (xxviii) After the tenancy ended, the Applicant insisted that the Respondent make a claim to the tenancy deposit scheme to retain the deposit to cover costs of damage to the Property.
- (xxix) The Respondent made a claim to the tenancy deposit scheme to retain the deposit due to damage to the Property, stating that worktops were damaged, doors warped or cracked, and tiles and bath panels cracked.
- (xxx) The Respondent did not include the marking on the walls and ceilings in the claim to the tenancy deposit scheme.
- (xxxi) The Respondent did not include the damaged blinds in the claim to the tenancy deposit scheme.

- (xxxii) The Respondent did not claim for costs of cleaning the Property in the claim to the tenancy deposit scheme.
- (xxxiii) The Respondent did not include the rusted radiators in the claim to the tenancy deposit scheme.
- (xxxiv) The Applicant asked the Respondent to provide her with details of the evidence sent to the tenancy deposit scheme. This was not provided.
- (xxxv) In or around November 2022, the Applicant made a formal complaint to the Respondent.
- (xxxvi) The tenancy deposit scheme initially awarded the sum of £800 of the deposit to the Applicant.
- (xxxvii) Following an appeal by the tenants, the tenancy deposit scheme awarded the sum of £600 to the Applicant.
- (xxxviii) The tenancy deposit scheme found that the extent of the damage claimed by the Respondent was difficult to discern and the remedy sought unclear.
- (xxxix) The Respondent did not provide a clear and precise breakdown of the claim to the tenancy deposit scheme.
- (xl) The Respondent provided photographs that were undated to the tenancy deposit scheme, such that no significant weight could be placed on them.

Determination and Reasons for Decision

39. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

Paragraph 21

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

40. The Tribunal found that the Respondent failed to comply with this paragraph of the Code by failing to carry out their services in respect of inspections with reasonable care and skill and in a timely way. The Tribunal took into account that the Covid-19 pandemic meant that inspections could not take place, however, the Respondent failed to resume regular inspections as agreed between the parties at the start of the contract. There was no explanation for the gap between inspections on 2nd June 2021 and 10th March 2022, other than the cancellation of an inspection scheduled for 29th September 2021 due to illness. The Tribunal considered this to be remiss of the Respondent, considering that concerns had been raised to the Respondent, presumably by

a member of staff, that the Property was dirty prior to the June 2021 inspection. While it was stated that the tenant could be difficult, little evidence was provided to the Tribunal of attempts to get access to the property or any further actions taken by the respondent to gain access.

- 41.** The Tribunal also considered the Respondent had failed to comply with this paragraph by giving inaccurate information to the Applicant and failing to allow her to inspect the Property as requested on her visits to the UK. Had the Respondent been allowed to inspect the Property, she may have identified issues at an earlier stage.
- 42.** The Tribunal also considered the Respondent had failed to comply with this paragraph by failing to use care and skill in its application to the tenancy deposit scheme. The Respondent failed to allow the Applicant to be involved in the submission to the tenancy deposit scheme, and failed to make a proper case to the tenancy deposit scheme, as outlined in their adjudication decision. The Tribunal noted that the Respondent failed to include any evidence of damage to blinds and radiators, full details of the state of the décor of the Property at the end of the tenancy, and details of any cleaning costs over and above what might be expected between tenancies. The evidence led before the Tribunal indicated the Property was in a poor state at the end of the last tenancy, and the tenancy deposit scheme ought to have been properly notified of this, with the submission of dated photographs and full details of all damage. The Tribunal accepted that there was insufficient evidence to prove the damage to the wooden flooring was caused by the fault of the tenant, therefore, it was correct not to include this in the tenancy deposit scheme claim. It was also appropriate not to include the damage to the mattress, which was attributable to wear and tear, given its age. The Tribunal also considered that, due to the age of the blinds and radiators, the tenancy deposit scheme would not have awarded the full replacement costs, however, it may have been the case that, had evidence been provided that the tenants had damaged items, and caused significant staining to décor, the Applicant may have received a higher award.

Paragraph 26

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

- 43.** The Tribunal found that the Respondent had failed to comply with this paragraph of the Code by failing to respond to the Applicant's request for full details of all evidence provided to the tenancy deposit scheme.

Paragraph 32(j)

Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out ...

(j) Communication and complaints

that you are subject to this Code and give your clients a copy on request. This may be provided electronically;

how you will communicate (including the use of electronic communication⁽⁴⁾) with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;

your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond;

how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure;

- 44.** The Tribunal found that, despite the Respondent accepting a failure in this regard, there was no failure to comply with this paragraph of the Code. This paragraph pertains to the content of the terms of business, rather than compliance with the terms of business.

Paragraph 37(a)

When either party ends the agreement, you must:

- (a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed, you must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill.*

- 45.** The Tribunal found that the Respondent had failed to comply with this paragraph of the Code by failing to give the Applicant the written confirmation required by the Code.

Paragraph 74

If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate.

- 46.** The Tribunal found that the Respondent had failed to comply with this paragraph of the Code by failing to bring issues to the Applicant's attention timeously. The Respondent delayed in informing the Applicant of the outcome of the 10th March 2022 inspection, emailing her on 28th April 2022. The Applicant was forced to chase up the Respondent for an update following the 1st June 2022 inspection. The Tribunal noted that the Applicant queried with the Respondent in her email of 27th July 2022 the outcome of discussions with

tenants following the June inspection, and it was only after that email that the Respondent appears to have emailed the tenant with a follow up to the inspection and to mention concerns. This suggests the Respondent was not bringing issues to the attention of the Applicant and the tenants until chased up by the Applicant around six weeks after an inspection.

Paragraph 102

If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began.

47. The Tribunal found that the Respondent had failed to comply with this paragraph of the Code as the check-out report lodged appeared to be handwritten notes on the original report. This was not sufficient to satisfy the terms of the Code. The Applicant had to rely upon photographs from the contractor to ascertain the actual state of the Property at the end of the last tenancy.

Paragraph 104

You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared.

48. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code, as it refers to information provided to the tenant. No evidence was led in respect of what information was provided to the tenants at the end of the tenancy, and no challenge was made by the Applicant in this regard.

Paragraph 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.

49. The Tribunal found that there had been a failure to comply with this paragraph of the Code, for the reasons stated in respect of paragraph 26.

Paragraph 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.

50. The Tribunal did not find that there had been a failure to comply with this paragraph of the Code, as the Respondent has a clear written complaints procedure as required.

Further discussion and observations

51. Although the Tribunal found the Respondent had failed to comply with the Code, the Tribunal did not consider the Respondent to be liable for the full extent of the Applicant's costs in rectifying the state of the Property. It was, and remains, open to the Applicant to take action against the tenants for any alleged damage to the Property. The Tribunal considered that, had a better application been made to the tenancy deposit scheme, the Applicant may have been able to recover the full deposit of £1042.50. Accordingly, the Tribunal considered it appropriate to award the sum of £442.50 to the Applicant, being the balance of the tenancy deposit.

Proposed Respondent Enforcement Order ("LAEO")

52. Having determined that the Respondent has failed to comply with the Code, the Tribunal must make a LAEO. The Tribunal is required by section 48(7) of the Act to require the Respondent to take such steps as it considers necessary to rectify the failure. Section 48(8) provides that payment of compensation may be made by the Respondent to the Applicant as the Tribunal considers appropriate for any loss suffered by the Applicant as a result of the failure to comply with the Code.

The Tribunal determined to make an LAEO as follows:

1. The Respondent must pay to the Applicant within 21 days of the issue of this Order the sum of £442.50 which constitutes the balance of the tenancy deposit returned to the tenants.
2. The Respondent must pay to the Applicant within 21 days of the issue of this Order the sum of £1,000 in respect of distress and inconvenience caused to the Applicant due to the failure of the Respondent to comply with the Code.

Right of Appeal

In terms of section 46 of the Tribunals (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.



Legal Member and Chairperson

20th February 2024