

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Statement of Reasons under Section 48(6) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/18/1624

94, 3F1 Warrender Park Road, Edinburgh EH9 1ET ("the House")

The Parties:-

Tabitha Ralphs, residing at the House

("the Applicant")

DRM Residential, 1-3 Comiston Place, Edinburgh EH10 6AF ("the Letting Agent")

Tribunal Members :

Joan Devine – Chairing and Legal Member

David MacIver – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Letting Agent has not failed to comply with the Letting Agent Code of Conduct as required by section 46 of the Housing (Scotland) Act 2014. In all the circumstances the Tribunal does not propose to make a Letting Agent Enforcement Order.

The Tribunal make the following findings in fact:

1. The Applicant is tenant of the House having taken entry on 17 April 2018.
2. The Letting Agent carried out an inspection of the House on or around 23 May 2018.
3. The Letting Agent has requested access to the House in order to install a CO detector with a lithium battery in a sealed unit.
4. The Applicant has not consented to the Letting Agent having access to the House since the inspection on or about 23 May 2018.
5. The Letting Agent has not taken access to the House without the consent of the Applicant.

Introduction

1. In this decision the Housing (Scotland) Act 2014 is referred to as "the Act"; the Letting Agent Code of Practice is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are referred to as "the Rules".
2. Following on from the Applicant's application to the Tribunal which comprised documents received on 2 July 2018 ("the Application"), the Convener, with delegated powers under section 18A of the Act, referred the Application to the Tribunal on 5 July 2018. The Tribunal had available to it, and gave consideration to, the Application, written representation from the Letting Agent dated 2 August 2018 and the oral submissions made by the Applicant at the hearing.

Hearing

3. A hearing took place at George House, 126 George Street, Edinburgh EH2 4HH on 10 September 2018. The Applicant attended on her own behalf. There was no appearance by or on behalf of the Letting Agent

Basis of the Application

4. The Applicant complained of non-compliance with section 82 and 83 of the Code.

Summary of Submissions

5. The Applicant told the Tribunal that she took entry to the House on 17 April 2018. A few weeks after that the Letting Agent told her that they needed to carry out the annual inspection at the House. The Applicant queried why the Letting Agent had not carried out the inspection before she took entry. The inspection was carried out on or around 23 May 2018. The Applicant told the Tribunal that the following week she went on holiday. Whilst away she received a number of texts from the Letting Agent, they said that they needed to return to the House.
6. The Applicant told the Tribunal that the Letting Agent had emailed her saying that they had a right of access to the House and if access was denied she would be in breach of contract. The Applicant thought that the Letting Agent was very aggressive. It made her feel uneasy. The Applicant referred to an email from the Letting Agent dated 29 June 2018 in which the Letting Agent said that the landlord was concerned as to why the Applicant was not permitting entry. In the email the Letting Agent referred to an inspection that would go ahead on 6 July 2018.
7. The Applicant told to the Tribunal that the Letting Agent had not been in the House since the inspection which took place around 23 May.

8. The Tribunal explained to the Applicant that the Letting Agent is required to ensure that the House complies with all regulations and statutes that apply to private residential tenancies. The Applicant said that she understood that.
9. The Applicant said that she is planning to buy a house. Her intention is to move out of the House after Christmas.
10. The Applicant had said that she had bought her own CO detector which she had installed at the House and that it complied with the relevant Regulations. She had provided photographs of the detector with the application.

The Code

11. The Homeowner complained of non-compliance with section 82 and 83 of the Code. They provide as follows:
 82. You must give the tenant reasonable notice of your intention to visit the property and the reason for this. At least 24 hours' notice must be given or 48 hours' notice where the tenancy is a private residential tenancy, unless the situation is urgent or you consider that giving such notice would defeat the object of the entry. You must ensure the Tenant is present when entering the property and visit at reasonable times of the day unless otherwise agreed with the Tenant.
 83. If the Tenant refuses access, you, the landlord or any third party have no right to enter the property using the keys without a Warrant.

Remedy Sought

12. The Applicant said that she wanted the Tribunal to ensure that she was given notice before any inspection took place by the Letting Agent. She said that she would like a witness to attend any inspection. She also said that she did not want her occupation of the House to be unreasonably disturbed. The Applicant told the Tribunal that she would like the Letting Agent to explain what further works/inspections will be required at the House between now and the end of February 2019.

Tribunal Findings and Reasons for Decision

13. Having considered all of the information placed before it, the Tribunal determined that the issues complained of did not constitute a breach of the Code. In terms of the Housing (Scotland) Act 2006 the landlord of the House is required to ensure that the House complies with the repairing standard. That includes the provision of a CO detector. The CO detector must comply with BS EN 50291-1:2010+A1:2012. That requires the CO detector to be either hard wired or powered by a battery designed to operate for the working life of the detector. The pictures produced by the Applicant indicated that what she has installed in the House is a Kidde 7COC which requires 3 AA batteries. These would require replacement within the lifetime of the detector. In the circumstances the House is not currently compliant with the repairing

standard. The Letting Agent acts as the agent for the landlord in ensuring compliance with the repairing standard. It was not unreasonable for the Letting Agent to request access to the House in order to install a CO detector that would ensure compliance with the repairing standard.

Proposed Letting Agent Enforcement Order

14. The Tribunal does not propose to make a letting agent enforcement order.

Appeals

15. In terms of section 46 of the Tribunals (Scotland) Act 2014 a homeowner or property factor 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.

J Devine

Signed
Joan Devine, Legal Member and Chair

17 September 2018
Date