



**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**

**Chamber Ref: FTS/HPC/LA/23/4314**

**Re: 82 Old Coach Road, East Kilbride, G74 4AU (“the Property”)**

**Parties:**

**Mr David Kingswell, 33 Greenstone Road, Shaftesbury, Dorset, SP7 8FL (“the Applicant”)**

**Bensons Estate Agents Ltd, 4 Stuart Street, East Kilbride, G74 4NG (“the Respondent”)**

**Tribunal Members:**

**Mr Andrew Upton (Legal Member) and Mrs Mary Lyden (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with paragraphs 26, 37, 89, 90 and 108 of the Letting Agent Code of Practice, and that a Letting Agent Enforcement Order should be granted.**

**Statement of Reasons**

1. This Application called for its Case Management Discussion by teleconference call on 26 March 2024. The Applicant was present on the call. The Respondent was not present or represented.
2. This is an Application under section 48 of the Housing (Scotland) Act 2014. The Applicant contends that the Respondent has failed to comply with paragraphs 26, 37, 89, 90 and 108 of the Letting Agent Code of Practice (“the Code”).

**Background**

3. The Applicant is the owner and landlord of the Property. He entered into a Management Agreement with the Respondent whereby the Respondent undertook to provide a “full management service” (“the Management Agreement”). In particular, the Respondent undertook responsibility for both collection of rent and management of repairs in return for payment by the Applicant of a monthly management fee equal to 9% of the rent for the Property plus VAT. The rent for the Property is £506.70 per calendar month, and therefore the management fee was £54.72 per month inclusive of VAT. The Applicant’s complaint flows from a repairing issue at the Property. The Applicant has a portfolio of six residential properties across the UK that he lets out. The Property is the only property within his portfolio that was managed by the Respondent.
4. In or around May 2023, the boiler at the property was replaced with a new combi-boiler. The thermostatic radiator valves were changed. The contractor for those works was instructed by the Respondent. The contractor’s quote included works to remove the pre-existing apparatus, including a fire. The boiler was replaced, but the old apparatus was not removed. The central heating system subsequently developed issues whereby the pressure was dropping twice each day, one radiator would not heat at all, and a noise was coming from all of the radiators at night. The tenant reported those issues to the Respondent, who directed the tenant to contact the contractors directly under warranty. The Respondent did not press the contractor to complete the works by removing the old apparatus or remedy any disrepair in the system. The tenant contacted the Applicant to report these matters. Having tried and failed to procure that the Respondent address the issues, the Applicant made arrangements with the contractor directly to remedy the issues. The Applicant then sought to terminate the Management Agreement with effect from 1 December 2023.

### **Paragraph 26**

5. In terms of paragraph 26 of the Code:-

“[The Letting Agent] must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.”
6. The Applicant’s complaint under this paragraph is that he wrote to the Respondent on 14 August 2023 and 27 September 2023 by email, but did not receive any response to those emails. The Applicant has produced copies of his emails with the Application.
7. The Respondent has been afforded the opportunity to lodge written representations and, separately, attend at the CMD to contest the allegations made against it by the Applicant, but has chosen not to. In the circumstances, the Tribunal is satisfied that the Respondent does not dispute that it failed to respond to the Applicant’s emails of 14 August 2023 and 27 September 2023.
8. In all of the circumstances, the Tribunal is satisfied that the Respondent has failed to comply with paragraph 26 of the Code.

### Paragraph 37

9. In terms of paragraph 37 of the Code, in respect of management agreements between letting agents and landlords:-

“When either party ends the agreement, [the Letting Agent] must:

- a) give the landlord written confirmation [the Letting Agent is] 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, [the Letting Agent] 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 [the Letting Agent] 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. [The Letting Agent] must also inform the tenants of any resulting changes that affect them.”
10. The Applicant’s complaint under this paragraph is that he wrote to the Respondent on 24 October 2023 to terminate the Management Agreement, but did not receive written confirmation in the terms prescribed by paragraph 37(a) of the Code. The Applicant wrote to the Respondent again on 31 October 2023 seeking acknowledgement of the termination of the Management Agreement, but received no written confirmation.
11. The Respondent has been afforded the opportunity to lodge written representations and, separately, attend at the CMD to contest the allegations made against it by the Applicant, but has chosen not to. In the circumstances, the Tribunal is satisfied that the Respondent does not dispute that it failed to provide written confirmation in terms of paragraph 37(a) of the Code.
12. In all of the circumstances, the Tribunal is satisfied that the Respondent has failed to comply with paragraph 37(a) of the Code.
13. For completeness, the Tribunal observes that the Applicant contends in the Application that the Respondent failed to inform the tenant that the Respondent was no longer acting as agent for the Applicant as required by paragraph 37(b) of the Code. However, that complaint did not feature in the Applicant’s Complaint Letter to the Respondent 1 November 2023, prior to raising the Application. For that reason, the Tribunal cannot make an order under section 48 in respect of that complaint, though it appears to the Tribunal

that the Respondent had likely failed to comply with paragraph 37(b) of the Code.

### **Paragraphs 89 and 90**

14. Paragraphs 89 and 90 both relate to repairs issues, and it is convenient to deal with the Applicant's complaints under those paragraphs together.
15. In terms of paragraph 89 of the Code:-

“When notified by a tenant of any repairs needing attention, [the Letting Agent] must manage the repair in line with [the Letting Agent's] agreement with the landlord. Where the work required is not covered by [the Letting Agent's] agreement [the Letting Agent] should inform the landlord in writing of the work required and seek their instructions on how to proceed.”
16. In terms of paragraph 90 of the Code:-

“Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with [the Letting Agent's] written procedures.”
17. The Applicant's complaint is that the Respondent undertook to provide a full management service. That is what the Applicant required because he lives in Dorset, and the Property is in East Kilbride. However, the Respondent obviated responsibility for completion of the boiler replacement works and, separately, the remedying of defects in the boiler replacement works. Put simply, it did not deal with either. In the end, the Applicant had to deal with the issues himself.
18. The Respondent has been afforded the opportunity to lodge written representations and, separately, attend at the CMD to contest the allegations made against it by the Applicant, but has chosen not to. In the circumstances, the Tribunal is satisfied that the Respondent does not dispute that it failed to (i) manage the boiler replacement works to completion, including by attending to the request to repair the issues following replacement of the boiler and thermostatic radiator valves, or (ii) deal with the said repair request promptly or appropriately.
19. In all of the circumstances, the Tribunal is satisfied that the Respondent has failed to comply with paragraphs 89 and 90 of the Code.

### **Paragraph 108**

20. In terms of paragraph 108 of the Code:-

“[The Letting Agent] must respond to enquiries and complaints within reasonable timescales. Overall, [the Letting Agent's] aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep

those making them informed if [the Letting Agent needs] more time to respond.”

21. The Applicant’s complaint under this paragraph is that he complained to the Respondent by email on 14 August 2023 and 27 September 2023 but has not received a response.
22. The Respondent has been afforded the opportunity to lodge written representations and, separately, attend at the CMD to contest the allegations made against it by the Applicant, but has chosen not to. In the circumstances, the Tribunal is satisfied that the Respondent does not dispute that it failed to respond to the Applicant’s complaints within a reasonable timescale.
23. In all of the circumstances, the Tribunal is satisfied that the Respondent has failed to comply with paragraph 108 of the Code.

### **Disposal**

24. Having determined that the Respondent has failed to comply with the Code, the Tribunal is required by section 48(6) of the 2014 Act to make a Letting Agent Enforcement Order requiring the Respondent to take such steps as the Tribunal considers necessary to rectify the failure (“the LAEO”).
25. In respect of the failure to respond to the Applicant’s enquiries, the Tribunal considers that the Respondent ought to have a policy in place to regulate its process for receiving, considering and responding to enquiries, including by prescribing the timescales within which enquiries will be dealt with by the Respondent (“the Enquiry Response Policy”). The Tribunal therefore requires the Respondent to produce and implement the Enquiry Response Policy within 28 days from the date of intimation of the LAEO.
26. In respect of the failure to give the Applicant written confirmation of termination of the Management Agreement with the details specified in paragraph 37(a), the Tribunal considers that the Respondent ought to have a policy in place to regulate the termination of its Management Agreements, which includes the provision of written confirmation within a set period of time of the terms specified in paragraph 37(a) (“the Management Agreement Termination Policy”). The Tribunal therefore requires the Respondent to produce and implement the Management Agreement Termination Policy within 28 days from the date of intimation of the LAEO.
27. In respect of the failure to manage repairs and, separately, deal with repairs promptly and appropriately, the Tribunal considers that the Respondent ought to have a policy in place to regulate the process for receiving intimation of wants of repair, actioning repairs, and managing any instructed repair to completion, including the timescales within which the Respondent will complete each stage of the process (“the Repairs Policy”). The Tribunal therefore requires the Respondent to produce and implement the Repairs Policy within 28 days from the date of intimation of the LAEO.

28. In respect of the failure to respond to the Applicant's complaints, the Tribunal considers that the Respondent ought to have a policy in place to regulate the process for receiving, considering and responding to complaints, including the timescales within which the Respondent will complete each stage of the complaints process ("the Complaints Policy"). The Tribunal therefore requires the Respondent to produce and implement the Complaints Policy within 28 days from the date of intimation of the LAEO.
29. Finally, in respect of all of the Respondent's failures to comply, it is the Tribunal's view that the Applicant has paid a management fee to the Respondent during the period 1 June 2023 until 1 December 2023 for services that the Respondent failed to provide. In particular, the Respondent failed to manage the repairs to the Property. In the circumstances, the Tribunal is satisfied that the Applicant has suffered loss insofar as he has paid the Respondent for services that it failed to provide. The Tribunal considers that a reasonable estimate of the Applicant's loss is calculated as an abatement of the management fee. An appropriate abatement would be to reduce the management fee payable for the period 1 June 2023 to 1 December 2023 from 9% plus VAT to 4% plus VAT. Accordingly, the Tribunal finds the Applicant entitled to payment from the Respondent of compensation in the total sum of £182.40, being the sum equal to 5% of the rent plus VAT (£30.40) for each of the months of June, July, August, September, October and November 2023.

### **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.**

Andrew Upton

26 March 2024

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**Legal Member/Chair**

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**Date**