



**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/18/2143**

**Re: Property at Flat 0/2 2 Walmer Crescent, Glasgow G51 1AT (“the Property”)**

**Parties:**

**Mr Dylan Bonar, 2 Old Hall Knowe Place, Bathgate EH48 2TW (“the Applicant”)**

**Domino Estates, Pavilion 1, Finnieston Business Park, 12 Minerva Way, Glasgow G3 8AU (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has not failed to comply with the Letting Agent Code of Practice under Section 46 of the Housing (Scotland) Act 2014**

**Background**

This is an application for a determination that the Respondent has failed to comply with the Letting Agent Code of Practice dated 17<sup>th</sup> August 2018 brought in terms of Rule 95 (Application to enforce letting agent code of practice) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of a screenshot of the property listing on the rightmove website, and various e-mail correspondence between the parties.

## The Hearing

A hearing was held on 30<sup>th</sup> October 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant and the Respondent's Director, Mr Callaghan, both appeared. Neither was represented.

The Applicant and Mr Callaghan both gave evidence. The Tribunal found them both to be credible and reliable witnesses. They gave their evidence in a clear and straightforward manner, and the Tribunal accepted the evidence which they both gave. There was substantial agreement concerning the facts in this matter, and almost no areas of dispute on those facts.

The Tribunal found in fact:

- 1) That the Applicant was seeking a property to let in Glasgow in July 2018. He found the Property advertised by the Respondent on the rightmove website, and arranged a viewing on 30<sup>th</sup> July 2018.
- 2) That the Applicant attended the viewing along with a member of the Respondent's staff, Rosalind Phillips, and another prospective tenant at about 1pm. The Applicant only spent about 5 minutes conducting the viewing. He discussed with Ms Phillips practical issues concerning the deposit and how to progress his interest in renting the Property, but did not ask her any other questions about the Property, and nor did Ms Phillips make any assertions to him regarding it.
- 3) That the Applicant did not know the area in which the Property is situated very well. He had, however, attended Glasgow University, was familiar with the city, and had previously travelled on the Subway.
- 4) That the Applicant agreed to rent the Property, and collected keys for it from the Respondent's offices on 10<sup>th</sup> August 2018.
- 5) That the Applicant went to the Property with his father on 11<sup>th</sup> August 2018 with the intention of moving in. Whilst they were taking boxes containing his possessions into the Property, the Applicant immediately noticed frequent loud vibrations. He realised that these were caused by Subway trains passing in the tunnels underneath the Property to the Subway station next door.
- 6) That the Applicant found these vibrations quite intolerable, and he did not wish to live in the Property if it was subject to them with every passing Subway train. He had anticipated some light noise in the Property due to the proximity of the Subway lines and station, but had not anticipated such strong and intrusive vibrations.
- 7) That the Applicant removed his possessions from the Property and did not move into it, and thereafter he returned the keys to the Respondent on 13<sup>th</sup> August 2018, explaining his reason for not wishing to rent the Property and seeking to be released from the tenancy agreement which he had signed in relation thereto.
- 8) That the Respondent treated the Applicant's request and return of the keys as the giving of one months' notices to leave, and immediately sought to obtain a replacement tenant. It quickly succeeded in finding one, who commenced renting the Property from the end of August 2018. The Respondent charged

- the Applicant rental pro-rata from 10<sup>th</sup> August till the end of the month at which time the new tenant commenced a new lease of the Property. The Respondent then returned the balance of the first months' rental which was paid in advance by the Applicant, and subsequently returned his deposit.
- 9) That the Respondent had not previously noticed, nor had received any comment upon vibration in the Property caused by the Subway trains. It had taken on the Property on behalf of the owner in April 2017. The owner had not advised it of any issues regarding intrusive vibration in the Property.
  - 10) The Respondent had obtained a previous tenant for the Property, who resided there from April 2017 to July 2018. That tenant was quite happy with the Property and had reported no issue with excessive vibration within it.
  - 11) Mr Callaghan has asked the replacement tenant who commenced renting the Property at the end of August 2018, and continues to do so, if he had noticed excessive vibration, and was told that the new tenant noticed occasional slight noise or vibration caused by passing Subway trains, but that this was insufficient to cause him any concern.
  - 12) Mr Callaghan himself had visited the Property prior to this Hearing. He had noticed what he described as an occasional slight rumble when a Subway train passed, which he had not previously been aware of on previous visits to the Property. It was only when he returned with the intention of investigating the Applicant's complaint of excessive vibrations that he had detected this slight rumble, which he had not previously noticed and which he did not find intrusive or distressing.
  - 13) That the Applicant found the vibration caused by the passage of Subway trains intolerable, and the Respondent accepted his sincerity about that.
  - 14) That the property is located next door to the entrance to Cessnock Subway station, and the Applicant was aware of that having seen the station entrance when he visited the Property.
  - 15) That the Applicant had lived in London close to underground train stations, but had not appreciated that the vibrations in Glasgow from Subway trains might be more substantial than in London due to the train lines being located at a much shallower depth beneath the surface than in London.
  - 16) That the rightmove advertisement containing the particulars of the Property stated that Cessnock Underground Station was "less than a minutes' walk from the Property" and was located 0.00 miles from the Property, and included a map clearly showing that the Property was located next door to the Subway station.
  - 17) That the Respondent did not alert the Applicant to the potential for noise or vibration in the Property, and was not aware of that potential until after the Applicant's return of the keys.
  - 18) That the Applicant did not make any enquiries about the area in which the Property was located, nor potential noise and vibration to which it might be subject, and the Respondent did not make any assertions to him in that regard.

## **Statement of Reasons**

The Applicant alleges in his application a breach of paragraphs 17 and 18 of the letting agent code of practice. These two paragraphs concern overarching standards of practice.

Paragraph 17 states that the letting agent must be honest, open, transparent and fair in its dealings with the tenant. Paragraph 18 states that the letting agent must provide information in a clear and accessible way.

In particular, the Applicant alleges that the Respondent did not disclose to him frequent strong vibrations which would be felt in the Property caused by passing Subway trains and that there was no transparency by it in that regard, and that the agreement should be unwound due to him signing it under false pretences.

It is commonly understood and within judicial knowledge that different individuals may have very different tolerances and reactions to varying levels of noise and vibration. Some may be quite unconcerned by relatively loud noises and vibrations which they barely notice. Others might find one particular sound even at relatively low volumes quite intolerable.

The Tribunal accepts that the Applicant clearly found the vibrations caused by passing Subway trains quite intolerable, and that he felt that he could not reside in the Property as a result. Indeed, Mr Callaghan was at pains to stress that the Respondent had no doubt about the Applicant's sincerity in that regard.

However, the Respondent's position was that the noise or vibration in the Property caused by Subway trains was objectively slight; that Mr Callaghan, other tenants of the Property and its owner did not find it intrusive and indeed barely noticed its presence unless and until they made a point of listening out for it; that until the Applicant returned the keys on 13<sup>th</sup> August, the Respondent had not been aware of this issue and accordingly could not have alerted the Applicant to it; that the listing on rightmove noted the close proximity of the Subway to the Property; and that it would have been immediately obvious to the Applicant when he attended the Property for the viewing that it was located next door to the Subway station, and could have asked questions concerning any concerns he might have had and for information concerning noise which the Property might be subject to from the close proximity of the Subway lines and station, but did not do so.

The Tribunal has very great sympathy with the Applicant in this matter. He clearly found the vibrations in the Property quite intolerable, and would not be able to reside there as a result.

However, the Tribunal concludes that the Respondent could not have realistically anticipated what appears to it to be the Applicant's particular sensitivity to noise and vibration of this sort.

The Applicant accepted that he realised that the Property was right beside the Subway lines and station, and accepted that he had anticipated that there would be some noise in the Property caused by the passing trains.

It seems to the Tribunal that in circumstances where the Applicant himself did not anticipate that the level of vibration which he accepted and realised would be caused by the passing trains would exceed his tolerance, it would be impossible for the Respondent to have anticipated that would be the case.

The Respondent had in its listing on rightmove clearly identified the close proximity of the Subway lines and station to the Property, and did not attempt to conceal that in any way.

It was also quite unaware of any noise or vibration in the Property being of a level which might cause any problems for its occupants until after the Applicant returned the keys and explained his reason for doing so.

The Applicant had every opportunity to himself enquire of the Respondent about the level of noise or vibration caused to the Property by passing trains, and did not do so.

The Tribunal in these circumstances does not find that the Respondent has failed to comply with the letting agent code in the manner alleged by the Applicant, and accordingly dismisses this application.

## **Decision**

In these circumstances, and for these reasons, the Tribunal will dismiss the application.

## **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.**

Neil Kinnear

**Legal Member/Chair**

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**09 November 2018**  
**Date**