Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014

Reference number: FTS/HPC/LA/21/2306

The Parties:

Mr Charles Simpson, 8 Priory Way, Beauly, IV4 7GF ("the Applicant")

Belvoir (A&A Inverness), 18 Queensgate, Inverness, IV1 1DJ ("the Respondent")

Tribunal Members:

Nairn Young (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

- Background

This is an application for a letting agent enforcement order ('LAEO') in relation to the Respondent's management of the Applicant's property at 11 Dellness Avenue, Inverness, IV2 5HE ('the Property'). A decision on a preliminary matter regarding the competence of the application was made in October 2022. That concluded that the application was competent and should proceed to a full hearing. Some of the findings in fact set out below are repeated from that decision, for ease of reference.

After postponements of the full hearing on the merits of the application for various reasons, the matter finally called on 27 November 2023, by teleconference. The Applicant was on the call and led evidence from wife, Mrs Sara Simpson. The

Respondent was represented by one of its directors, Mr Amjed Rasul. He led evidence from one of its employees, Ms Marion MacKinnon.

- Findings in Fact

1. The Applicant and his wife are joint owners of the Property.

2. On 15 April 2012, the Applicant and his wife signed an agreement appointing a company called RE/MAX to act as their agents in letting the Property ('the Agreement').

3. One of the terms of the Agreement read:

> "This agreement may be terminated by either party by way if [sic] three months written notice. In the event of a landlord terminating this agreement and retaining their current tenant sourced by RE/MAX Property Centre, a withdrawal fee of £300.00 will be payable."

4. The Respondent succeeded to RE/MAX's interest in the Agreement in 2013.

5. On 18 March 2013, the Respondent sent an email to the Applicant's wife referring to the termination clause in the Agreement saying, "[T]he termination clause in your contract is £300+VAT and requires 3 months notice."

6. Neither the Applicant nor his wife terminated the agreement at that point.

7. On 14 August 2015 the Respondent executed a short assured tenancy agreement relating to the Property which named the Applicant's wife as the landlord.

8. The other documents accompanying that tenancy agreement similarly named only the Applicant's wife as landlord.

9. The Applicant was aware of the tenancy agreement having been executed and did not at any point raise an objection to the tenant taking possession of the Property under its terms.

10. On 13 April 2021, the Respondent emailed the Applicant's wife, following a routine inspection of the Property on 7 April 2021, stating, among other things:

    - that the tenant had reported mould around the bathroom window and dampness on the ceiling and wall in that room;

    - that the tenant suggested the cause of this may be condensation resulting from the extractor fan being too small and needing replaced;

    - that the inspection was a 'walk through' and not a survey;

    - that, "The Agent will notify the Landlord of any obvious defects but does not accept responsibility for any latent defects.";

    - asking for authority to arrange for any repairs.

11. On 5 May 2021, the Respondent followed up this email with a further email, stating that a contractor had visited the Property and assessed that the fans in the ensuite and bathroom were inadequate; quoting the price given to replace them; and asking for authority to instruct that work.

12. The Applicant's wife responded on 12 May 2021 by email, saying, "On the basis that you advise the extract [sic] fans will resolve the damp issues in the bathroom and shower room, please proceed with the replacement of the fans as per the quote."

13. The replacement fans were fitted by a contractor on 19 May 2021.

14. On 24 May 2021, the Applicant's wife became aware that there was a potential leak from the roof of the Property.

15. Following that exchange, the Applicant's wife attempted to cancel the instruction to replace the extractor fans: but was informed by the Respondent that it was too late to do so, the replacement having been carried out.

16. On 1 June 2021, the Respondent emailed the Applicant's wife to pass on a photograph of black mould in the corner of one of the windows that had been received from the tenants; and expressing the hope that the newly installed fans would address any condensation issue.

17. On 15 June 2021, the Applicant's wife phoned the Respondent initially to request that the cost of the replacement fans be reimbursed, on the basis that she considered they had been replaced unnecessarily. The office was operating with limited staff due to the Covid-19 pandemic. The phone was therefore not immediately answered; but the Applicant's wife left a message and the Respondent's Mr Rasul phoned her back within around 15 minutes.

18. In the course of the ensuing conversation, Mr Rasul refused to reimburse the cost of the fans. The Applicant's wife indicated that she would therefore like to terminate the Agreement. Mr Rasul pointed out that she received a preferential rate for the service provided, in order to attempt to persuade her not to take this step; but she insisted. Mr Rasul indicated that he would attempt to reply to her the following day with details regarding the process of termination and to confirm the fee payable.

19. The Applicant's wife phoned the Respondent's office on 19 and 22 June 2021, leaving messages asking for a response re: the termination process. The Respondent's answer machine message at that time indicated that requests were taking longer than usual to be responded to, due to changes to working practices caused by the pandemic.

20. On 24 June 2021, the Applicant's wife emailed the Respondent, confirming that she and the Applicant wished to terminate the Agreement; requesting copies of the current lease agreement for the Property, the "certificate," relating to the Property, and details of where the deposit was held; and

indicating that, while they accepted a fee would be payable to cover the cost of paperwork, they did not expect this to amount to a large sum.

21. On 25 June 2021, the Applicant's wife used the chat feature on the Respondent's website to ask if there was a head office that she could refer the matter to. She was informed that there was not.

22. On 26 June 2021, the Applicant's wife hand-delivered a letter of complaint to the Respondent's office (which was closed to the public due to the pandemic), complaining about the management of the termination of the agreement: in particular, a lack of communication and failure to provide documents that had been requested.

23. On 28 June 2021, the Respondent emailed the Applicant's wife stating that Mr Rasul had explained the termination process during the call on 15 May 2021; requesting that she not contact Mr Rasul directly regarding the matter; confirming the three-month notice period (giving an, "end of contract date," of 15 September 2021) and termination fee of £300+VAT; setting out various steps it intended to take to effect the termination, including production of disclaimers, dealing with the transfer of the deposit registration and transfer of documents; indicating that the process would not be commenced prior to payment of the fee; and referring to potential delays in responses due to remote working.

24. Around half an hour later, the Applicant's wife responded to that email: among other things, disputing the notice period and fee for termination and asking to discuss further. She also phoned the Respondent's office and spoke to its Marion McKinnon on the same topic, following that up with a further email, restating her wish to negotiate on the fee and notice period.

25. On 29 June 2021, the Respondent's Mr Rasul emailed the Applicant's wife, stating:

> “I have been informed of your recent communications with our office, the transcript of your online chats with our Central Office have also been issued to me.
>
> The safety and wellbeing of our colleagues is of utmost importance, and I kindly ask that you refrain from any further phone contact with our office.
>
> We will absolutely not tolerate your conduct, behaviour and threats. You have also made unfounded defamatory comments.
>
> We are now obligated to notify this matter to Police authorities as harassment which we will now do.”

The email continued by refusing to negotiate on the matter of the termination fee; but offering to waive the notice period, on the basis that the fee be paid and a disclaimer signed.

26. The reference in the email to notifying the Police was intended to intimidate the Applicant’s wife and stop her from contacting the office further. She was not intimidated, however.

27. The Applicant’s wife responded by email, approximately half an hour later, as follows [grammar and syntax as in the original]:

> “Thanks for replying. Please note my communications were never meant to be abusive, any stern language used caused by extremely frustrated at the lack of communication and I am totally surprised by your email below. My contact with head office was an attempt to resolve the issues as you were not responding and the purpose of the repeated calls was to try and sort out amicably, and I’m extremely sorry it has come to this and your interpretation below.

> Given where we are now I think the sooner we break contact the better, I appreciate your gesture of goodwill and will be happy to accept if you can please clarify in writing the termination fee and confirm of what do I get in return and associated timescales?"

28. The Respondent sent an invoice for the termination fee to the Applicant's wife on 1 July 2021. The Applicant's wife responded the same day (among other things) querying what the fee covered and giving a list of 7 'key' documents she wanted to confirm she would receive upon payment.

29. On 2 July 2021, the Respondent replied, confirming the documents would be released following payment of the fee and signature of the disclaimer, with the exception of a Legionella Risk Assessment, which was not completed, the Respondent having completed its own water system check.

30. On 3 July 2021, the Applicant's wife emailed a list of questions regarding the process of termination. This was replied to by the Respondent on 6 July 2021.

31. On 7 July 2021, the Applicant's wife paid the termination fee, stating that she was doing so, "under duress," given the position advanced by the Respondent that the documents would not be released until she did so.

32. On 14 July 2021, the Applicant's wife emailed the Respondent following up her previous email. The Respondent replied on 16 July 2021, confirming that payment had cleared and attaching what it described as a disclaimer (hereafter referred to as 'the Discharge'), for execution and return, after which it would release the documents requested.

33. The Applicant's wife signed the Discharge on 17 July 2021 and returned it.

34. The Respondent returned the keys and the documents requested by 23 July 2021, with the exception of the Legionella Risk Assessment, which the Applicant's wife had previously been informed did not exist (see 29, above).

The gas safety certificate had expired in the interim, but had been renewed by the Applicant's wife acting on her own behalf.

35. The emails from the Respondent all had an email signature at the foot giving a contact phone number for its office.

36. On 10 August 2021, the Applicant sent a letter to the Respondent notifying it that he considered it to have breached the Code of Practice for Letting Agents ('the Code') in respect of the matters raised in this application.

37. The Respondent did not reply to that letter and the Applicant raised this application on 23 September 2021.

- Discussion

38. The Applicant alleges breaches of various provisions in the Code. The Tribunal's findings in relation to each alleged breach will be set out roughly chronologically, based on the facts as found above, rather than in the paragraph order of the Code. The breaches alleged of the overarching standards will be considered last of all. The text of the relevant paragraphs from the Code to each topic will be set out in italics and the headings and numberings in these italicised sections are also from the Code:

Carrying out repairs and maintenance

89. When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

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

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

…

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.

39. The Applicant alleged that the tenants at the Property had informed the Respondent that repairs to the roof and windows were required in December 2020. The Respondent denied that it had received any such reference. It stated that it had completed the inspection on 7 April 2021 (para.10, above) as a routine inspection on the first opportunity it could, following relaxation of lockdown restrictions, and not in response to any complaint.

40. The Tribunal was not presented with any evidence from the tenants themselves, whether in documentary form or as witness evidence, which supported the contention that they had raised any issue with the roof or windows with the Respondent. On the other hand, the Respondent's contemporaneous email of 13 April 2021 (also referred to in para.10, above) sets out clearly what issues the tenant identified at the inspection, including the extent of the dampness and the cause identified by them. So far as it goes, it is not inconsistent with the Respondent's position as to the reason for the inspection. On the basis of the limited evidence available, the Tribunal therefore concluded that the Respondent's position on this point was to be preferred. The burden of proof is on the Applicant on this point and he did not discharge it. Having made that determination, the Applicant's case in regard to paragraph 89 of the Code falls away, since that paragraph applies only, "When notified by a tenant of any repairs needing attention."

41. For a similar reason, the Applicant's case based on paragraph 91 of the Code cannot be supported. The Tribunal was presented with no evidence that

suggested the tenants were not kept informed of the action to be taken regarding repairs or the timescale attached to that.

42. The Applicant's suggestion that there was delay in addressing the repair rests also on the contention that it was brought to the Respondent's attention by the tenant in December 2020. It follows that that suggestion has not been evidenced either; and that the case under paragraph 91 (insofar as it requires prompt action) and 93 cannot be supported.

43. The remainder of the Applicant's case in regard to repairs is essentially that these were not dealt with appropriately, and thus that the Respondent was in breach of paragraph 91 of the Code. This is based on the contention that the Respondent should not have advised that replacement of the extractor fans in the bathrooms was required; and, in particular, should not have done so on the basis that it would address the problem of dampness in these locations. Having done so, it should not have passed the cost of this on to the Applicant, since his wife had attempted to countermand the instruction to carry out the work, albeit too late; and the work did not ultimately succeed in solving the problem of dampness, since the real issue was a leak in the roof and/ or window.

44. The Respondent's case on this point is that the fans straightforwardly needed to be replaced. They were inadequate, whether or not the root cause of the dampness in the rooms in question was condensation. The Respondent proceeded on the instructions it was given and was therefore entitled to charge the expense of the work to the Applicant.

45. The relevant findings in fact are set out at paras.10 to 16, above. The Respondent did not at any point guarantee that the fans were the sole cause of dampness in the rooms in question. It was clear in its email of 13 April 2021 that it was not offering a survey of the Property, but a report of a walk-through inspection; and that the conclusions presented were based on the reports and suggestions made by the tenant at the inspection. On the basis of that, a contractor was employed to assess the fans and found them to be

inadequate. It was reasonable on the basis of these points to ask for authority to replace the fans. The Applicant's wife gave that authority. The fact that there was subsequently found also to be an issue with the roof does not necessarily lead to a conclusion that the fans did not need replaced; or that condensation caused by the inadequate fans was not part of the problem. The Respondent acted appropriately in relation to the replacement of the fans and was under no obligation to bear the expense of that work. There was therefore no breach of paragraph 91 of the Code.

Terms of business

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

…

Fees, charges and financial arrangements

…

> *g) how you will collect payment including timescales and methods and any charges for late payment;*

…

Communication and complaints

> *m) 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;*

…

How to change or end the terms of business

> *q) clear information on how to change or end the agreement and any fees or charges (inclusive of taxes) that may apply and in what circumstances. Termination charges and related terms must not be unreasonable or excessive.*

…

Ending the agreement

37. 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.*
>
> *b) if tenants are still living in the managed property or properties, inform the tenants you will no longer be acting as an agent for the landlord and inform them of the landlord's name and contact details if these have not already been provided, or where relevant, those of any new agent. You must also inform the tenants of any resulting changes that affect them.*

46. The Tribunal observes that paragraph 32 of the Code is concerned only with the content of the terms of business. It stipulates information that must be included; but does not relate to whether or not the terms are adhered to. The Code only came into effect in January 2018: several years after the terms of business were agreed between the Applicant and the previous agent, and

even after that agent's interest was assigned to the Respondent. It is not therefore competent for the Tribunal to find a breach of the terms of paragraph 32 in this case.

47. The Applicant alleges a breach of paragraph 37(a) of the Code, in that the written communication stipulated there was not sent by the Respondent. The email of 28 June 2021 (finding in fact 23, above) sets out the date the contract ends, the fee/ charge owed by the Applicant, and the three-month notice period, which, it is stated, will allow the various processes it mentions to be completed. There is no mention of any sums being owed to the Applicant; but it has not been suggested that there were any such sums in the application or in evidence. It is clear from the reference to termination in this email that the Respondent will no longer be acting for the Applicant (and that is even clearer when the context is considered). The Tribunal therefore finds that this is sufficient to meet the requirements of paragraph 37(a). The Tribunal does not consider that conclusion is negated by the fact that the Applicant and his wife did not wish to accept these details, particularly in regard to the notice period and cancellation fee, or that they were subsequently successful in negotiating a compromise on the former. The main point of this paragraph of the Code is that the relevant details should be set out clearly in writing. They were in this case, both initially, and as they were subsequently renegotiated. There was therefore no breach of this paragraph of the Code.

48. The Applicant's case in regard to paragraph 37(b) of the Code was stated in the application to be that the Respondent did not inform the tenants of the change of agent and, "refused to pass information and the secure deposit to the new agent." In relation to informing the tenants of the situation, there was no evidence presented to support this assertion and the Respondent's director stated he did inform the tenants, as required. In the absence of evidence to the contrary, there is no reason to disbelieve him. In regard to dealings with the new agents, the behaviour alleged does not fall under this paragraph of the Code. The Tribunal therefore finds no breach of this paragraph.

Communications

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.

109. You must provide landlords and tenants with your contact details including a current telephone number.

110. You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.

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

49. The Applicant alleges that paragraph 108 of the Code was breached by the Respondent by not dealing with the complaint letter (finding fact 22, above); and by failing to respond timeously to other calls and emails during the process of termination. The Respondent's position is that all communication was responded to within a reasonable timescale. The relevant portion of the findings in fact runs from 17 to 35 above.

50. In general terms, the Tribunal does not find that the Respondent took an unreasonable amount of time to respond to communication. The Applicant's wife referred in the course of the hearing to a perception that, prior to the phone call where she indicated she wished to terminate the Agreement, the Respondent would reply very quickly to any query; whereas after that call, the speed of reply slowed considerably. On the limited evidence available to the Tribunal that perception appears to be well-founded; but, to that extent, it is unremarkable. The question for the Tribunal is not whether the Respondent continued the level of service (in regard to response times to communication) it had previously provided to the Applicant, even once it became clear he was terminating their contract. Rather, it is whether or not the level of service in

that regard fell below what was reasonable at any point. The longest gap between a query and response was following the phone call where the Applicant's wife stated she wished to terminate the Agreement, on 15 June 2021, and the written response of 28 June 2021. The response was on the ninth working day following the phone call. While this is somewhat slow, the Tribunal does not consider it an unreasonable amount of time in context, given that the response in question was to frame the process and requirements around the termination: an important and delicate task. It is also of relevance that the Agreement stipulates a 3-month notice period, against which period of time that response time is not particularly lengthy. Further, the contract requires written notice of termination to be given, which only occurred on 24 June 2021, albeit the Respondent did not insist on the notice period running from that date.

51. It is true that the Respondent's Mr Rasul had stated in the course of the initial call that he would try to get back to the Applicant's wife the following day; but, taken in context, that can only be understood as a statement of aspiration and not a hard guarantee. The Applicant's wife was also in contact on various occasions prior to the response asking for it to be expedited. In evidence, she explained that she had become concerned that necessary documents did not exist and that there was no proof that the tenants' deposit had been properly protected. It was not clear why she jumped to that conclusion; but her concerns were ill-founded and it was not necessary for her to follow the initial phone call up as insistently as she did. The answer machine at the Respondent's office indicated that response times may be slower than usual. The fact that she had followed up her original request does not in any event change the conclusion that ultimate response time was not unreasonable.

52. The Tribunal also does not find a breach of paragraph 108 of the Code in relation to the response to the complaint. It is incorrect to say that the Respondent did not respond to this. Its response was bound up in the general communication around termination. The complaint concerned lack of communication following the termination notification and failure to provide documents. These points were substantially addressed in the email of 28

June 2021; but, to the extent there might have been any continuing complaint following that email, the process was brought to an end by the parties agreeing that their reaching a negotiated conclusion to their relationship sooner rather than later was desirable. In particular, the final paragraph of the Applicant's wife's email of 29 June 2021 (finding in fact 27, above) suggests the only matters remaining outstanding are clarification of the termination fee, what this relates to, and how quickly the process may be completed. It was not unreasonable for the Respondent to consider against that background that the complaint was either resolved, or no longer being pursued.

53. The Applicant's assertion that paragraph 109 was breached is also unfounded. Contact details were included in the signatures appended to all of the emails sent by the Respondent that were produced to the Tribunal; and it is the Applicant's own position that his wife contacted the Respondent over the phone on various occasions. The Applicant refers to the email of 29 June 2021 (finding in fact 25, above) and the instruction not to contact the office by phone. This is not a breach of paragraph 109 in itself: the Respondent was not severing all contact, but asking the Applicant's wife to restrict herself to email contact. That may or may not have been reasonable in the circumstances, but the request does not change the fact that she had the contact details should she have chosen to use them.

54. In relation to the alleged breach of paragraph 110, the Applicant asserted that he was at no point made aware of the existence of the Code by the Respondent. There was certainly no evidence that any specific communication was made by the Respondent to that effect. The Respondent's position was that landlords were signposted to the Code on its website, via a link to the Tribunal's website. The Applicant did not dispute that; but considered that paragraph 110 required a more active approach.

55. The Tribunal agrees with the Applicant that a more active approach to making landlords aware of the Code than was evidenced in this case is required. This does not necessarily mean specifically communicating the existence of the Code to every landlord and tenant. However, the Tribunal considers it is

clearly insufficient only to provide a link to the Tribunal's website, without any context and without referring to what a person following that link should be looking for there. That is not 'making aware' in any normal interpretation of the words. There has therefore been a breach of paragraph 110.

56. Finally, under this section, the Applicant contends that the Respondent's email of 29 June 2021 (finding in fact 25, above) was intimidatory and threatening, in that it accused the Applicant's wife of threatening conduct and of making defamatory comments. It stated that the matter would be referred to the Police. The Applicant's wife states that this led to anxiety and sleepless nights on her part, especially since such a report could have had an impact on her professional accreditation. The Applicant further suggests that the Respondent refused to confirm the existence or validity of the paperwork that the Applicant's wife sought, or to provide the terms of the termination agreement it stated would be necessary, until the termination fee had been paid. He suggests that this was bullying behaviour designed to force payment of the fee.

57. The Respondent denies that there was any intent to threaten or intimidate in any of the communication.

58. Both parties' witnesses testified in this case that the relationship between them had been a good one until the phone conversation on 15 June 2021. It is sad to note how quickly that relationship seems to have descended into mutual accusations of threatening behaviour. That it did so appears to the Tribunal to be due to somewhat exaggerated responses on both sides. It has already been noted that the Applicant's wife has suggested that the immediacy and persistence with which she followed up the phone call was due to a concern that documents and/ or the deposit were missing; but that there does not seem to be any objective reason why that conclusion would be a reasonable one in the circumstances and, consequently, why that persistence was necessary (para.51). That excessive persistence continued following the response that was sent on 28 June 2021 (which the Tribunal notes does refer to the deposit being transferred and documents returned as

part of the process) when the Applicant's wife sought to argue over the payment of the termination fee and the notice period (both of which were stipulated in the Agreement). For its part, the Respondent simply needed to restate its position on these points (or make an offer to settle the matter on a different basis, if one was to be made); but instead it sent an email on 29 June 2021 which, the Tribunal considers, overstated the nature of the Applicant's wife's communication and unnecessarily referred to a Police report to follow.

59. The reason for this escalation was, the Respondent suggested, largely to do with the impact of the interactions on its Ms McKinnon, who stated that she felt the weight of communication, asking her repeatedly to make decisions in relation to matters that she was not authorised to make, was becoming too much for her. The Tribunal does not doubt that the Applicant's wife was by that point a difficult customer to deal with; but on the evidence presented, there was no reason to conclude that she behaved in a threatening manner. Neither was it clarified what statements of a defamatory nature were supposed to have been made, particularly since all communication was taking place between the parties themselves. Ms McKinnon's evidence was that the Applicant's wife had visited the office on Saturday 26 June 2021 and attempted to gain access. Ms McKinnon stated that she had been present at that time, albeit the office was closed, and had found this alarming, since she was not expected. The Applicant's wife explained that she had visited to hand-deliver her letter of complaint, which she did and then left. On the balance of probabilities, the Tribunal found the Applicant's wife's version of events more credible. It notes that there was no reference to any attempt to gain access to the office in the email of 29 June 2021, which refers only to the tenor of communications. If the Applicant's wife's behaviour had gone further than that which she described, it would have been highly unlikely that it would not have been referred to in that email.

60. On that basis, the Tribunal considers that the reference in the email of 29 June 2021 to referring the matter to Police was an over-reaction. On balance, the Tribunal concludes the intention of this reference was to intimidate the Applicant's wife in order to stop her from contacting the office directly further.

That there was also fault on her side explains but does not excuse this. The Respondent is held to a higher standard of behaviour under the Code and must remain professional, even in the face of over-demanding clients. It would, for example, have been quite acceptable for the Respondent to have set out the behaviour that was not appropriate and warned the Applicant's wife that it would have to consider restricting her communication should she fail to moderate it. To suggest that a referral to the Police would be made imminently went beyond a courteous instruction of that type into something intended to be more intimidating; and thereby breached paragraph 111.

61. Nonetheless, while the intention was intimidatory, the Tribunal does not consider that that was the actual effect of the email. The Applicant's wife suggested she had sleepless nights worrying about the referral to the Police and was terrified that she would receive a visit from them. Looking at the communication between the parties following the email, however, shows that is clearly an exaggeration. She does not refer to the Police referral at all in any of the subsequent correspondence (commencing less than half an hour after the offending email). If she were really as concerned by this as she stated, one would have expected her to ask for confirmation that this step would not be taken. Neither does her approach in communication become noticeably less forthright than previously. In her immediate response she continues to push for clarification of the fee and what it is for (although this information has previously been provided). There is no sign in any of the ensuing exchanges that she is intimidated in any way and she continues to make demands of the Respondent, some of which could not be fairly described as reasonable.

62. In particular, she continues to push against the imposition of the termination fee and ask what she will receive in return for this. This is to some extent due to the Respondent's insistence that the process of termination will not be commenced until the fee is received. The Tribunal considers that the Respondent's position here was not unreasonable. The fee is required by the contract and there is no obligation on the Respondent to justify its imposition. Given the continuing refusal to accept this, it was reasonable of the

Respondent to be concerned that the Applicant may refuse to pay it. In those circumstances, it cannot be described as ‘bullying’ for the Respondent to insist on the fee being paid before processing the termination.

Overarching standards of practice

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

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

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

…

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

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.

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

63. The Applicant alleges a lack of clarity in the communications surrounding the termination process from the Respondent. He states that the Applicant cut off communication and did not respond to the complaint. He refers again to the alleged failure to address a report from the tenants of a leak made in December 2020. He alleges again that the email of 29 June 2021 from the Respondent was intimidating and threatening.

64. The Tribunal does not find that there is any lack of clarity in the emails surrounding termination and the process that would be followed. The email of 28 June 2021 (finding in fact 23, above) set this out in an adequate level of detail. The Applicant's complaint seems really to be that the Respondent did not provide an answer to the question of what service the termination fee related to; but this was not something that it was required to do (see para.62, above).

65. The remaining aspects of the application relating to the overarching standards are addressed at paras. 40, 52, 53 and 58 to 62, above. Applying these conclusions to the overarching standards mentioned, the Tribunal finds no breach of paragraphs 17, 18, 19, 26 or 27; and a breach of paragraph 28, insofar as described in paras. 58 to 62, above. These findings do not add anything of significance to the breaches already described.

- Remedy

66. Sections 48(7) and (8) of the Housing (Scotland) Act 2014 ('the Act') state:

> "(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a "letting agent enforcement order") require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.
>
> (8) A letting agent enforcement order—
>
> (a) must specify the period within which each step must be taken,
>
> (b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply."

67. The Applicant asks the Tribunal to require the Respondent to send a letter of apology for its behaviour and intimidating messages; and a review of its termination and complaints procedures. He also suggests a refund should be ordered of the £230 paid for the fans and half the termination fee (£180); and an award of £250 compensation made for stress and time wasted.

68. The Tribunal has not found any breach of the Code in relation to complaints or the handling of the termination process, so will not make any order in relation to these.

69. The Tribunal has found that the Respondent breached the terms of paragraph 110 of the Code in not making landlords and tenants aware of the Code's existence. The Tribunal will make an LAEO requiring it to rectify this failure by making a clear statement on its website that it is subject to the Code. It will be given one month to demonstrate to the Tribunal that it has complied with this requirement.

70. The Tribunal has also found that the Respondent breached paragraphs 28 and 111 of the Code by making an intimidatory statement in its email to the Applicant's wife suggesting it was reporting her to the Police. In order to rectify this, the Respondent will be ordered to send a letter of apology to the Applicant and his wife for this breach, copying to the Tribunal, within 2 weeks of the making of the LAEO.

71. The Tribunal considered whether it would be appropriate to provide for a compensatory payment in terms of s.48(8)(b) of the Act. In terms of the heads of claim identified, there is no basis, given the findings above, for an award in relation to refunding the cost of the fans or the termination fee. The question of compensation for stress and loss of time is less straightforward. The Tribunal has found that there were breaches of the Code; however, it has equally found that there is no evidence of any direct loss on the part of the Applicant (or, indeed, his wife). Additionally, the Tribunal considers that the deterioration in the parties' relationship that led to mutual accusations of threatening behaviour was due to fault on both sides. While it has already

observed that that is not a relevant consideration when it comes to a question of whether the Code was breached by the Respondent, the Tribunal considers it is relevant to the question of whether it is appropriate to award compensation. It therefore concludes that an award of compensation is not appropriate in this case.

- Decision

The Respondent is found to have breached the terms of paragraphs 28, 110 and 111 of the Code. An LAEO will be made requiring these breaches to be rectified.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

_____ **10 April 2024**

Legal Member/Chair **Date**