

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/LA/20/2064

The Parties:-

Graeme Taylor, 69 Ballumbie Gardens, Dundee, DD4 0NR (“the Applicant”)

**BS Properties, Mr Brian Stewart, 23 South Tay Street, Dundee DD1 1NR (“the
Letting Agent and Respondent”)**

Tribunal Members:-

**Petra Hennig McFatridge - Chairing and Legal Member
Jane Heppenstall - Ordinary Member (Housing)**

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 18 March 2021 as amended by the variation of 21 June 2021, certifies that the Letting Agent has complied with the LAEO. The tribunal’s decision was unanimous.

Reasons for decision:

The tribunal issued a decision dated 18 March 2021 to the parties by letter dated 23 March 2021. The tribunal found that the letting Agent had failed to comply with the Letting Agent Code of Practice (“the Code”) with regard to the following provisions and issued a LAEO on the same date:

2 Numbers 16, 17, 18, 19, 20, 21, 24, 26, and 27
Section 3 Numbers 32(i) and 37
Section 4 Numbers 52, 61, 65, 68
Section 5 Numbers 74, 75, 78, 79, 80, 85, 86
Section 6 Numbers 98, 99, 102
Section 7 Numbers 108, 110
Section 8 Numbers 119, 120, 123, 124, 125

The LAEO required the Letting Agent within 2 months of service of the order to do the following:

A: produce a document and send this to the Tribunal setting out the steps the Respondent is taking to reconcile all relevant bank records with the internal client ledger to ensure that all sums due to clients can be accounted for and accurate records produced going forward.

B: pay to the Applicant compensation of a total amount of £5,048.39 and produce proof of payment of said sum to the Tribunal

C: produce a document and send this to the Tribunal setting out the steps the Respondent is taking to identify training needs and to put in place appropriate supervision of staff to ensure compliance of staff with the Letting Agent Code of Practice.

D: issue a written letter of apology to the Applicant for the breaches of the parties' agreement, failure to meet the standards expected of Letting Agents operating in Scotland, and the breaches of various Sections of the Code and send a copy together with proof of service on the Applicant to the Tribunal at the same time.

E: produce a clear written procedure for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information as required in Number 92 of the Code and send a copy to the Tribunal

Evidence that the LAEO had been complied with:

1. Evidence was received that the LAEO with regard to items B and D has been complied with, albeit 3 days after the expiry of the period stated by the Tribunal, in that the Letting Agent provided proof in the email dated 28 May 2021 with documents attached showing that the required payment to the Applicant had been made on 26 May 2021 and an apology issued to the Applicant on 28 May 2021. Given the short delay from 23 May 2021 to 28 May 2021 in providing the necessary payment and apology the Tribunal saw no benefit in formally extending the time period for compliance and thus accepts the payment and apology to be lodged in compliance with the LAEO.
2. Evidence was received with regard to item E of the LAEO, albeit 8 after the expiry of the period stated by the Tribunal, in that the Letting Agent provided proof in the email dated 1 June 2021 with documents attached showing that the Letting Agent has in place the required written procedure for managing the end of tenancy process as required in LAEO item E. Given the short delay from 23 May 2021 to 1 June 2021 in providing the necessary documentation of written procedures regarding the end of tenancy process, the Tribunal saw no benefit in formally extending the time period for compliance and thus accepts the documentation lodged as proof of compliance with the LAEO item E.
3. Following the initial submission of evidence from the Letting Agent regarding items A and C, the Tribunal considered that although some evidence has been

submitted, this was insufficient to find that the order had been complied with and issued a variation of the original LAEO under S 49 of the Act. The order is referred to for its terms and held to be incorporated herein.

4. The Tribunal ordered: In order to satisfy the LAEO part A the tribunal will give the Letting Agent a further opportunity to produce a satisfactory document setting out the steps taken to tighten the internal money handling procedures by 31 July 2021. In order to satisfy the LAEO part C the tribunal will give the Letting Agent a further opportunity to produce a satisfactory document setting out the steps taken to identify training needs and to monitor compliance of staff with the Letting Agent Code of Practice by 31 July 2021.
5. The following further evidence was produced by the Letting Agent on 30 July 2021: checklist for each client file, BS Properties Checklist/Manual, invoice for Letting Agent training course for Stacey Latham, Client Money Protection Certificate, Procedure-for-handling-client-money.doc and professional indemnity document. The Letting Agent wrote: "*Please find attached manual for staff day to day running of the office I have also attached an invoice for which I have paid for Letting Course so not only myself aware of correct conduct but also Stacey Latham will now be approved Letting Agent I have also made it mandatory that a checklist is stapled on every file and ticked approved when all relevant paperwork has been filed*". The documents are referred to for their terms and held to be incorporated herein.
6. The Tribunal had regard to the additional evidence received and in particular notes that the money handling procedures have now been tightened up, the time periods for identifying payments have been shortened and the formal procedures show that the Letting Agent Mr Stewart is personally overseeing the day to day running of the client account. The Letting Agent has produced evidence of the protection of client funds through insurance. Although these documents are not exactly what the Tribunal has asked for, the additional evidence as a whole together with the fact that the Letting Agent is now much more aware of the pitfalls of not reconciling the payments following the incident with the member of staff as set out in his evidence to the Tribunal satisfies the Tribunal that the purpose of LAEO item A, to ensure future awareness of any discrepancies and early identification of any client money issues, has been achieved. The Tribunal therefore considers the LAEO item A complied with.
7. The Tribunal also had regard to the additional evidence regarding the formal Letting Agent training of the office manager Ms Latham evidenced by the course invoice dated 17 June 2021 and the improved procedures shown in the checklist and manual submitted. Although, again, the documents were not exactly what the Tribunal had asked for, they do show that the staff training has significantly improved, that procedures are now formally in place which ensure that staff are aware of important steps to be taken with regard to compliance with the Letting Agent Code of Practice and that both the office manager and Mr Stewart personally are supervising staff awareness of the necessary procedures. The Tribunal considers that the purpose of the LAEO item C has been achieved and thus considers the LAEO item C complied with.

8. On the basis of the evidence before it, the tribunal is satisfied that the Letting Agent has complied with the terms of the LAEO, albeit somewhat late and with some prompting. The purpose of the LAEO has been fulfilled. Therefore the tribunal issues a certificate of compliance regarding the LAEO for this case.

Rights of Appeals:

In terms of S 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.

Petra Hennig McFatridge
Chairing and Legal Member
5 September 2021