

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 48 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/LA/19/2074

Re: Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH (“the Property”)

Parties:

Maria Cervnakova, Flat 3/1, 5 Barrland Street, Glasgow, G41 1QH (“the Applicant”)

GPS Legal & Estate, 467 Victoria Road, Glasgow, G42 8RL (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in the absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

- **Background**

This application seeks compensation for alleged breaches of paragraphs 89, 90, 91 and 93 of the Letting Agent Code of Practice (‘LACP’). It called for hearing at 10am on 18 September 2019. The Applicant was not present in person and was not represented at the hearing. Written representations on her behalf had been made by Govanhill Law Centre. The Respondent was represented by its director, Mr Tahir Bashir.

- **Relevant Law**

The following provisions are of relevance to this application:

Section 46 of the Housing (Scotland) Act 2014 (‘the Act’) states:

“Letting Agent Code of Practice

(1) The Scottish Ministers may, by regulations, set out a code of practice which makes provision about—

(a) the standards of practice of persons who carry out letting agency work,

(b) the handling of tenants' and landlords' money by those persons, and

(c) the professional indemnity arrangements to be kept in place by those persons.

(2) The code of practice is to be known as the Letting Agent Code of Practice.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate on a draft of the code of practice.”

In terms of the powers granted under this section, the Scottish Ministers produced the Letting Agent Code of Practice (Scotland) Regulations 2016, which contained the LACP in its Schedule. This came into force on 31 January 2018.

The following paragraphs of the LACP were referred to (in this context ‘you’ refers to the letting agent in question):

“89. When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

90. Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

91. You must inform the tenant of the action you intend to take on the repair and its likely timescale.

...

93. 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.”

Section 48 of the Act states (so far as relevant to this application):

“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 ... 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 ...

(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...."

'Letting agency work' is defined in s.61 of the Act as follows (again, so far as is relevant):

"Meaning of letting agency work

(1) For the purposes of this Part, "letting agency work" means things done by a person in the course of that person's business in response to relevant instructions which are—

(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord's house as a dwelling, or

(b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).

(2) In subsection (1)—

(a) “relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and

(b) “occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the [Antisocial Behaviour etc. (Scotland) Act] 2004 Act....”

The relevant definitions from the Antisocial Behaviour etc. (Scotland) Act 2004 are:

“relevant person” means a person who is not—

- (a) a local authority;
- (b) a registered social landlord; or
- (c) Scottish Homes; and

“unconnected person”, in relation to a relevant person, means a person who is not a member of the family of the relevant person. [at s.83(8)]

“the use of a house as a dwelling shall be disregarded if—

(a) the house is being used for the provision of—

- (i) a care home service (as defined in paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010);
- (ii) a school care accommodation service (as defined in paragraph 3 of that schedule);
- ...
- (iv) a secure accommodation service (as defined in paragraph 6 of that schedule);
- (v) an independent hospital (as defined in subsection (2) of section 10F of the Public Services Reform (Scotland) Act 2010 (asp 8));
- (vi) a private psychiatric hospital (as defined in that section);
- (vii) an independent clinic (as defined in that section); or
- (viii) an independent medical agency (as defined in that section);

(b) the house is being used by a religious order the principal occupation of which is prayer, contemplation, education or the relief of suffering;

(c) a control order under section 178 of the Housing (Scotland) Act 1987 (c.26) is in force in respect of the house;

(d) the house is being used for holiday purposes;

(e) the house is the only or main residence of the relevant person;

(f) the house is—

(i) on agricultural land which is land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 or comprised in a lease constituting a short limited duration tenancy, limited duration tenancy, modern limited duration tenancy or repairing tenancy (within the meaning of that Act); and

(ii) occupied by the tenant of the relevant lease;

(g) the house is on a croft (within the meaning of section 3 of the Crofters (Scotland) Act 1993);

(h) the house is—

(i) on a holding to which any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies;

(ii) not situated in the crofting counties (within the meaning of the Crofters (Scotland) Act 1993); and

(iii) occupied by the landholder;

(i) the house is occupied by virtue of a liferent;

(j) the house is—

(i) owned by an organisation which has the advancement of religion as its principal purpose and the regular holding of worship as its principal activity; and

(ii) occupied by a person whose principal responsibility is the leading of members of the organisation in worship and preaching the faith of that organisation;

(k) the house is part of an estate of a deceased person and has been held by an executor for a period not exceeding 6 months from the date of death;

(l) the house is in the lawful possession of a heritable creditor and has been held by that creditor for a period not exceeding 6 months from the date of possession; or

(m) the house is owned by a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 and has been so owned by that person for a period not exceeding six months." [s.83(6)]

- Findings in Fact

1. The Applicant entered into a lease in respect of the Property with Shaheen Ashraf ('the Landlord') on 30 April 2015. The Landlord is a relevant person within the terms of Antisocial Behaviour etc. (Scotland) Act 2004. The Applicant is an unconnected person and the lease was entered into to allow her to use the Property as a dwelling, in accordance with that Act's terms.
2. One of the terms of the lease agreement stated: "All repairs or works desired to be carried out on the premises shall be notified to SHAHEEN ASHRAF in writing and no tenant shall be reimbursed for repairs undertaken unless with written consent."
3. In early December 2018, the Landlord approached the Respondent via her husband, Mohammad Ashraf, asking it to take on management of the Property on her behalf. On 6 December 2018, the Respondent carried out an inspection of the Property and concluded that it was not in a sufficient state of repair for it to accept that responsibility. The Property required various repairs and continues to do so. The Applicant had made various complaints to the Landlord regarding the state of the Property. On the basis that the relationship between the Applicant and Respondent was becoming fraught, the Respondent undertook to take over receiving and responding to these complaints on behalf of the Landlord. The Landlord agreed to pay a fee to the Respondent for this service, to be billed on the basis of each item of work completed.
4. The Respondent carries out letting agency work as part of its business in respect of other properties. It currently manages around 7 other properties in the Govanhill area on behalf of landlords. In all cases, it bills on the basis of each item of work carried out on the landlord's behalf.
5. In February 2019, the Respondent arranged for the repair of the shower at the Property on the Landlord's behalf. The Applicant had communicated the requirement for the work to be done to the Respondent, who had in turn passed that information on to the Landlord. The Landlord asked the Respondent to deal with this specific repair for her. The Respondent contracted with tradesmen on the Landlord's behalf and oversaw the work to its completion. Later in the year, the Landlord asked the Respondent to obtain quotes for work to replace the heating system at the Property. The Respondent did so, however the Landlord ultimately decided to contract for

this work and see it to completion herself. As part of its advice to the Landlord, the Respondent identified that she was not registered on the Scottish Landlord Register. The Respondent took steps on her behalf to have her name registered. The Respondent entered itself as her agent on that register and remains identified there as such. The Respondent is not registered as a letting agent.

6. The Applicant, through her agents, wrote to the Respondent on 3 and 25 June 2019 to report various repairs and other work required at the Property. She wrote again, again via her agents, on 28 June 2019, this time drawing the Respondent's attention specifically to paragraphs 89, 90, 91 and 93 of the LACP and alleging that the Respondent was in breach of the same. The Respondent passed these letters to the Landlord for action. It did not reply to the Applicant or her agents.
7. This application was raised on 3 July 2019.
 - Decision
8. The Respondent's only defence to the application is that it does not believe that it is carrying out letting agency work on behalf of the Landlord and that the LACP therefore does not apply to it in this context. The Tribunal did not consider this to be well-founded.
9. While the tenancy agreement refers the Applicant to the Landlord in relation to any complaints re: repairs at the Property, that agreement has now been superseded by the arrangement entered into by the Landlord in December of 2018, that the Respondent should deal with complaints from the Applicant regarding the Property on her behalf. The Respondent continues to do so and the Applicant has acquiesced to it. The Tribunal considers that dealing with such correspondence fits the definition of 'things done for the purpose of managing a house' in itself; however, the conclusion that the Respondent's actions fit that description is strengthened by the observation that the complaints in question are all, or almost all, in relation to issues concerning the repair of the Property. Further, by its own admission, the Respondent, on receipt of such complaints, passes them to the Landlord and awaits instructions as to what action to take. Such action may include carrying out a repair on the Landlord's behalf and providing support for her to do so herself. The Respondent provides this service as part of its business, in that it receives payment from the Landlord for doing so. The Tribunal therefore considered that this constitutes 'letting agency work', within the terms of the definition contained in s.61 of the Act.
10. This notwithstanding, the Tribunal does not consider that it is part of the arrangement between the Respondent and the Landlord that all repairs should be taken forwards by the Respondent. Rather, the Respondent passes complaints to the Landlord and awaits further instruction as to how to respond. The Tribunal did not therefore consider that the Respondent could be found to be in breach of paragraph 89 of the LACP, as it did not fail to deal with the repairs in terms of its agreement with the Landlord. It follows that

paragraphs 90 and 93 do not apply to the Respondent in these circumstances, since it had not received an instruction to carry out the repairs from the Landlord, in this instance.

11. Nonetheless, the Respondent should have responded to the letters sent by the Applicant on 3, 25 and 28 June 2019, to explain that it had passed the correspondence on to the Landlord and was awaiting instructions, and that it therefore was not taking any further action in regard to the repairs itself. Not doing so was a failure to comply with the terms of paragraph 91 of the LACP.
12. The Tribunal considered that, in order to rectify that failure, it is necessary for the Respondent to give written confirmation to the Applicant of how complaints regarding the Property will be dealt with going forwards and to apologise for the failure to respond to the letters sent in June 2019. It therefore made a letting agent enforcement order to that effect.
13. The Tribunal further considered that, as a result of the breach, the Applicant suffered loss, in the form of considerable inconvenience, having to expend time and effort attempting to communicate with the Respondent. The Tribunal adjudged that it was appropriate to order the payment of compensation of £150 in respect of this loss.

Right of Appeal

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/Chair

24 SEPTEMBER 2019
Date