

Housing and Property Chamber
First-tier Tribunal for Scotland



Written Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 48(1) of the Housing (Scotland) Act 2014 (“the Act”)

Chamber Ref: FTS/HPC/LA/22/3853

Re: Property at 9 Grant Street, Greenock, PA15 2BP (“the Property”)

Parties:

Miss Wilma Ramage, 47 Finnart Street, Greenock, PA16 8HB (“the Applicant”)

Cathie Scott Properties, Suite 25, Ladyburn Business Centre, 20 Pottery Street, Greenock, PA15 2UH (“the Respondent”)

Tribunal Member:

Karen Moore (Legal Member) and Mary Lyden (Ordinary Member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with the Code of Practice for Letting Agents (“the Code”) and made a Letting Agent Enforcement Order for £5,080.00.

Background

2. By application received between 20 October 2022 and 16 November 2022 (“the Application”) the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondent had failed to comply with the Code of Practice for Letting Agents (“the Code”)
3. The Application comprised the following documents: -(i) application form in the First-tier Tribunal standard application form indicating that the parts of the Code complained of are Overarching standards of practice at Rules 21, 26, and 27, Management and maintenance at Rules 73, 74 and 75, Ending the tenancy at Rules 105 and 106, Communications and resolving complaints at Rules 104 and 108 and Handling landlords’ and tenants’ money , and insurance arrangements (ii) copy correspondence between the Applicant and the Respondent (iii) a copy of the agency contract between the Applicant and the Respondent (iv) copy tenancy agreement

between the Applicant and Daniel McDougall dated 24 December 2018 relative to the Property (v) End of Tenancy Report dated 23 August 2022 and (vi) photographs of the Property.

4. A legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (CMD) was fixed for 27 February 2023 at 10.00 by telephone conference call.
5. Prior to the CMD both Parties lodged written submissions. The CMD took place on 27 February 2023 at 10.00 by telephone conference call. The Applicant was present on the call and was unrepresented. The Respondent was represented by Mrs. Cathie Scott, the Respondent's managing director.
6. The Tribunal advised the Parties that the purpose of the CMD was to identify if matters were disputed or could be resolved and if a Hearing on evidence is required. Mrs. Scott confirmed that the Respondent opposed the Application.
7. From the CMD, the matters in dispute between the Parties were identified as :
 - i) The scope of the letting agency contract between the Parties ("the Contract") with regard to inspections of the Property ("Tenancy Inspections and notifying the Applicant of unauthorised works carried out by tenants;
 - ii) The Respondent's supervision and management of the Property during the term of the Contract;
 - iii) The scope of the Contract with regard to its duration and post-tenancy obligations on the part of the Respondent;
 - iv) The Applicant's dealings with contractors instructed by the Respondent and
 - v) The Respondent's obligation to deal with the Applicant's landlord's insurance claim and with recovery of the tenancy deposit ("Tenancy Deposit").
8. The Tribunal adjourned the CMD to a Hearing of evidence.
9. The Tribunal issued a Direction directing the Parties to lodge all relevant paperwork and a list of witnesses. The Parties lodged further written representations and documentation in response to the Direction. The Respondent lodged two witness statements.

Hearing

10. The Hearing took place on 28 April 2023 at 10.00 at the Glasgow Tribunal Centre. The Applicant was present and was unrepresented. The Respondent was represented by Mrs. Cathie Scott, the Respondent's managing director.

The Applicant's Evidence.

11. The Applicant gave evidence on her own behalf and stated that the most important matter to her in appointing a letting agent was that "someone took care of my house"

and that she emphasised this at her initial meeting with Mrs. Scott. She confirmed her position as set out at the CMD that the Respondent had not carried out its duties properly, had not inspected the Property and that the Property had been left in a poor state at the end of the last tenancy.

12. The Tribunal took the Applicant through the complaints as set out in the Application.

Overarching Standards of Practice:

21. You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.

26. You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.

27. You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.

13. With regard to the above part of the complaint as set out in the Application, the Applicant, with reference to copy emails lodged by her, stated that she required to chase the Respondent for replies to her requests that Tenancy Inspections be carried out and that in her opinion, “the tenants had been allowed to do anything” in the Property. She gave examples of décor being changed without permission and the Respondent failing to follow up on her request that the tenants be visited and told that these actions were a breach of the tenancy agreement.

Management and maintenance:

73. If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

74. If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate.

75. Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.

14. With regard to this part of the complaint as set out in the Application, the Applicant stated that this was the most important aspect to her as Tenancy Inspections had not been carried out. She stated that at her initial meeting with Mrs. Scott she emphasised that this was important and queried why she would have to pay for this in addition to the management fee. The Applicant stated that Mrs. Scott agreed that there would be no additional fee.

15. With reference to the emails lodged by her, the Applicant stated that she repeatedly asked for updates on Tenancy Inspections and frequently had to remind the Respondent that Tenancy Inspections were overdue. She stated that she was told that tenants were on holiday or cancelled at the last minute and that Covid restrictions prevented Tenancy Inspections taking place.
16. With regard to reporting repairs to her, the Applicant stated that the Respondent notified her on one occasion only, 1 October 2020, that a repair was needed at the Property and, when the Applicant found out that the repair had not be carried out by 7 October 2020, the Applicant herself arranged for this to be done.
17. The Applicant stated that the most serious aspect of this part of the complaint was that the there had been a breach of the tenancy agreement as panelling had been affixed to the walls and could not be removed without damage to the walls and , in particular, to a marble fireplace.
18. The Applicant stated that she had visited the Property in 2019 and noted that there had been changes to the décor and that the tenant had told her that they had been given verbal authority by the Respondent. She stated that she advised the Respondent that there were to be no more changes to the décor without her express approval and asked the Respondent to draw this to the tenant's attention. However, she understood that this had not been done.
19. The Applicant stated that she had given approval for the bathroom suite to be renewed by the last tenant, Mr. McDougall. She stated that the Respondent had carried out a Tenancy Inspection after that time but had not advised her that the bathroom suite had not been fitted properly with the bath and sink not being sealed properly. With reference to photographs lodged with the Tribunal, the Applicant pointed out where the work had not been finished correctly. She stated that she had repeatedly asked for a report and photos of the bathroom suite and that the photo she received six months later was taken from an angle which hid the flawed workmanship and that the report did not mention that the panelling had been installed. The Applicant stated that this had been the only Tenancy Inspection carried out during the Mr. McDougall's three and a half year tenancy.

Tenancy deposits

104. You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared.

105. Where you manage the tenancy deposit on behalf of a landlord you must take reasonable steps to come to an agreement with the tenant about deposit repayment. Where agreement is reached you must make a claim to the relevant Tenancy Deposit Scheme.

106. In the event of a dispute, the agent and tenant will be required to follow the relevant scheme's rules for disputes.

20. With regard to this part of the complaint as set out in the Application, the Applicant stated that, around September 2021, she had decided to sell the Property when the tenancy agreement had come to an end. She had advised the Respondent of this and had advised Mr. McDougall, also. She stated that she asked the Respondent to speak to Mr. McDougall to find out his plans and had been advised by Jenna, an employee of the Respondent, that Mr. McDougall intended to leave in June 2022 and had served notice to this effect.
21. The Applicant stated that she asked the Respondent to carry out a Tenancy Inspection before Mr. McDougall left so that tenant repairs could be identified and addressed as décor carried out by a previous tenant had not been picked until after that tenant had left. The Applicant stated that she had asked the Respondent to carry out a final Tenancy Inspection before the tenant left or to attend on the day when Mr. McDougall was leaving to do a final check, but that neither had happened.
22. The Applicant stated that Mr. McDougall left the Property on Friday 19 August 2022 and that she and her partner, Mr. William Davidson, visited the Property on Saturday 20 August 2022 to find it in a poor condition and with significant damage. She stated that she immediately contacted the Respondent and asked the Respondent to call out to the Property and take a photographic record for insurance purposes. The Applicant stated that Mrs. Scott of the Respondent advised her that she had tried to gain access on Monday 22 August 2022 but could not unlock the door.
23. The Applicant stated that, thereafter, Mrs. Scott of the Respondent and her assistant, Jenna, met with the Applicant and Mr. Davidson at the Property on Tuesday 23 August 2022, at which visit, they noted the condition of the Property and Jenna took photographs. The Applicant stated that the Mrs. Scott offered to get contractor quotes to repair the damage and Jenna offered advice on making a claim against Mr. McDougall under a “new” procedure and indicated that the Respondent would deal with the Tenancy Deposit claim. The Respondent followed this up with an email on 24 August 2022 advising that they were dealing with a claim by arranging contractors for quotes. The Applicant stated that, by email dated 9 September 2022, the Respondent withdrew from acting on her behalf.
24. The Applicant stated that the Respondent had dealt with lodging the Tenancy Deposits for all tenancies and had dealt with the return of the Tenancy Deposit for all previous tenancies, but now advised that the Applicant required to do this herself.

Communications and resolving complaints

108. You must respond to enquiries and complaints within reasonable timescales.

Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

25. With regard to this part of the complaint as set out in the Application, with reference to the emails lodged as part of the Application and as further productions, the Applicant stated that she repeatedly raised issues with the management of the Property and the lack of routine Tenancy Inspections but did not get satisfactory answers from the Respondent.
26. In response to questions from the Tribunal as to why she continued to use the services of the Respondent, the Applicant stated that there were few letting agents in the locality and the others had poor reputations.

Handling landlords' and tenants' money, and insurance arrangements

135. If applicable, you must have a procedure in place for making insurance claims on a landlord's behalf and for liaising with the insurer to check that claims are dealt with promptly and correctly. If landlords are responsible for submitting claims on their own behalf, you must supply all information they reasonably need to do so.

27. With regard to landlord insurance cover, the Applicant stated that she had insurance cover, however, when she made a claim the insurance assessor advised her that the damage was not classed as malicious damage and asked why the damage was not picked up at the Tenancy Inspections. She stated that the assessor advised that "your problem is with your letting agent and not the insurer". The Applicant advised that the Respondent's response was that this was not covered in the Contract and that the Respondent had "no obligation" to do anything about the claim. However, at the beginning of October 2022, the Respondent sent the Applicant contractor quotes for repair to the damage at the Property.
28. The Applicant confirmed that she handled the insurance claim herself and had been unsuccessful as there were no photographic records of the condition of the Property before and during the tenancy.

Cross examination by the Respondent

29. In response to cross-examination questions by Mrs. Scott, the Applicant agreed that she had completed her personal details and that details of the Property in her own handwriting on the Respondent's pro forma Contract. The Applicant did not accept she had excluded Tenancy Inspections from the Contract as she refused to pay for them. The Applicant maintained that the Respondent agreed to include Tenancy Inspections at no additional cost. The Applicant firmly disputed that the Tenancy Inspections were to be carried out on an "as and when" basis and strongly maintained that these were to be carried out six-monthly at no additional cost. The Applicant referred to her emails pointing this out and to the earlier Tenancy Inspection reports which referred to the date of the next planned Tenancy Inspection. The Applicant agreed that Covid restrictions had been in place for part of the Contract but did not accept that this prevented most of the Tenancy Inspections taking place.

30. The Applicant agreed that she had given permission for a previous tenant to replace a carpet but had not agreed to a change of wallpaper.
31. The Applicant agreed that on occasions she arranged for minor repairs to be carried out and agreed with the Tribunal that there had been a mixed approach to dealing with repairs and that there is no dispute in respect of repair handling.
32. With regard to text messages between the Applicant and Mr. McDougall on 20 August 2022 in which the tenant accepted damage had been caused, the Applicant maintained that she had forwarded these to Jenna of the Respondent. In addition, she maintained that she had shown the texts to Mrs. Scott at the Property on 23 August 2022.
33. With regard to the tenant vacating the Property, the Applicant agreed that the Respondent had told her that Mr. McDougall was late in returning the keys and that the Respondent's staff had not been able to access the Property on Monday 22 August 2022 as there was an issue with the keys.
34. The Applicant did not accept that the Respondent could not carry out tenancy inspections during the last tenancy due to Covid restrictions. She did not accept that no changes to the décor had been reported following the Tenancy Inspection in February 2020 because there had been nothing to report.
35. The Applicant did not accept that, at the meeting at the Property on 23 August 2022, although the Respondent agreed to get contractors out for repairs and to take photos for the insurers, that the Respondent advised that they did not handle insurance claims.
36. The Applicant agreed that she had received two quotes from contractors and had called the contractors to query the quotes but denied that she had asked the contractors to describe the Property as she disputed that they had been given access to the Property.
37. The Applicant agreed that there had been an overpayment of rent by Mr. McDougall but stated that she had been told it was an overpayment by the Respondent to her and so had not returned it.
38. The Applicant agreed that she had advised Jenna of the Respondent that she intended to sell the Property. She did not agree and did not know if Jenna had taken this to mean that she had terminated the Contract. The Applicant agreed that she instructed selling agents after Mr. McDougall had given notice and that the estate agent took photos on 22 July 2022. She stated that she did not see that photos as the estate agent had lost them.

Evidence of Mr. William Davidson

39. Mr. Davidson identified himself as the partner of the Applicant. He confirmed that he had attended at the Property on Saturday 20 August 2022 after Mr. McDougall had left and that the Property was badly damaged and that the condition of it distressed both

the Applicant and him. He confirmed that he had attended the meeting at the Property on Tuesday 23 August 2022 and met with Mrs Scott and her colleague . He stated that as the Applicant and he showed Mrs. Scott the state of the Property and the damage, they became more and more upset. Mr. Davidson stated that he remembered that Mrs. Scott and her colleague took photos, that they agreed that that Property was “a disgrace” and that they said they would “get the ball rolling for the claim process”. He recalled that they said they would get quotes for the insurance claim “to recover the costs for us”.

Cross examination by the Respondent

40. In response to questions by Mrs. Scott, Mr. Davidson maintained that she and her colleague had said that they would assist with reclaiming on the Tenancy Deposit and that they would deal with a new type of claim. He did not agree that the Applicant had stated that she would make a claim on her insurance as “the first call”.

Re-examination by the Applicant

41. Mr. Davidson confirmed that he had been present at the initial meeting with Mrs. Scott and that she had agreed that inspection fees would be waived. He confirmed that the primary concern was that “we wanted it to be looked after”.

Evidence of the Respondent.

42. Mrs Scott gave evidence on behalf of the Respondent. She stated that she is the managing director of the Respondent and always attempts to carry out their duties within the regulations and the Code. She stated that the Respondent dealt with all enquiries and complaints in line with the Code.
43. With regard to the Application, she stated that when she and Jenna had inspected the Property there were no changes to the Property and so nothing to report. She stated that, at the Inspection on 27 February 2022, Jenna reported that a radiator was leaking and that the Applicant attended to this herself the following day. She explained that the Respondent had difficulty getting access to the Property as Mr. McDougall was reluctant to allow them in.
44. With regard to changes of décor, she confirmed that the previous tenant had decorated the lounge with new paper and a new carpet, with permission, and had painted the kitchen grey which the Applicant then re-painted white. She stated that all tenants were made aware that in terms of the tenancy agreement, all request to make changes must be in writing and that Mr. McDougall had not asked for consent and none was given. She accepted that, nonetheless, he had added wall panelling.
45. With regard to Tenancy Inspections, Mrs Scott maintained that these could not be carried out due to Covid restrictions and thereafter it had been difficult to access the Property as arrangements to visit were cancelled by Mr. McDougall. She stated that she had not been concerned as Mr. McDougall had continued to pay rent on time, particularly during Covid.

46. Mrs. Scott explained that the Respondent could not carry out an Inspection after Mr. McDougall left as the keys did not work. She confirmed that, during his tenancy, only one Tenancy Inspection was carried out on 27 February 2020.
47. With regard to the meeting at the Property on 23 August 2022, Mrs. Scott stated that she took photos and that the discussion with the Applicant had been that the Applicant had her own insurance and her own lawyer and would pursue a claim. Mrs. Scott recalled that she would give access for contractors to start the process to claim the Tenancy Deposit. She recalled that Jenna said that a claim could be made through the tribunal but she had been under the impression that the Applicant wanted to make an insurance claim. Mrs. Scott recalled that at that meeting, the Applicant had been angry as she had sent a text to Mr. McDougall thanking him for looking after the Property, and she was now disgusted with its condition.
48. Mrs. Scott stated that she was aware that there had been an incident with the downstairs neighbour which resulted in the estate agent being refused access and that Mr. McDougall had then refused to deal with the Respondent.
49. With regard to the overpayment of rent, Mrs. Scott stated that Jenna, on behalf of the Respondent, had contacted and taken advice from the Scottish Association of Letting Agents (SAL). SAL advised that as the Respondent was no longer contractually committed to the Applicant, they had to be careful in respect of Mr. McDougall's overpayment and had to inform him that the Applicant was holding his funds.
50. Mrs. Scott agreed that the Respondent had supplied photos and two quotes to the Applicant and agreed that the contractors had been told that the quotes were for an insurance claim. She stated that this had been done to help the Applicant as the Property had been left in a poor condition as Mr. McDougall had taken no care in moving out. Mrs. Scott stated that the Respondent agreed to start the Tenancy Deposit process but "subsequently it all got messy" and the Applicant was advised that the Respondent would no longer handle the process. Mrs. Scott maintained that, at that time, the Respondent no longer managed the Property as the Contract had been terminated by the Applicant when she instructed a sale agent.
51. Mrs. Scott stated that SAL is a trade organisation who give guidance and advice and that they advised Jenna that the overpayment of rent could not be retained. She stated that the Respondent felt uncomfortable that they were not in control of the rent overpayment and so re-imbursed the last month's fee to the Applicant. Mrs. Scott stated that the advice from SAL was that the Respondent was only bound by the Contract until the Property went on the market and that the Respondent was not obliged by the Contract to deal with the Tenancy Deposit or the insurance claim. She stated that Jenna specifically asked what the law is on the end of the tenancy, and that SAL advised that the Contract ended on the End of Tenancy Report and that the Respondent no longer managed the Property if it was being sold. Mrs. Scott stated that, although SAL advised that the agreement was at an end, the Respondent continued to assist as much as they could.

52. In response to questions from the Tribunal, Mrs. Scott stated that the advice from SAL had been by telephone and that SAL had seen a copy of the Contract. Mrs. Scott accepted that the Contract was not in the best format and stated that a different template is now used.
53. In response to questions from the Tribunal, Mrs. Scott stated that she had told Mr. McDougall that there was damage in the Property and there would be a claim on the Tenancy Deposit. She agreed that there had been a mixed management from the start and stated that the Applicant had been more hands on than most landlords as she had an attachment to the Property.
54. Mrs. Scott stated that the Respondent had resolved issues with other tenants and tenancies but Mr. McDougall's tenancy during the Covid lockdown and the year after was a big issue.
55. With reference to the contractors' witness statements lodged by the Respondent, Mrs. Scott found that the remarks by the Applicant that the contractors had not been in the Property were unfair, as Mrs. Scott in running the Respondent as a business, tries to act as professionally as possible and would never falsify reports or evidence.

Cross Examination by the Applicant

56. Mrs. Scott agreed that the Respondent had dealt with tenant changes where permission had been granted by the Applicant and that there had been an occasion when paint was changed without permission.
57. Mrs. Scott agreed that the Respondent had Tenancy Deposit matters for previous tenancies including a Tenancy Deposit claim and dispute.
58. Mrs. Scott agreed that the Applicant had not been told that access for Tenancy Inspections had not been given and that there had been repeated refusals. She explained that while tenants will give access for safety checks, most are not happy to let agents into the properties and agents must give 48 hours' notice. She agreed that the Respondent did not make any 'Right of Entry' access applications to the tribunal.
59. Mrs. Scott agreed that the issue with the keys not working occurred on only one day and had no bearing on the Application.
60. With regard to the meeting at the Property on 23 August 2022, Mrs. Scott maintained that, after the photos had been taken, the discussion between the Applicant, Jenna and herself focused on the Applicant's intention to claim on her insurance. She accepted that Jenna had followed up the next day with an email advising that the Respondent would deal with the claims but explained that she was not aware that Jenna had sent this email. She also stated that she was not aware that Jenna had sent a further email on 2 September 2020 referring to photos required for the claims.

61. Mrs. Scott denied strongly that she attempted to imply that the Applicant intended to act dishonestly by making multiple claims and apologised for any offence taken by the Applicant in that regard as she had not intended to discredit the Applicant.
62. In response to questions from the Tribunal, Mrs. Scott advised that the Respondent manages around 173 properties and has two permanent staff, two part-time and herself. With regard to procedures, Mrs. Scott stated that the Respondent advises tenants verbally or by email that of the end of tenancy procedures and that there will be an inspection. She stated that new procedures, a new style contract and an IT system are now in place and stated that tenants and landlords are both made aware of the consequences of breaches of tenancy agreements.

Applicant's Summing- up

63. The Applicant advised that she found the whole experience devastating and that her main point is that the Respondent had been paid to look after the Property but this had not happened. The condition of the Property was more than wear and tear and was damage. The Applicant stated that she has had significant expense in additional insurance and the expense of making good the damage, using holiday leave to do so. In response to the Tribunal's questions the Applicant confirmed that the Property is now being marketed for sale.

Respondent's Summing- up

64. Mrs. Scott stated that she, too, had found the experience stressful and considered that the Respondent had complied with the Code. She stated that there are other letting agents in the area but the Applicant chose to stay with the Respondent. Mrs. Scott stated that she has been in business for ten years, most referrals are word of mouth . She added that she always acts professionally and this is the first experience of a complaint like this.

Findings in Fact.

65. The Tribunal had regard to the Application in full, the written submissions and productions as lodged by the Parties and to the evidence at the Hearing, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.
66. The Tribunal found the following facts established:
- i) The Parties are as set out in the Application;
 - ii) The Applicant is the owner of the Property and was the landlord during the term of the Contract;
 - iii) The Respondent is a letting agent in terms of the Act and is bound by the Code;
 - iv) The Contract is undated and began on or around 2016;
 - v) The Contract gives the Respondent sole agency of the let and management of the Property;
 - vi) The Contract is part printed in a pro forma style and part completed in the Applicant's handwriting;

- vii) The Contract states that an administration fee of £25 will be charged for six monthly inspection visit and there is a handwritten "x" at this clause of the Contract;
- viii) The Contract refers to the tenancy deposit as one month's rent;
- ix) The Contract is silent in respect of termination;
- x) The Contract is silent in respect of the tasks to be carried out and tasks which are excluded;
- xi) There have been three tenancies of the Property during the term of the Contract, all arranged by the Respondent;
- xii) The last tenancy ended on or around 19 August 2022;
- xiii) Tenancy Inspections have been carried out by the Respondent on six occasions from May 2017 to February 2022;
- xiv) A charge of £25.00 was made by the Respondent for a Tenancy Inspection in August 2019 and later refunded;
- xv) Infrequent Tenancy Inspection reports were carried out and reports provided by the Respondent to the Applicant;
- xvi) Each Tenancy Inspection noted the date on which the next Tenancy Inspection was to be carried out;
- xvii) The Respondent failed to carry out Tenancy Inspections on the due dates;
- xviii) The Applicant frequently reminded the Respondent to carry out Tenancy Inspections and frequently requested photos of the Property;
- xix) The Respondent failed to update the Applicant on their failure to carry out Tenancy Inspections and failed to take photos of the Property;
- xx) Only one Tenancy Inspection was carried out during the last tenancy, the period of which endured for over three years;
- xxi) A final end of Tenancy Inspection was carried out on 23 August 2023 at which considerable damage to the Property was noted;
- xxii) Unauthorised decoration carried out by the tenant, Louise Compston, was not reported to the Applicant ;
- xxiii) The last tenant, Mr. McDougall, replaced the bathroom suite in an unworkmanlike manner and the condition of the bathroom was not reported to the Applicant ;
- xxiv) Unauthorised decoration carried out by the last tenant, Mr. McDougall, was not reported to the Applicant ;
- xxv) The Respondent dealt with Tenancy Deposit matters, including disputes, up until the last tenancy;
- xxvi) The Respondent unilaterally terminated the Contract by email on 9 September 2022;
- xxvii) The Respondent refused to deal with Tenancy Deposit matters arising from the last tenancy;
- xxviii) The Respondent refused to deal with insurance claim matters arising from the last tenancy;
- xxix) The Applicant dealt with both the Tenancy Deposit and insurance claim matters arising from the last tenancy herself;
- xxx) The Respondent's failure to carry out Tenancy Inspections and keep a photographic record of the Property prejudiced the Applicant's insurance claim;
- xxxi) The Applicant suffered significant financial loss due to the Respondent's

- failures to carry out Tenancy Inspections and to manage the Property properly;
- xxxii) The Applicant and her partner suffered distress and inconvenience due to the Respondent's failures to carry out Tenancy Inspections and to manage the Property properly;
 - xxxiii) The Contract is now at an end and
 - xxxiv) The Property is being marketed for sale.

Issues for Tribunal

67. The issues for the Tribunal are: was the Respondent bound by those parts of the Code as complained of in the Applications and did the Respondent breach those parts of the Code.
68. Although a significant volume of productions have been lodged by the Parties, the core issues are relatively narrow being the scope of the Contract in respect of management of the Property and the standard of service provided by the Respondent.

Assessment of Evidence - Scope of the Contract.

69. The Applicant's position is that the Respondent was obliged to carry out Tenancy Inspections and to deal with post-tenancy claims in respect of the Tenancy Deposit, tenant damage and insurance, all in terms of the Code.
70. The Contract is a sole agency contract with no exclusions or limitations and no termination provisions.
71. The Respondent's position is that Tenancy Inspections were excluded by virtue of the "x" marked at the relevant clause and because the Applicant did not pay a £25.00 fee per Tenancy Inspection. The Respondent's position is that Tenancy Inspections were carried out as and when the Respondent had time to do so. However, the Contract does not state that a fee is to be paid per visit, the Respondent did not seek to charge a fee per visit and the reports on the Tenancy Inspections which were carried out all note a date for the next visit. Mrs. Scott's direct evidence and the documentary evidence which the Respondent lodged do not support the Respondent's position in respect of Tenancy Inspections.
72. The Respondent's position is that the Contract ended when the Applicant advised the Respondent in or around June 2022 that she intended to sell the Property. However, the last tenancy continued until August 2022 and the Respondent continued to manage the Property until after the last tenancy ended. The Respondent notified the Applicant by email on 9 September 2022 that the Contract was at an end. However, the Respondent continued to deal with the Applicant and the Property after that date. Again, Mrs. Scott's direct evidence and the documentary evidence which the Respondent lodged do not support the Respondent's position in respect of the end of the Contract and that the Respondent had no residual obligations to the Applicant. In any event, the Code applies regardless of the end of the Contract.

73. The Respondent's position is that handling insurance claims is not within the scope of the Contract . However, the Contract gives the Respondent sole management without exclusion of activities, the Respondent informed the Applicant by email that they would handle claims arising from the last tenancy and the Respondent then obtained contractor quotes in this regard. Again, Mrs. Scott's direct evidence and the documentary evidence which the Respondent lodged do not support the Respondent's position in respect of handling insurance claims.
74. The Respondent's position is that as the Contract had ended, the Respondent was not obliged to act on behalf of the Applicant in respect of the Tenancy Deposit. Mrs. Scott's direct evidence and the documentary evidence which the Respondent lodged confirm that the Respondent dealt with Tenancy Deposits. The effect of the Code is that the Respondent was bound to continue to deal with the Tenancy Deposit. No evidence was provided by the Respondent that the Code did not apply in this respect.

Assessment of Evidence Standard of Service

75. The Applicant's direct evidence and the documentary evidence which she lodged show that she wrote and contacted the Respondent repeatedly with regard to Tenancy Inspections and photos of the Property, with little response from the Respondent. Mrs. Scott's direct evidence and the documentary evidence which the Respondent lodged do not contradict the Applicant's position.

Decision of the Tribunal with reasons.

76. Section 46 of the Housing (Scotland) Act 2014 permitted the Scottish Ministers to set out a code of practice to be known as the Letting Agent Code of Practice. Section 48 of that Act permits a landlord to apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Code. Section 48 of that Act defines a "relevant letting agent" as a letting agent appointed by the landlord to carry out letting agency work in relation to a house occupied (or to be occupied) by a tenant. Therefore, the Respondent is a relevant letting agent bound by the Code and the Applicant is entitled to apply to the Tribunal for a determination that the Respondent has failed to comply with the Code. Section 48 of the Act does not limit or restrict the application of the Code to the terms of the contracts between landlord and letting agent and so the terms of the Contract is not relevant to the Application. The Tribunal is satisfied that the Respondent is bound by the Code in its entirety and so is bound by the parts of the Code complained of in the Application.
77. With regard to the breaches of the Code, from the Tribunal's Findings in Fact and Assessment of Evidence as set out above, the Tribunal had no hesitation in finding that the Respondent has failed to comply with Code as complained of in the Application.
78. Section 48(7) of the Act states: *"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."* Therefore, the Tribunal must make a letting agent enforcement order.

79. Section 48(8) of the Act states: *“A letting agent enforcement order (a) must specify the period within which each step must be taken and (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 to comply.”*

80. As the Contract and the landlord/letting agent relationship is now at an end, there are no steps to be taken in respect of rectifying the Respondent's failure. However, the Applicant has suffered significant financial loss and has suffered distress and inconvenience by the Respondent's failure to comply with the Code. In the Application, the Applicant states that she should be compensated by a refund of all of the fees paid by her and by the sum of at least £5,000.00 to cover the costs of the tenant damage. The Tribunal considers that it is appropriate to order an award for of compensation and considers that a refund of fees to the value of £2,580.00 and a contribution towards the cost of rectifying the damage caused in an amount of £2,500.00 is reasonable and so makes a Letting Agent Enforcement Order for £5,080.00.

81. The decision is unanimous.

Appeal

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.

Signed

Karen Moore, Chairperson

15 May 2023