

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Statement of Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 48 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/23/0828

Re: Property at Flat 7, 45 Lyon Street, Dundee DD4 6RA ("the Property")

Parties:

Miss Lauren Siddalls ("the Applicant")

Belvoir Letting - Dundee ("the Respondent")

The Tribunal comprised:-

Mr Andrew McLaughlin	-	Legal Member
Mr David Godfrey	-	Ordinary Member

Background

[1] The Applicant alleges that the Respondent has breached certain paragraphs of the Letting Agent Code of Practice ("The Code").

[2] The relevant paragraphs alleged to have been breached are 21, 26, 86, 90, 91, 93, 108 and 113.

[3] The substance of the grievances could be summarised as being that the Respondent failed to recognise adequately the significance of a leak in the Applicant's roof and failed to communicate or engage with the Applicant appropriately in trying to have this issue resolved.

The Case Management Discussion.

[4] A Case Management Discussion (CMD) took place on 12 June 2023. The Respondent was represented by Ms Aimi Lewis of Belvoir Letting, Dundee. The CMD notes record that the Respondent was directed to lodge the communications between the parties about the issue and also any such communications with the landlord. The Respondent

was also directed to lodge a timeline of the relevant events. Nothing further was however ever received from the Respondent.

The Hearing

[5] The Application called for a Hearing in Endeavour House, Dundee at 10 am on 22 August 2023. The Applicant was personally present. She had no preliminary matters to raise and was content that the Tribunal commence hearing the Application. The Applicant also had one witness, her mother, who she also wished the Tribunal to hear from. There was no appearance by or on behalf of the Respondent. The Respondent had been competently notified of today's hearing. On the basis that the Respondent was not present and had failed to comply with the direction made by the Tribunal at the CMD, the Tribunal decided to proceed in the absence of the Respondent.

[6] The Tribunal questioned the Appellant and took her through the documentation she had submitted. Thereafter the Tribunal heard evidence from the Appellant's mother, Ms Carolyn Siddalls and questioned her also.

[7] Having heard evidence and having considered all the documentation before it, the Tribunal made the following findings in fact:

Findings in fact

- I. *The Applicant is a tenant with rights to occupy the property known as and forming Flat 7, 45 Lyon Street, Dundee;*
- II. *The Respondent is the Applicant's letting agent who principally manages the Property on behalf of a landlord;*
- III. *In part due to the failures of the Respondent to engage with the Tribunal process, the identity of the landlord is not apparent in the materials before the Tribunal;*
- IV. *The Applicant's contractual monthly rent is the sum of £360.00;*
- V. *On 24 August 2022 a leak developed in the Applicant's living room/kitchen of the Property. This leak was significant and required the Applicant to position various receptacles to collect the ingress of water. She regularly then had to empty them. This had a significant impact on the Applicant's quality of life as she worked from home and was distracted by the effort required to manage the water collected. It also impacted on the Applicant's ability to leave the Property for extended periods or invite others into her home;*
- VI. *The Applicant attempted on numerous occasions to communicate with the Respondent and convey to them the urgency with which matters required to be dealt;*

- VII. *The Applicant had reported the leak via a portal available on the Respondent's website especially for that purpose;*
- VIII. *The Respondent appears to have organised a contractor to appear at the Property two days after the leak was reported which was potentially an encouraging start to the leak being fixed;*
- IX. *Unfortunately, the contractor was unable to deal with the issue then and there, perhaps due the requirement for specialist equipment for working on the roof of a four story building;*
- X. *The Respondent failed to communicate with the Applicant what was happening or when the repair would be completed. It could have been the case that the Respondent was working hard behind the scenes to liaise with the landlord, but there is no evidence before the Tribunal that they were. There is nothing to suggest that any developments re progress were shared with the Applicant;*
- XI. *There were times when the Applicant and her mother phoned the Respondent several times a day only for the phone to ring out. Emails went unacknowledged and unresponded to;*
- XII. *On 23 September 2023, the Applicant submitted a formal email of complaint to the Respondent setting out her grievances in respect of the Respondent's management of the issue. Immediately after, Ms Aimi Lewis phoned the Respondent and made reference to hiring a cherry picker crane to allow remedial works to be carried out;*
- XIII. *Another contractor attended the Property on 2 October 2022 without any crane and looked at the roof from the ground;*
- XIV. *The Applicant made further phone calls to the Respondent throughout October but received no information about what was going on. The Respondent told the Applicant about how busy they all were and made her feel silly and like an inconvenience for bothering them with this matter;*
- XV. *On 17 October 2022, Aimi Lewis apparently returned from holiday and a member of staff told the Applicant when she phoned the Respondent, that "quote letters" were going to the landlord that day. Still nothing appeared to happen. The leak was still unaddressed and the Applicant was still having to work around monitoring and emptying water containers;*
- XVI. *A new member of staff began with the Respondent in or around November 2022. She appears to have been a positive influence on matters and attended at the Property to see what it was like. Whilst she could offer no practical assistance, she expressed sympathy to*

the Applicant for the position she continued to find herself in. The new staff member emailed the Applicant with some updates which had never happened before. Previously the Respondent had never instigated any phone-calls or emails to the Applicant. Communications had always been instigated by the Applicant. Even throughout November and December the Applicant never really knew what was happening with the repair;

- XVII. *Eventually, the repair was carried out in January 2023;*
- XVIII. *The Respondent made no apology or offered any goodwill gesture to the Applicant for her troubles. The Respondent has still not discussed any sort of follow up inspection of the roof even though there remains damp staining on the ceiling where the leak was;*
- XIX. *The Respondent has failed to supply any information to the Tribunal that might offer any explanation or mitigation for their actions;*
- XX. *The Applicant has also incurred modest out of pocket expenses in the purchase of sundry items to assist her in managing the water ingress. She has also been significantly inconvenienced.*

Relevant Legislation

[8] The relevant legislation is section 48 of the Housing (Scotland) Act 2014:-

“48 Applications to First-tier Tribunal to enforce code of practice

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is —

(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,

(b) in relation to an application by a landlord, a letting agent appointed by the landlord,

(c) in relation to an application by the Scottish Ministers, any letting agent.

(3) An application under subsection (1) must set out the applicant’s reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

(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.

(9) References in this section to—

(a) a tenant include—

(i) a person who has entered into an agreement to let a house, and

(ii) a former tenant,

(b) a landlord include a former landlord.”

{9} The Tribunal makes the following findings in fact and law:

Findings in fact and law

- a) The Respondent has breached Paragraph 21 of the Code: “You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way”. They did not carry out the services they provide in a timely manner. They clearly offer repairing services to tenants because they have a portal on their website for the express purpose of reporting such issues;
- b) The Respondent has breached Paragraph 26 of the Code: “You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement”. The Respondent’s actions clearly fall short of this;
- c) The Respondent has not breached Paragraph 86 of the Code: “ You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required, if you provide this service directly on the landlord’s behalf. Your procedure should include target timescales for carrying out routine and emergency repairs.” The Respondent does appear to have procedures. The problem appears to be their following through on them in this case;

- d) The Respondent has breached Paragraph 90 of the Code: *“Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures”*. The Respondent should have dealt with this repair urgently.” There is no evidence of them displaying any urgency;
- e) The Respondent has breached Paragraph 91 of the Code: *“You must inform the tenant of the action you intend to take on the repair and its likely timescale.”* The Respondent clearly failed to keep the Applicant updated;
- f) The Respondent has breached Paragraph 93 of the Code: *“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.”* The Respondent clearly failed to keep the Applicant informed about any delays to the repair;
- g) The Respondent has breached Paragraph 108 of the Code: *“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.”* The Respondent clearly failed to respond appropriately to the Applicant;
- h) The Respondent has not breached Paragraph 113 of the Code: *“The procedure must also set out how you will handle complaints against contractors and third parties; any recourse to the complaints procedures of a professional or membership body you belong to; whether you provide access to alternative dispute resolution services; if you are also subject to another regulatory body (for example the Scottish Legal Complaints Commission); and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.”* This does not seem relevant to the issues at hand.

Disposal of Application

[10] Having made the above findings in fact and law the Tribunal makes a Letting Agent Enforcement Order obliging the Respondent:-

1. To pay the Applicant the sum of £750.00 in compensation. This sum is composed of an amount equivalent to two months' rent together with an additional sum of £30.00 for the modest out of pocket expenses incurred by the Applicant to assist her in containing the water ingress;
2. To Inspect the ceiling of the Property affected by the leak within 14 days and to advise the landlord to repair the damp staining and redecorate as necessary.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Legal Member

23 August 2023

Date