

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Certificate of Compliance with Letting Agent Enforcement Order in terms of Section 50 of the Housing (Scotland) Act 2014

Case Reference Number: FTS/HPC/LA/18/0967

The Parties:

Miss Ania Gieremek, formerly residing at 564b Flat 3 Lanark Road, Edinburgh EH14 5EL (the applicant)

Arden Property Management LLP, 43 Morningside Road, Edinburgh EH10 4DR (the Letting Agent)

Tribunal members: Sarah O'Neill (Chairing member), Mary Lyden (Ordinary member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having determined that the Letting Agent has complied with the Letting Agent Enforcement Order ('LAEO') dated 25 September 2018, certifies that the Letting Agent has complied with the LAEO.

The tribunal's decision is unanimous.

Reasons for decision

1. The tribunal issued a decision to the parties on 25 September 2018. The tribunal found that the Letting Agent had failed to comply with paragraphs 17 and 110 of the Letting Agent Code of Practice ('the Code') and issued a Letting Agent Enforcement Order (LAEO) on the same date.
2. The LAEO required the Letting Agent, within 28 days of the date of service of the order to do the following:
 - (a) Pay to the applicant the sum of £361.40, as compensation for 1) the total amount of rent incorrectly claimed by the Letting Agent from the applicant for the 16 days from 28 May until 12 June 2018 inclusive i.e. £331.40; and 2) the £30 late rent charge added to the final sum claimed from the applicant by the Letting Agency. **But this sum is to be paid to the applicant only in the event that the applicant is not awarded a sum equal to or greater than £361.40 by the SafeDeposits Scotland dispute resolution scheme.**

Any lesser amount awarded to the applicant by that dispute resolution scheme should be subtracted from the £361.40, and the Letting Agent shall pay to the applicant the sum required to bring the amount paid to the applicant up to a total £361.40.

- (b) Pay to the applicant a further sum of £200 as compensation for the stress and inconvenience suffered by the applicant as a result of the failure to comply with paragraphs 17 and 110 of the Code.
 - (c) Issue a formal written apology to the applicant in respect of the Letting Agent's failure to comply with paragraphs 17 and 110 of the Code.
 - (d) Provide documentary evidence to the tribunal of its compliance with the above by sending such evidence to the office of the First-tier Tribunal for Scotland (Housing and Property Chamber) by email or by recorded delivery post.
3. On 13 October 2018, an email was received from the applicant, which forwarded an email of the same date from SafeDeposits Scotland, confirming the Adjudicator's final decision that the entire £730 deposit had been awarded to the applicant. There was accordingly no requirement on the Letting Agent to pay any compensation in terms of paragraph (a) of the LAEO.
4. On 19 October 2018, Ms Catriona Waugh, a Partner with the Letting Agent, copied the tribunal into an email to the applicant stating that, as SafeDeposits Scotland had made its determination regarding the deposit, she would post a cheque and letter of apology to the applicant as required by the LAEO that day. Following a request from the tribunal, Ms Waugh sent an email on 31 October, enclosing a copy of the letter of apology dated 19 October which had been sent to the applicant. She also confirmed that she had enclosed a cheque with the letter, which had been cashed on 24 October.
5. In the meantime, the applicant had made an application for review of the tribunal's decision and the terms of the LAEO, dated 8 October 2018. As one of the grounds for review was the level of compensation set out in the LAEO, the tribunal was unable to make a decision on compliance with the LAEO until the review process was completed. The tribunal issued a final decision on the review application on 22 January 2019, refusing the applicant's application for review of its decision and LAEO.
6. The tribunal then wrote to both parties, asking them to confirm whether they agreed that the actions required by the LAEO had been completed. Both parties responded, confirming that the actions had been completed.
7. On the basis of the evidence before it, the tribunal is satisfied that the Letting Agent has complied with the terms of the LAEO. It therefore issues this certificate of compliance.

Rights 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.

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.....Date.....18/2/19.....

Sarah O'Neill, Chairperson