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/19/1289

Miss Lila Pitcher and Mr Shane O'Neill,38/6 Montpellier Park, Edinburgh, EH10 4NH ("the Applicants")

Belvoir Edinburgh,28-28A Dundas Street, Edinburgh EH3 6JN ("the Respondent")

Regarding; 5 3F2 Livingstone Place, Marchmont, Edinburgh, EH9 1PB ("the Property")

Tribunal Members:

Yvonne McKenna (Legal Member)
Elizabeth Currie (Ordinary Member)

DECISION
The First-tier Tribunal for Scotland(Housing and Property Chamber)("the Tribunal"):

(a) determine that the Respondent has failed to comply with the following standards , namely 16,17,19,26,85,91,93,97,100,101,103 ,and 108 of the Letting Agent Code of Practice ("the Code")under Section 46 of the Housing (Scotland) Act 2014 ("the Act") and the Letting Agent Code of Practice(Scotland) Regulations 2016 (the Regulations);

(b) having found the Respondent has failed to comply with the Code, the Tribunal must issue a Letting Agent Enforcement Order ("LAEO") as required by the Code;

(i) the Repondent to pay the Applicants compensation of Two Thousand Pounds (£2000) Sterling for the loss and inconvenience caused by the collective breaches of the Code, and to lodge written confirmation of payment thereafter with the Tribunal.This represents the sum of £1000 to each Applicant as an individual.

(ii)the Respondent to issue a formal apology to the Applicants in respect of the Respondent's failure to comply with the above-mentioned paragraphs of the Code.

(iii)The Respondent requires to provide documentary evidence to the Tribunal of its compliance with the above by sending such evidence to the office of the Tribunal by e-mail or by recorded delivery post.
(iv)the Respondent requires to lodge with the Tribunal a written complaints procedure that is fully compliant with the terms of the Code.
(v)The Respondent requires to lodge with the Tribunal a written proceure for bringing the tenancy to an end that is fully compliant with the Code.
(vi) the Respondent requires to undertake staff training to ensure that all staff members are aware of the terms of the Respondent's procedures in relation to the Code in ending the tenancy, dealing with complaints and enquiries and dealing with maintenance and repairs issues raised by tenants. Therafter the Respondent must provide the Tribunal with evidence of the staff training which has been carried out.

The Tribunal order that the steps and payment within the LAEO must be carried out and completed by the Respondent within the period of 30 days from the date of service of this Decision and the LAEO.

The decision of the Tribunal is unanimous.

Background

On 24th April 2019 the Applicants lodged an application with the Tribunal seeking to enforce the Code against the Respondent.

In their application the Applicants alleged breaches of paragraphs 16,17,18,19,21,26, ,28, 58 ,74,82,85,90,91,93,97,100,101,103,108 and 111 of the Regulations.

They alleged that they had suffered loss in the amount of £2,500 for each Applicant, being an increased cost related to living conditions (higher rent), removal costs and cleaning costs; also compensation for what they specified as "unquantifiable losses" linked to mental and physical ill health ; time lost eventually leading to diminished academic performance in what was the Applicants' last semester of undergraduate study at University; and financial costs incurred due to the hearing which required to be adjourned on the 27th August 2019 . They sought a formal acknowledgement and apology for the high disturbance caused and consequential costs incurred.

The Applicants served a Letting Agent Code of Practice Notification letter on the Respondent by e-mail on 1st April 2019.The Respondent replied to this e-mail on 25th April 2019 stating that it apologised that the Applicants had been disturbed and required upheaval during their academic year but stating that this, in all the circumstances, could not have been avoided.

The Hearing on 27th August 2019

The first date which was allocated as a Hearing on the application was 27th August 2019. On that date the Applicants were both personally present. The Respondent was present. Both Lauren Gilchrist, Senior Property Consultant and Lorraine Doig

Maintenance and Compliance Manager from Belvoir Edinburgh attended the Hearing. They explained that Belvoir Edinburgh is a business franchise and the General Manager is Mr. Ross Young.

No additional witnesses were called.

No written representations were received in advance of the Hearing date from the Respondent. No previous Case Management Discussion had taken place.

This Hearing required to be adjourned to 28th October 2019. This was due to the fact that the Respondent stated that it had received no paperwork in the case and had only turned up at the venue as a result of receiving the letter fixing the Hearing date.

After some enquiry it was established that the paperwork namely the application and all the supporting evidence had indeed been served by recorded delivery on the Respondent by the Tribunal on 15th July 2019 The Tribunal provided a track and trace signature from the Respondent accepting service of the papers. The Respondent confirmed that the person who had signed accepting the documents was indeed an employee, namely Zoe Thomson, a Property Consultant. The Respondent`s only explanation for not being aware of the same was that it was suggested that the papers "may have been filed incorrectly as opposed to with the active mail". A copy of the application only at that stage was provided to the Respondent and its employees were afforded some time to consider their position. The Respondent was also made aware by the Tribunal that there were voluminous appendices.

After a break in the proceedings parties returned. An adjournment of the hearing was sought in order that the Respondent could consider the application together with the supporting documents which consisted of

- Appendices 1-10
- Appendices A, and C-F
- Copy Notice to Leave
- Copy Tenancy Agreement

This was opposed by the Applicants who pointed out that they had already brought all of their concerns to the Respondent in their e-mail notification of 1st April 2019. They complained that 5 months had passed, and that the Respondent had had ample time to process the case. They also queried why the Respondent had taken no action for two weeks since receiving the notification of the hearing today.

In the interest of justice and bearing in mind the overriding objective of the Tribunal to deal with the proceedings justly, the Tribunal members having considered all the circumstances of the case were minded to grant the adjournment of the hearing.

Directions were issue to parties on 27th August 2019 in the following terms; -

- The Tribunal shall send by recorded delivery mail to the Respondent within the following 7 days a copy of all the supporting documentation lodged by the Applicants in support of their application
- The Applicants are required to provide; In the event the Applicant wishes to amend the application to the Tribunal such supplementary amendments to the

application together with any supporting documentation no later than 17th September 2019

- The Respondents were required to provide no later than 10th September 2019
  1.A copy of their written complaints procedure.
  2.A copy of their written procedure in relation to ending the tenancy.
  3.In the event that the Respondent wishes to make written representations, said representations and supporting documents require to be lodged no later than 1st October 2019.

The Hearing on 28th October 2019

The First Named Applicant attended the Hearing together with a Supporter Mr. River Foster. Due to work commitments the Second Named Applicant was unable to attend. The First Named Applicant was representing both Applicants on that date. The Respondent was present. Ms. Lorraine Doig was present initially and after approximately 10 minutes into the hearing Ms. Lauren Gilchrist arrived having apparently "mixed up the address".

In the period between the two hearing dates the Applicants had amended their application in increasing the sum sued for to take account of the first adjourned hearing from £2000 per Applicant to £2500 per Applicant. On 17th September 2019 the Applicants lodged the amended application together with a further two Appendices G and H. On 18th September 2019 they lodged a timeline of all documents.

On Friday 25th October 2019 the Respondent had lodged documents relating to the application. In the most part these were copies of a chain of e-mails that had already been lodged by the Applicants. In addition, the Respondent provided; -

- First Plumbing Solutions Invoices dated 22nd January 2019, 5th February 2018 and 28th August 2018
- HMO Scotland Record of Fire Assessment for the Property dated 13th December 2018
- Leith Domestic Appliance Repairs Ltd Invoice dated 13th September 2018
- Ray Haston Property Maintenance Invoice dated 22nd November 2018
- HMO Scotland Ltd Invoice dated 13th April 2018
- Complaints Procedure for the Respondent

The Applicants did not require any additional time to consider the same.

The Respondent confirmed that it had applied for registration in the Register of Letting Agents and that the application had been accepted.

The Respondent was asked by the Tribunal why it had not complied with the Tribunal's Directions in relation to lodging with the Tribunal the written procedure for ending the tenancy. Miss Gilchrist said that this was contained in the tenancy agreement and that the Respondent did not want to "bombard" the Applicants with papers. She accepted that the Respondent did not have a separate written procedure in relation to ending the tenancy.

She also said that in relation to the Respondent's complaints procedure that the Respondent did not want a 3-page complaints procedure and the brief 3 paragraph complaints procedure lodged with the Tribunal was all that was required and was available on the Respondent's website.

The Hearing then proposed , and it was accepted by the parties, that the best way to proceed with the Hearing was to ask the Applicant to address each paragraph of the Code that was alleged to have been breached in turn, and the Respondent could respond to each point in turn. The Tribunal then proceeded to go through the various complaints of the Applicants which are as follows; -

Section 2 -Overarching Standards of Practice

16. You must conduct your business in a way that complies with all relevant legislation

The Applicants referred to the way that the tenancy agreement had been brought to an end and to misleading ultimatums given to the Applicants by the Respondent. They also relied on a lack of communication on a number of maintenance and repair issues during the tenancy, the time and date of the final inspection and not notifying the Applicants that Ms. Lydia Westwood the third tenant of the Property had submitted a Notice on 28th December 2018 that she was leaving the Property -a Notice which was accepted by the Respondent.

It was accepted that on 28th December 2018 that Ms. Westwood e-mailed the Respondent to intimate her decision to leave the Property. This was not agreed to or seen by the Applicants at that time.

On 4th January 2019 the Applicants were made aware that Ms. Westwood had decided to vacate the Property by an e-mail from Ms. Westwood.

On 10th January 2019 the Applicants contacted the Respondent concerning Ms. Westwood having left and enquiring about the possibility of advertising for a new tenant.

On 14th January 2019 at 11.10 the Applicants sent a further e-mail enquiring as to the position and expressing concern.

On 14th January 2019 at 12.13 the Respondent e-mailed the Applicants stating; "When one party issues their notice effectively this ends the tenancy for all parties however we can continue the tenancy if you would like to stay on this will increase your share of the rental amount to £575 pcm and a new tenancy will be created for you both. We cannot add another member to the agreement as we will be required to go through the referencing process, and this will incur extra charges to the Landlord. If you are not able to take on the tenancy together this will unfortunately mean that your tenancy will end, and you will need to vacate the property on the 23rd January."

On 15th January 2019 the Respondent e-mailed the Applicants stating;

"Further to speaking to Lydia this morning she is going to stay on in the property for another month and we accept her notice to vacate the property on the 23rd of February.
We now require confirmation of your intentions; would you like to remain in the property after the 23rd of February? This will mean the tenancy will be between Lila and Shane and the rental amount of £1150 must be covered by you both, if not can you please reply stating that you wish us to accept your notice to vacate the property on the 23rd February along with Lydia`s notice."

On 15th January 2019 the Respondent sent an email to the Applicants with a Notice to Leave under section 50(1)(a) of the Private Housing (Tenancies)(Scotland) Act 2016 stating that if the Applicants did not leave the Property by the end of the notice period 12th February 2019 that eviction proceedings would be taken against them. The ground specified for eviction was that one or more of the tenants is no longer occupying the let property as their main residence.

The tenancy agreement provided for communication between parties. It provided for all communication including notices to be served either by hard copy; personal delivery or recorded delivery, or by e-mail to the addresses narrated in the tenancy agreement. Clause 4 of the tenancy agreement also stipulated that;
"if sending a document electronically or by recorded delivery post, the document will be regarded as having been received 48 hours after it was sent, unless the receiving party can provide proof that he or she received it later than this. This extra delivery time should be factored into any required notice period"

In relation to ending the tenancy by the tenant the tenancy agreement in Clause 24 stipulated that in relation to joint tenancies;
"To end a joint tenancy, all the Joint Tenants must agree to end the tenancy. One Joint Tenant cannot terminate the joint tenancy on behalf of all Joint Tenants."

In response Miss Gilchrist for the Respondent said that she agreed that the tenancy was still valid and that it had not been brought to an end by Miss Westwood leaving. She accepted that the wording in her e-mail of 15th January 2019 was incorrect. She said that since that date that she had received further training on bringing tenancies to an end. She also accepted that her e-mail of 14th January 2019 was incorrect legally in its terms. She acknowledged that the Applicants had not been afforded the correct notice period. She acknowledged that the Notice to Leave should have afforded a clear 30-day period to take account of the extra 48 hours as provided for in the tenancy agreement.

The Tribunal accepted that this paragraph of the Code had been breached as the Respondent had not complied with the requisite legal notice period in bringing the tenancy to an end .In addition the Tribunal does not accept that the written complaints procedure complies with the Code as hereinafter specified.
The Tribunal did not find that the other complaints were substantiated under this heading and are dealt with in the communications section.

17.You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).
The Applicants said that this was breached as

- the Respondent had refused rent from Ms. Westwood. They claimed that this had been proved by an e-mail from MS. Westwood's father to the First-Named Applicant`s father dated 15th January 2019 in which he claimed that he had offered to pay Ms. Westwood`s share of the rent and this was refused by the Respondent.
- The ultimatum contained in the Respondent's e-mail of 14th January 2019 to either pay full rent between the Applicants or vacate the Property was unfair and unjustified
- The lack of communication from the Respondent in relation to the final inspection was unfair, non-transparent and lacking in honesty.

With regard to the final inspection the Applicants had asked the Respondent on 4th February 2019 to advise on what date and time the final inspection would take place in order that they could be present. No response was received. A further e-mail was sent by the Applicant on 11th February 2019. No response was received. On 11th February 2019 at 19.30 the Applicants received a phone call from No Letting Go who were a 3rd party itinerary check out service hired by the Respondent to organise the inspection to take place on 13th February 2019.

The Respondent maintained that e-mail communications from one tenant's father to another were irrelevant in the matters before the Tribunal.
They had already agreed that the content of the e-mail of 14th January 2019 was legally wrong.
In relation to the final inspection the Respondent argued that they had employed a third-party company to deal with the final inspection so there could be no suggestion of bias if this were carried out by them. They said that there were "teething problems" in relation to the 3rd party company who had been instructed by the Respondent to contact the Applicants and arrange a time .This had been done and the check-out report sent by the Respondent to the Applicants the following day.

The Tribunal found that this paragraph of the Code had been breached in relation to the email sent by the Respondent to the Applicants dated 14th January 2019 which was unfair and not legally correct.
Whist the final inspection report was disorganised the Tribunal did not find that this amounted to a breach of the Code under this heading. The Tribunal did not accept that the Respondent could be responsible for e-mail exchanges between the tenants' fathers.

18.you must provide information in a clear and easily accessible way.

- The Applicants referred to being given two differing amounts in relation to the last payment of rent due for the Property in an e-mail from the Respondent dated 22nd January 2019 which included two separate figures of £749 and £794.01
- They said that critical information was not put in writing- such as Mr. Malcolm Barrett having resigned from his post as the Respondent's Property Manager,

calls were made to them outside of office hours and that critical emails were sent to single tenants and not sent to all 3 tenants nor their guarantors.

In response Ms. Gilchrist for the Respondent said there was clearly a typo in the e-mail of 22nd January 2019 as it also contained a breakdown of the amount due which made it clear that the correct figure due was £794.01.Ms Gilchrist who sent the e-mail said that she suffered from dyslexia.
She stated that she does work late but that no telephone calls were made after 7pm and that all essential information was put in writing to all tenants. Minor matters raised by one tenant were responded to by the Respondent in contact with the tenant who had been in touch with the Respondent. In relation to Mr. Barrett she said that he had simply changed position within the organisation and had not resigned.

The Tribunal do not accept that this paragraph of the Code has been breached. They accept that there was a minor typographical error in one e-mail and accepted the Respondent's position that all essential information was put in writing.

19. You must not provide information that is deliberately or negligently misleading or false.

- The Applicants again referred to the two differing numbers in the Respondent's e-mail of 22nd January 2019
- The Applicants claimed that the Respondent's e-mail of 14th January 2019 was itself misleading and false with regards to the Applicants requiring to pay full rent or vacate the Property in 9 days.
- The Respondents at the First hearing date advised the Hearing that they had not been served with the papers which proved to be incorrect.

The Tribunal found this paragraph of the Code had been breached as they accept that the Respondent was negligent in providing misleading and false information to the Respondent with regards to the e-mail of 14th January 2019 as previously referred to.
Regarding the typographical error we do not accept this was deliberate / negligent and reading the document as a whole it was clear what sum was due.
In relation to the latter point whilst we accept that the Tribunal were misled at the first hearing date by the Respondent we do not accept that this is a breach of the Code with regard to the dealings of the parties during the term of , or arising out of ,the tenancy agreement.

21. You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.
The Applicants maintained that services such as repairs and maintenance were not carried out in a timely way nor were the Applicants consistently kept informed of processes to solve repairs. They state that "critical issues" were left unsolved without communication.
The Applicants complained of issues with mice in the Property and referred to communication sent to the Respondent regarding this problem. The Tribunal pointed out that clause 40 of the tenancy agreement makes it clear that the tenant is responsible for eradication of vermin if the infestation occurs after one week of the

date of entry. The Respondent did however assist with this problem as a good will gesture.
The Applicants had minor issues regarding lack of a hot water supply during August 2018 (which were resolved on 17th August 2018) and a lack of a ceiling light in the bathroom and a toilet issue as well as the efficiency of the hoover.
The Tribunal noted that the light bulbs were the responsibility of the tenants in terms of the tenancy agreement. The Tribunal also had regard to the various invoices from 1st Plumbing which identified that the issues complained of were attended to and accept that they were attended to a timely way.
The Respondent accepted that the tenants ought to have been informed when the contractors were instructed.
The Respondent stated that a system had now been put in place whereby when a works order was sent to a contractor that automatically the landlord and the tenant would both be appraised of this at the same time and provided with the contractor's details.
The toilet issues were rectified at the beginning of December 2018 and had not made the toilet unusable. The complaints related to the efficiency and noise of the toilet.
The Tribunal did not accept in the whole circumstances that this paragraph of the Code had been breached.

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

These issues were addressed by parties in their submission regarding the breach of paragraph 21 of the Code as detailed above.
Whilst issues were resolved in what the Tribunal consider to be a timely fashion, the Tribunal do accept the Applicants' concerns regarding lack of responses to their repair and maintenance issues.
One example of this was the Applicants e-mailing on the 10th October 2018 regarding the toilet issues and receiving no response at all and then e-mailing again on 6th November 2018 making further enquiry.
The Tribunal accepts that new procedures have now been put in place as detailed above. These were not in place when the Applicants were raising their concerns and the Tribunal find this paragraph of the Code has been breached.

28. You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.
The Applicants stated that they were intimidated by the situation in general. They complained about the Notice to Leave being intimidating and threatening.
They referred to the illegal process adopted by the Respondent in removing them from the Property. They also complained of out of hours telephone calls instead of answering e-mails in writing
The Tribunal accept that procedures for ending the tenancy were not carried out correctly and the Respondent accepted it had calculated the notice period wrongly.
Whilst the Respondent was chaotic and unorganised in these procedures the Tribunal do not accept that any of its communications were abusive intimidating or threatening in nature.
The Tribunal do not therefore accept that this paragraph of the Code has been breached.

LETTINGS

58.If you are to check references and make other checks, you must explain to the applicant and any guarantor what information you will check and who will do the checking and get their written permission.

Under this heading the Applicants complained that the Respondent added the third tenant Miss Westwood's father as a guarantor despite their referencing system rejecting him. A separate arrangement was put in place regarding this tenant paying 6 months rent in advance. The Applicants complained that their guarantors were not made aware of this until after the tenancy agreement was signed.

The Tribunal did not consider that this paragraph of the Code had been breached as this was a private arrangement with the third tenant's guarantor. The Applicants' guarantors were told what information were checked regarding their own situation.

MAMAGEMENT AND MAINTENANCE

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

The Applicants state that the Respondent failed to comply with Fire and Safety Regulations regarding replacing 3 smoke alarms which had expired, some more than 4 years ago and that they were not notified of this expiry. The Applicants said that they were provided with this information by the person who carried out the inspection. There was no other evidence placed before the Tribunal regarding this by the Applicants

The Respondent in response said that all checks were carried out, acted upon and rectified accordingly. They produced their record of the Fire Risk Assessment carried out on the Property dated 13th December 2018.

The Tribunal do not accept that this paragraph of the Code has been breached.

82.You must give the tenant reasonable notice of your intention to visit the property and the reasons 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.

The Applicants state that no checkout procedure nor notification concerning the final inspection was sent. They state they had to repeatedly enquire about this and at times were contacted by 3rd parties and not the Respondent. They also state that 24 hours' notice of the final inspection was not provided, instead the 3rd party called at 8pm for inspection the following day.

The Tribunal do not find that this paragraph of the Code has been breached. The Applicants vacated the Property on 12th February 2019 and the Tribunal do not find that this particular breach has been substantiated. The Applicants were afforded an opportunity to be present at the final inspection.

85.If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations(e.g. electrical safety testing; annual gas safety inspections; Legionella risk assessments)on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.
90.Repairs must be dealt with promptly and appropriately having regards 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 landlords, tenants or both as appropriate about this along with the reason for it as soon as possible.

The Applicants addressed theses issues collectively. They referred to the same issues regarding repairs and maintenance not being carried out timeously or being kept informed of the process to resolve repairs. When e-mails were addressed by the Respondent, timescales were not mentioned. Delays were not notified to the Applicants who often had to contact the Respondent to ask for information about what was happening.

For the reasons already referred to earlier in this judgement the Tribunal accept that works were carried out within relevant timescales. However, The Tribunal do not accept that appropriate systems and controls were in place in that the tenants were not kept informed of the process and various e-mails were not responded to. Accordingly, the Tribunal accept that paragraphs 85, 91 and 93 of the Code have been breached.

ENDING THE TENANCY
97.The correct procedure for ending a tenancy depends on such factors as the type of tenancy and the reason it is ending. But in all circumstances, you must comply with relevant tenancy law and ensure you follow appropriate procedures when seeking to end a tenancy.

The Applicants refer to the Respondent accepting notice form one tenant in isolation, without notice given by all tenants as provided for in the tenancy agreement and the incorrect notice period being afforded as already referred to in this decision.
(These factual matters have been dealt with by the Tribunal in their consideration of the breach of paragraph 16 of the Code as hereinbefore referred)

The Tribunal accept that this paragraph 97of the Code has been breached.

100.You must not try to persuade or force the tenant to leave without following the correct legal process

The Respondent accepts that the wrong Notice to Leave period was provided. The Respondent also accepts that the e-mail of 14th January 2019 sent by Miss Gilchrist was legally wrong, and that one tenant could not end the tenancy in isolation. No acknowledgement of this error was given to the Applicants. At no stage did the Respondent say to the Applicants that the wrong notice period was provided and that in fact the Applicants were not legally obliged to leave the Property at the end of the notice period. The difficulties encountered by the Respondent in ending the tenancy were symptomatic of the fact that the Respondent has no clear written procedures in place for managing the end of the tenancy; the serving of appropriate legal notices and giving the landlord and tenant all relevant information.
The Tribunal accepts that this paragraph of the Code has been breached.

101.Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit unless there is good reason not to. For example, evidence of violent behaviour.
103.If the tenant wishes to be present during the check-out visit, you must give them reasonable notice of the arrangements, unless there is good reason not to be present (see also paragraph 101)
These matters were addressed collectively by the Applicants. The Applicants were not given any indication of cleaning standards required nor was any contact made with the Applicants by the Respondent to be present at the check-out visit. The Respondent made no written response to e-mails from the Applicants requesting information of the check-out inspection sent on the 4th and the 11th February 2019.They were only telephoned the night before the check-out inspection at 8pm by the third-party company who carried out the report. This was not disputed by the Respondent.
The Tribunal accordingly does not accept that reasonable notice of the date was provided to the Applicant by the Respondent or any information regarding the standard of cleaning required.
The Tribunal finds that paragraphs 101 and 103 of the Code have been breached.

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.
The Tribunal following the first hearing on 27th August 2019 requested a copy of the Respondent's written complaints procedure. The document that has been produced to the Tribunal does not comply with the Code.
It does not include the series of steps that a complaint may go through, with reasonable timescales .It does not set out how complaints against contractors and third parties will be handled: any recourse to the complaints procedures of a

professional or membership body you belong to :or whether you provide access to alternative dispute resolution services
The Tribunal find that this paragraph of the Code has been breached due to the lack of an appropriate written complaints procedure being in place.

111. You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.
The Tribunal was not referred to any abusive threatening or intimidating communication and does not find that this paragraph of the Code has been breached.

Findings in Fact

1. The Letting Agent Code of Practice came into force on 31st January 2018
2. The Applicants were the tenants of the Property in terms of a tenancy agreement entered into dated 24th July 2019. There was also a third tenant of the Property in terms of the tenancy agreement, a Miss Lydia Westwood.
3. The landlords of the Property was Mrs. Elizabeth Guerdan.
4. The Respondent was the Letting Agent specified in the tenancy agreement.
5. As part of their work the Respondent enters into written tenancy agreements. The Respondent sets out procedures for termination by landlord or tenant in accordance with legislation.
6. The start date of the tenancy was 23rd July 2018.
7. The rent payable was £1150 per calendar month.
8. A deposit of £1250 was paid at the start of the tenancy.
9. All three tenants had a Guarantor who also signed the tenancy agreement in their capacity as Guarantor.
10. The Applicants left the Property on 12th February 2019.
11. The Respondent was under a duty to comply with The Letting Agent Code of Practice (Scotland) Regulations 2016 from 31st January 2018.
12. The written complaints procedure provided by the Respondent does not comply with the Code
13. A checkout final inspection report was carried out in relation to the Property on 12th February 2019
14. The Respondent has breached paragraphs16,17,19,26,85,91,93,97,100,101,103 and 108 of the Code.

Reasons for Decision
Decision
We have a wide discretion as to the terms of the LAEO we may make. In this case we consider it appropriate to order the Respondent to make a payment to the Applicants in the sum of £2000 (being £1000 to each Applicant as an individual). This reflects the fact that the Applicants have been caused significant distress, stress and inconvenience by the Respondents conduct in breach of the Code.

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.

Yvonne McKenna
Legal Member/Chair **Dated 16th November 2019**