

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **Variation of the Letting Agent Enforcement Order in terms of S 49 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 tribunal having determined that the Letting Agent has only partially complied with the LAEO dated 18 March 2021 with regard to parts A and C hereby varies said order to extend the time for the Letting Agent to comply with the requirements set out in LAEO parts A and C by 31 July 2021.

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:

Section 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. On 16 June 2021 the Applicant stated in his LAEO compliance form reply that the order had not been complied with. In his previous representations of 2 June 2021 he had explained it was factually incorrect that Mr Stewart had not charged fees for the management of the property and that the replies sent by Mr Stewart were some days late. The Respondent, Mr Stewart, stated in his LAEO compliance reply on 15 June 2021 that he considered the order had been complied with.
2. Evidence had been 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.

3. 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.
4. 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 with regard to parts B, D and E and will in due course issue a compliance certificate for these parts of the LAEO. The decision of the Tribunal was unanimous.
5. However, with regard to the outstanding requirements for compliance with items A and C of the LAEO, the Tribunal considers that the statement in the email of 1 June 2021 by Mr Brian Stewart is insufficient to meet the requirements of the LAEO. The decision of the Tribunal was unanimous.
6. Mr Stewart wrote "*With regards to A outlined in the requirements, the bank statements are in the hands of the CID as stated previously this time frame was when Amber Milne was stealing from the company and inputting data wrongly. Mr Taylor was never charged any fees over the duration we managed his property. Myself, Mr Brian Stewart now takes on all training of any new staff members, all compliance with regards to the Letting Agent Code of Practice I now adhere to myself so there will be no future mistakes within my company.*"
7. The reasons for requiring the documentation stated in parts A of the LAEO are contained in the decision of 18 March 2021 as follows:  
*[54] The Tribunal considered on these breaches of the Code that the Letting Agent must produce proof of an internal process to be undertaken to ensure that the client records are brought up to date in light of the problems arising from the inaccurate entries made by the previous employee. The Tribunal thus makes a Letting Agent Enforcement Order for the Letting Agent to produce within 2 months a document setting out the steps the Letting Agent 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.*
8. The statement that the bank statements are currently with CID and that it was a particular member of staff who was stealing from the Letting Agent is not the document required from the Letting Agent to show what steps have been taken to address in particular the problems with incorrect entries in the client ledger not having been reconciled with the bank statements of the company. The order was not made to show what was done in regard to the bank

statements now with CID but to prove that going forward the Letting Agent has tightened the internal money handling procedures so that future payments are correctly allocated, reconciled with the actual bank statements regularly and that the internal records of the Letting Agent are appropriately checked and verified. The tribunal expressly explained that the internal procedures for money handling clearly were not robust enough to identify irregularities because the ledger was not reconciled with the actual movements of funds in the Letting Agent's bank account. As the Applicant stated in his reply of 2 June 2021, the matters most important to the Applicant were the payment of the funds ordered and the apology. However, to ensure that the situation arising between the Applicant and the Letting Agent does not arise in future, the tribunal of its own accord ordered the production of evidence that the lack of monitoring of the client funds and the requirement to keep adequate and correct financial records has now been remedied and that there are now robust checks in place to ensure funds are correctly entered into the internal ledger and correct records are held and can be produced to clients.

9. 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. Should this not be forthcoming the tribunal would be minded to refer the matter to Scottish Ministers as non compliant with the LAEO as amended in terms of S 50 (2) of the Housing (Scotland) Act 2014.
10. The reasons for requiring the documentation stated in parts C of the LAEO are contained in the decision of 18 March 2021 as follows:  
*[67] As previously stated, the Tribunal does not consider that the argument that a specific employee caused said breaches whilst in the process of defrauding the letting agent can lead to any different outcome. The Respondent as a letting agent business contracted with the Applicant. Whilst the Tribunal does not doubt that some of the failings were caused by one specific employee, who also appears to have been in the process of defrauding the Respondent, Mr Stewart also blamed a further two employees for failings in the provision of service to the Applicant. This indicates to the Tribunal that there was a distinct lack of supervision and appropriate oversight of employees within the business. The Tribunal considers that the Respondent is similarly responsible to ensure that internal procedures, terms and conditions in agreements with clients and all duties under the Letting Agent Code of Practice are dealt with correctly by all staff.*  
*[69] The Tribunal makes a Letting agent Enforcement Order for the respondent to produce a document 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 and to produce a copy to the Tribunal.*
11. As with regard to item A of the LEAO set out above, the tribunal of its own accord considered it necessary to ensure that there are appropriate procedures in place to ensure that in future training needs are correctly identified and staff compliance with the Letting Agent Code of Practice is monitored.

12. The statement provided by the Letting Agent that " *Myself, Mr Brian Stewart now takes on all training of any new staff members, all compliance with regards to the Letting Agent Code of Practice I now adhere to myself so there will be no future mistakes within my company*" does not meet the requirement of the LAEO item C as it does not state which procedures are in place to identify training needs and to ensure monitoring of staff compliance with the Letting Agent Code of Practice. The tribunal considers that in order to comply with the requirement under item C further details of the measures in place are required. These may set out e.g.: Are there measures in place to identify training issues such as by spot checks of files? Is there a training manual for staff or does the Letting Agent ensure that staff are sent to specific training courses or how is training on the Code of Practice facilitated?
13. 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. Should this not be forthcoming the tribunal would be minded to refer the matter to Scottish Ministers as non compliant with the LAEO as amended in terms of S 50 (2) of the Housing (Scotland) Act 2014.

### **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**  
**24 June 2021**