

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision: Housing (Scotland) Act 2014 Section 48 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26**

**Chamber Ref: FTS/HPC/LA/18/3131**

**The Parties:-**

**Mrs Morag Duncan, Flat 2/1, 281 Old Rutherglen Road, Glasgow, G5 0UU  
("the Applicant")**

**Corporate Accommodation Limited trading as AM-PM Leasing, incorporated in Scotland under the Companies Act (registered number SC556902), 441 Union Street, Aberdeen, AB11 6DA ("the Letting Agent and Respondent")**

**Tribunal Members:-**

<b>Patricia Anne Pryce</b>	-	<b>Chairing and Legal Member</b>
<b>Carolyn Hirst</b>	-	<b>Ordinary Member (Housing)</b>

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Letting Agent has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 ("the 2014 Act"), determines unanimously that, in relation to the present Application, the Letting Agent has not complied with the Code of Practice and determined to issue a Letting Agent Enforcement Order ("LAEO").

**The tribunal makes the following findings in fact:**

- The Applicant is the owner and Landlord of the property at 7 Earns Heugh Crescent, Aberdeen (hereinafter referred to as "the property").
- The property was let by the Respondent, on behalf of the Applicant, who acted in its capacity as a Letting Agent.
- £495 per calendar month was due by way of rent for the property.

- The Tenant of the property paid to the Respondent £495 by way of a deposit for the property along with an advance payment of six months of rent on or about the commencement of the tenancy.
- The Applicant has not received return of the deposit in respect of the property from the Respondent.
- The Respondent resigned as letting agent for the Applicant by way of an email dated 22 August 2018, which email took immediate effect.
- A management fee of £62.70 was received by the Respondent from the Applicant for the period 20 August to 19 September 2018.
- The Applicant has not received payment of the sum of £52.80 from the Respondent in respect of the balance of the management fee which is due by the Respondent to the Applicant for the period of 22 August to 19 September, both 2018.
- The Applicant has not received repayment of the sum of £66.80 from the Respondent in respect of plumbing works in connection with the property.
- The Applicant paid the Respondent £175 for an Electrical Installation Condition Report (EICR) in 2015 in respect of the property. The Respondent has not provided the Applicant with the EICR.
- The Applicant paid the Respondent £120 in 2017 for a PAT (portable appliance test) and a Legionella Risk Assessment in respect of the property. The Respondent has not provided the Applicant with these documents.
- The Respondent let the property to the present Tenant of the property on or about April 2018. The Applicant has not received a copy of the tenancy agreement in respect of the property.
- On or about April 2018, the Applicant requested that the Respondent arrange for a gas safe inspection take place in respect of the property. This was not undertaken.

**The tribunal makes the following finding in law:**

- The Respondent is a relevant letting agent to whom the Code applies from 31 January 2018.

Following on from the Applicant's application to the First-tier Tribunal (Housing and Property Chamber), which comprised documents received on 19 November 2018, the Legal Member with delegated powers of the Chamber President referred the application to a tribunal on 29 November 2018.

**Introduction**

The tribunal had available to it and gave consideration to: the Application by the Applicant as referred to above, further representations received from the Applicant and oral submissions made by the Applicant at the hearing. The Respondent did not lodge any representations with the tribunal.

## **The Legal Basis of the Complaints**

The Applicant complains under reference to Sections 16, 17, 20, 21, 23, 24, 26, 27, 29 (d), 32 (q), 35, 37 (a), 43, 55, 85, 89, 108, 124 and 125 of the Code which are referred to for their terms.

## **Hearing**

A hearing took place in the Glasgow Tribunal Centre, 20 York Street, Glasgow on 29 January 2019.

The Applicant attended on her own behalf.

The Respondent was not in attendance nor was it represented.

## **Preliminary Issues:-**

The tribunal decided that the terms of Rule 29 had been complied with and that the hearing could continue in the absence of the Respondent. The tribunal was content that the Respondent had been given sufficient time and notice of the proceedings and hearing.

## **Section 16**

The Applicant submitted that the Respondent did not comply with legislation but failed to state what specific legislation she considered the Respondent had failed to comply with, other than by making reference to the Rent (Scotland) Act 1984. The Applicant provided no further information about this alleged breach. On the basis of the information before it, the tribunal did not consider that the Respondent had breached the 1984 Act.

**Given this, the tribunal finds that the Respondent did not fail to comply with Section 16 of the Code.**

## **Section 17**

The Applicant referred to her application and submitted that the Respondent had failed to respond at all to her complaints and queries since resigning as her letting agent.

The tribunal noted that the Applicant had been writing to the Respondent for over six months seeking clarity on various matters and had not even received the courtesy of a response from the Respondent.

**Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 17 of the Code.**

### **Section 19**

The Applicant did not provide any evidence of having been provided with information which was misleading or false.

**Given the foregoing, the tribunal finds that the Respondent did not fail to comply with Section 19 of the Code.**

### **Section 20**

The Applicant submitted that the Respondent had failed to respond to her complaint letter of 21 September 2018. The Applicant submitted that she had received no response to her attempts at correspondence with the Respondent since the Respondent resigned.

The tribunal noted that the Respondent had failed to follow its own complaints procedure.

**Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 20 of the Code.**

### **Section 21**

The Applicant reiterated that, despite repeated requests, she has never received from the Respondent the relevant safety certificates in respect of the property. The Respondent has not provided her with a refund in respect of the plumbing bill which had been automatically deducted from the balance of the rent money she was due. She instructed her own plumber and did not know why this bill had appeared on her invoice. The Respondent had simply deducted the money without an explanation and, despite repeated requests, has failed to advise the Applicant what work this referred to. In addition, the Respondent has not replied to any of her correspondence.

**Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 21 of the Code.**

### **Section 23**

The Applicant, in her application, based this alleged breach on the assumption that the employees of the Respondent did not know about the legal requirements of letting property. However, she failed to provide any further detail regarding this.

**Given the foregoing, the tribunal finds that the Respondent did not fail to comply with Section 23 of the Code.**

### **Section 24**

Despite the terms of the application, the Applicant did not provide the tribunal with evidence that the Respondent failed to maintain records. The tribunal noted that the Respondent had failed to provide documents on request but opined that it did not necessarily follow that this failure was caused by a lack of record keeping.

**Given the foregoing, the tribunal finds that the Respondent did comply with Section 24 of the Code.**

### **Section 26**

The tribunal noted that the Applicant had received no response to any of her correspondence over the previous six months. Her enquiries and complaints remained completely unanswered and unacknowledged.

**Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 26 of the Code.**

### **Section 27**

The Applicant submitted that she knew nothing about the plumbing repair for which she had been charged as above. Despite requests, she still had not been told to what this related.

**Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 27 of the Code.**

### **Section 29 (d)**

The Applicant did not provide any evidence regarding this alleged breach, other than a failure to provide her with the certificates.

**Given the foregoing, the tribunal finds that the Respondent did not fail to comply with Section 29 (d) of the Code.**

### **Section 32 (q)**

The Applicant referred to the terms of her application. The terms and conditions of the letting agreement she had with the Respondent failed to state how the Respondent could end the agreement.

**Given this, the tribunal finds that the Respondent failed to comply with Section 32 (q) of the Code.**

### **Section 35**

The Applicant accepted that her concern related to the termination of the agreement by the Respondent rather than a change to the terms of their agreement.

**Given this, the tribunal finds that the Respondent did not fail to comply with Section 35 of the Code.**

### **Section 37 (a)**

The Applicant submitted that she was due a refund of the management fee. The Respondent had resigned with immediate effect on 22 August 2018 but continued to charge her for the fee until 19 September 2018. She was therefore due the sum of £52.80 for this period as her property was not managed by the Respondent during this period. In addition, she has not received the certificates for the property nor a copy of the current tenancy agreement.

**Given this, the tribunal finds that the Respondent failed to comply with Section 37 (a) of the Code.**

### **Sections 43 and 55**

The Applicant did not provide specific information regarding either of these alleged breaches. There was no information about the terms of the tenancy agreement.

**Given this above, the tribunal finds that the Respondent did not fail to comply with Sections 43 and 55 of the Code.**

### **Section 85**

The Applicant submitted that the Respondent had failed in this connection as there were no safety certificates for the property. No gas safe inspection had been carried out despite a request that this be done.

The tribunal noted that, in the absence of evidence to the contrary, on the balance of probabilities the Respondent had not maintained the records in respect of the property. The Respondent had been afforded ample opportunities to provide these records to the Applicant but had failed to do so.

**Given this, the tribunal finds that the Respondent failed to comply with Section 85 of the Code.**

### **Section 89**

The Applicant did not provide any further information regarding this alleged breach.

**Given this, the tribunal finds that the Respondent did not fail to comply with Section 89 of the Code.**

### **Section 108**

The Applicant re-affirmed that her complaint had remained completely unanswered.

**Given this, the tribunal finds that the Respondent failed to comply with Section 108 of the Code.**

### **Sections 124 and 125**

The Applicant submitted that, despite repeated requests, she was still due the balance of the management fee and the return of the plumbing payment. In addition, the Respondent had demanded six months' rent in advance from the Tenant. The Respondent had held onto this full amount only paying the Applicant every month the balance of the monthly rent due after payment of management fees. In short, the Respondent had held onto six months' rent without letting the Applicant know. The Applicant submitted that she would never have agreed to the Respondent seeking six months' rent from a Tenant. She only discovered this when she contacted her Tenant directly seeking the balance of the rent. The Applicant confirmed that no rent was outstanding from the Respondent but that the Respondent had held onto this money without telling her. In addition, the Respondent has not arranged for the return of the deposit in respect of the property.

**Given this, the tribunal finds that the Respondent failed to comply with Sections 124 and 125 of the Code.**

### **Compensation**

The tribunal considered all of the submissions in respect of compensation and in light of Section 48 of the 2014 Act. The tribunal noted that monies remain due and resting owing to the Applicant by the Respondent. The tribunal also noted that the Applicant gave her evidence in a straightforward way without attempting to embellish matters. In addition, the Applicant had tried to resolve matters by sending clear and unequivocal correspondence to the Respondent. The Respondent chose to ignore all of the correspondence which the Applicant had sent to it.

In light of the foregoing, the tribunal finds that the sum of £1,000 is an appropriate sum by way of compensation.

In light of its findings, the tribunal requires the Letting Agent to:-

Within 28 days of the date of communication to the Respondent of the letting agent enforcement order, the Respondent must:-

1. Pay to the Applicant the sum of £1,000.
2. Provide documentary evidence to the tribunal of the Respondent's compliance with the above Letting Agent Enforcement Order by sending such evidence to the office of the First-tier Tribunal (Housing and Property Chamber) by recorded delivery post.

**The Respondent should note that failure to comply with an LAEO may constitute a criminal offence.**

**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.**

P Pryce

Legal Member and Chair

29 January 2019

Date