

Housing and Property Chamber
First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**DECISION WITH STATEMENT OF REASONS: Housing (Scotland) Act 2014,
section 50**

Chamber Ref: FTS/HPC/LA/18/2388

Re:3 Crown Street, Flat 2/1, Greenock, PA15 1NN (“the Property”)

The Parties: -

**Mr. Ian Homer, 28 Craighead Road, Bishopton, PA7 5DT
 (“the Applicant”)**

**White Letting Limited, company number SC239955, 7 Hood Street, Clarence
House, Greenock, PA15 1YH
 (“the Letting Agent”)**

**Mr Mark Brysland, 7 Hood Street, Clarence House, Greenock, PA15 1YH (“the
Letting Agent’s Representative”)**

Letting Agent Registration Number: Not known

Tribunal Members:

Susan Christie (Legal Member and Chair)

Elizabeth Currie (Ordinary Member)

On 25 January 2019 the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), issued a Letting Agent Enforcement Order dated 16 January 2019 (“the Order”) on the Respondent in respect of a failure to comply with the Letting Agent Code of Practice (“the Code”).

The Order contained the following provisions: “The Tribunal requires the Letting Agent to: -

1. Lodge with the Tribunal a written Procedure for handling client money, including within it reference to the procedure and steps to be taken in obtaining prior authorisation from a Landlord before making deductions from Deposits taken and deposited or managed by the Letting Agent, that is fully

compliant with the terms of the Code and which also complies with the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015, section 24;

2. Lodge with the Tribunal a written Debt Recovery Procedure of the Letting Agent that is fully compliant with the terms of the Code and which also complies with the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015, section 24;
3. Lodge with the Tribunal a copy of the summary of the Certificate of Professional Indemnity Insurance AXA AB CPI 4155458 or such other relevant certificate in force;
4. Pay to the Applicant the amount of Three Hundred and Ten Pounds Sterling (£310), as compensation for the loss suffered by the Applicant as a result of the failures to comply with the Code.

The Tribunal order that the steps and payment specified in this Order must be carried out and completed within the period of **six weeks** from the date of service of this Order.”

The time allowed for compliance with the Order has expired and on the compliance checklist form response dated 21 March 2019 the Applicant stated that he had not received the awarded compensation from the Letting Agent and did not wish the Tribunal to consider variation or revocation of the Order. The Tribunal received no response from the Letting Agent despite the compliance checklist form being issued to it and the Letting Agent’s Representative on 13 March 2019 by e mail and recorded delivery post.

Decision & Reasons for Decision

The Order was issued to the Letting Agent and the Letting Agent’s Representative on 25 January 2019 by e mail and by recorded delivery post, signed for on 28 January 2019. The compliance checklist was issued to the Letting Agent and the Letting Agent’s Representative on 13 March 2019 by e mail and recorded delivery post and signed for on 15 March 2019. No documentation has been lodged with the Tribunal as required under Parts 1-3 of the Order. On the compliance checklist form response dated 21 March 2019 the Applicant stated that he had not received the awarded compensation awarded under Part 4 of the Order from the Letting Agent and did not wish the Tribunal to consider variation or revocation of the Order. The Applicant’s response was crossed over to the Letting Agent. The Tribunal received no response from the Letting Agent following on from the compliance checklist form being issued. No reasonable excuse for failure to comply has been given and the Tribunal is satisfied that the Letting Agent does not have a reasonable excuse for failing to comply. The Letting Agent continues to trade, and the company status is active. Enquiry today online at the Scottish Letting Agent Register and telephone enquiry by the Tribunal Clerk showed no entry on the Register for the Letting Agent and there was no pending application for registration. The Letting Agent is required to comply with the Order and the time allowed for compliance has expired. Accordingly, the Tribunal determined that the Letting Agent has not complied with

the Order. In terms of Section 50(2) of the Housing (Scotland) Act 2014 where the Tribunal makes a decision that the Letting Agent has failed to comply with the Order, the Tribunal is obliged to serve notice of that fact on the Scottish Ministers. The Tribunal also considers that a reference to the Procurator Fiscal is appropriate, given the failure to comply with the Order or any Part of it.

The decision of the Tribunal is unanimous.

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.

Please note that in terms of section 51(1) of the Act, a Letting Agent who, without reasonable excuse, fails to comply with an LAEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.

S Christie

Legal Member and Chair

11 April 2019 Date