

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision and Certificate of Compliance by the First-tier Tribunal under Section 50(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/19/3682

Re: Property at 23 Rosewell Park, Aberdeen, AB15 6HT (“the Property”)

Parties:

Mrs Kathleen Wattie, 23 Rosewell Park, Aberdeen, AB15 6HT (“the Appellant”)

Stonehouse Property, Osbourne House, 27-30 Carden Place, Aberdeen, AB10 1UP (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Jane Heppenstall (Ordinary Member)

DECISION

The Tribunal determined that the Letting Agent Enforcement Order had been complied with and therefore issued a certificate of compliance.

BACKGROUND

- 1 By application dated 18 November 2019, the Applicant sought a letting agent enforcement order against the Respondent due to alleged breaches of the Letting Agent Code of Conduct (“the Code of Conduct”).
- 2 By decision dated 17 November 2020 (“the Decision”) the Tribunal determined to make a Letting Agent Enforcement Order (“LAEO”) against the Respondent. In terms of the said LAEO the Tribunal required the Respondent to take the following action:-
 - (i) provide a clear written complaints procedure, stating how to make a complaint and including the series of steps the complaint will go through with reasonable timescales linked to those set out in any agreed terms of business. The procedure must also set out how complaints against third parties and contractors will be dealt with, any recourse to the professional or membership body the Respondent

belongs to, whether there is access to alternative dispute resolution services, and the availability of a complaint to the Tribunal if they are dissatisfied with the process; and

- (ii) pay to the Applicant £100 by way of compensation for distress suffered as a result of the failure to comply with the Code.

The Tribunal ordered the actions to be taken within 28 days of the date of the LAEO.

- 3 By email dated 25 November 2020 the Respondent submitted its formal complaints procedure. The said procedure included the steps a complaint would follow with attached timescales, reference to complaints against third parties and contractors, recourse to both the Property Ombudsman and the First-tier Tribunal and access to an alternative dispute resolution entity.
- 4 By email dated 15 December 2020 the Respondent emailed a screen grab from a bank account which showed a payment of £100 having been made to an account in the name of "Mr B Wattie".
- 5 On 21 December 2020 the Tribunal wrote to the parties requesting comment on whether the LAEO had been complied with. The Applicant's representative Bryon Wattie responded by email, referencing separate proceedings before the Tribunal and advising the Tribunal not to contact him again unless it related to complaints he had made against the Legal Member and a pending appeal. The Tribunal responded to Mr Wattie to confirm that the correspondence referenced this application. He provided no comment on the specific question of compliance with the LAEO. By emailed dated 29 December 2020 the Respondent confirmed its view that the LAEO had been complied with.
- 6 On 29 December 2020 Mr Wattie emailed the Tribunal to query the progress of the Applicant's appeal against the Tribunal's decision of 17 November 2020. On 5 January 2021 the Tribunal emailed the Applicant to advise that no request for permission to appeal had been received and again requesting comments on the question of compliance with the LAEO. The Applicant responded to advise that as far as she was aware the LAEO had not been complied with but failed to specify the reasons for this. The Applicant also confirmed that a request for permission to appeal had been submitted in November 2020. Following a search, a series of emails were located from Mr Bryon Wattie on the Applicant's behalf which included within them a request for permission to appeal. Due to an administrative oversight these emails had not been crossed over to the Tribunal.
- 7 On 18 January 2021 the Tribunal issued its decision to parties refusing permission to appeal. At the same time the Tribunal requested the following information from the Applicant:-

“In respect of the letting agent enforcement order, please confirm whether you have received payment in the sum of £100 from Stonehouse Lettings. We understand this was paid by BACS to Mr Bryon Wattie’s account on 16 December 2020.”

- 8 On 18 January 2021 the Tribunal received an email from Mr Bryon Wattie raising issues with both the Tribunal’s decision of 17 November 2020 and the decision to refuse permission to appeal. Mr Wattie further advised that he would be raising these issues with the Scottish Ministers and with the Upper Tribunal. On 21st January 2021 Mr Wattie emailed again to advise that he would be passing the appeal to his barrister to take forward.
- 9 On 5th February 2021 the Upper Tribunal confirmed to the Tribunal administration that they had no record of the Applicant having submitted a request for permission to appeal to that body.

REASON FOR DECISION

- 10 Section 50 of the Tribunal (Scotland) Act 2014 provides that the Tribunal may, after the period within which a letting agent enforcement order requires steps to be taken, review whether the letting agent has complied with the order. Both parties had been given the opportunity to comment on whether the LAEO in this case had been complied with. The Respondent had confirmed their view that it had. The Applicant had intimated that in her view it had not been complied with but she had failed to provide any specific reasons for this.
- 11 The Tribunal therefore considered the evidence produced by the Respondent, namely the complaints procedure and the screen grab showing a payment transfer of £100 to Mr B Wattie. In respect of the former, the Tribunal was satisfied that the complaints procedure produced by the Respondent complied with both the requirements of the LAEO and the Letting Agent Code of Practice. In respect of the latter, the Tribunal accepted that the screengrab from the Respondent’s bank account showed that a payment of £100 had been made to Mr Bryon Wattie, the representative for the Applicant. The Applicant had not put forward any submissions to contradict that position and had not explicitly denied receiving the payment. The Tribunal further noted the correspondence from the Upper Tribunal which confirmed that no request for permission to appeal had been submitted by the Applicant.
- 12 Accordingly the Tribunal was satisfied that the Respondent had complied with the RSEO and determined to issue this certificate of compliance.
- 13 The decision of the Tribunal was unanimous.

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.

**Legal Member and Chairperson of the Tribunal
Dated: 19 March 2021**