

Housing and Property Chamber

First-tier Tribunal for Scotland



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

In an Application under section 48 of the Housing (Scotland) Act 2014

By

Aileen Stewart, 136 Langton View, East Calder, West Lothian EH53 0RD (“the Applicant”)

Stephen Estates Ltd, formerly known as Homes 4U (Scotland) Ltd, Unit 16, 5 Dickson Street, West Calder, West Lothian EH55 8DZ (“the Respondent”)

**Re: 47 Young Crescent, Bathgate EH48 2SN
 (“the Property”)**

Chamber Ref: FTS/HPC/LA/19/2137

Tribunal Members:

John McHugh (Chairman) and Ann Moore (Ordinary (Housing) Member).

DECISION

The Respondent has failed to comply with the Code.

The decision is unanimous.

We make the following findings in fact:

- 1 The Applicant was the tenant of a property at 47 Young Crescent, Bathgate ("the Property") between 24 April 2017 and June 2018.
- 2 The Applicant was a joint tenant until on or around early 2018 when she became the sole tenant.
- 3 The Respondent operated at the material times as a professional letting agent.
- 4 Then Respondent acted as letting agent in respect of the Applicant's tenancy of the Property.
- 5 The Respondent was under a duty to comply with the Letting Agent Code of Practice contained in the Schedule to The Letting Agent Code of Practice (Scotland) Regulations 2016 from 31 January 2018.
- 6 The Applicant provided a tenancy deposit of £725 when she moved in.
- 7 The Respondent placed the deposit in a scheme operated by LPSS.
- 8 A short assured tenancy of six months duration was entered into.
- 9 In October 2017 the Respondent required the Applicant to sign a new short assured tenancy agreement for a duration of six months.
- 10 The Respondent requested that the Applicant sign a further short assured tenancy agreement with effect from April 2018. The Applicant refused and the parties agreed instead that the existing tenancy agreement would continue and expire with effect from June 2018.
- 11 The Respondent carried out a check-out inspection on or around 30 June 2018.
- 12 Shortly thereafter the Respondent intimated the intention to apply to LPSS be allowed the whole deposit and a that the Landlord claimed a further £500 on the grounds that the Property had been returned in need of repair, cleaning and redecoration.
- 13 On 13 July 2018, the Applicant's parents attended the Respondent's office. The Respondent's staff refused to provide any information regarding the repairs etc deemed necessary by the Landlord. They claimed that all relevant documentation was in the sole hands of the Landlord.
- 14 The Applicant disputed that the Property was returned in need of repairs, redecoration or cleaning.
- 15 The Respondent did not negotiate with the Applicant or attempt to reach a resolution of the matters in dispute.
- 16 The parties followed the contractual dispute resolution procedure operated by LPSS.
- 17 The result of the dispute resolution process was that the Applicant was allocated £575 of the Deposit and the Landlord £150.

- 18 The Applicant has, by her correspondence, including that of 9 May 2019, notified the Respondent of the reasons as to why she considers that the Respondent has breached its obligation to comply with the Code.
- 19 On 12 February 2019 the Respondent changed its name from Homes 4U (Scotland) Ltd to Stephen Estates Ltd.

Hearing

A hearing took place at George House, Edinburgh on 23 September 2019.

The Applicant was represented by her parents, Karen and James Bruce Stewart.

The Respondent was not represented at the hearing.

No additional witnesses were called.

Introduction

In this decision we refer to the Housing (Scotland) Act 2014 as “the 2014 Act”; the Letting Agent Code of Practice contained in the Schedule to The Letting Agent Code of Practice (Scotland) Regulations 2016 as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the Applicant. No documents had been lodged by the Respondent.

Preliminary Matters

The Respondent has made an application to be struck from the Register of Companies which seems inappropriate given the current ongoing application. The Respondent has not engaged in the process at all. Mail from The Tribunal addressed to the Respondent's registered office has been returned.

REASONS FOR DECISION

The Legal Basis of the Complaints

The Code

The Applicant complains of failure to comply with Sections 16; 17; 23; 26; 28; 40; 47; 48; 62; 72; 90-94; 97; 102; 104-106; 111; and 126 of the Code.

The elements of the Code relied upon in the application provide:

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

17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)...

...23. You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property...

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

...28. You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening...

...40. You must take all reasonable steps to ensure your letting agent registration number is included in all property advertisements or communications...

...47. You must comply with all relevant legislation on the charging of fees and premiums or making loans to tenants and prospective tenants in the private rented sector...

...48. In particular you must comply with section 82 of the Rent (Scotland) Act 1984, which prohibits any person, as a condition of the grant, renewal or continuance of an assured or short assured tenancy or private residential tenancy, from requiring a tenant or prospective tenant to pay any charges except rent and a refundable deposit of no more than two months' rent...

...62. If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the landlord; type; length of tenancy where it is a short assured tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on taking care

of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number...

...**72.** If the tenant asks in writing for the landlord's name and address, you must tell them free of charge within 21 days...

...**90.** Repairs must be dealt with promptly and appropriately having regard 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.

92. Where access is needed for repairs you must give the tenant reasonable notice of when access is required unless other arrangements have been agreed. Section 184 of the Housing (Scotland) Act 2006 is also relevant here and paragraph 6 of the schedule of the Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017 is relevant in respect of a private residential tenancy.

93. If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible.

94. You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided...

...**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 legal procedures when seeking to end a tenancy...

...**102.** If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began...

...**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...

...**111.** You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening...

...**126.** You must hold a client money protection insurance policy unless you can demonstrate equivalent or greater protection through another body or membership organisation. You must give further details (such as the name of your provider, your policy number and a summary of the policy) to them on request."

The Matters in Dispute

Factual Background

The Applicant and her then partner became the tenants of the Property on 24 April 2017. A short assured tenancy of 6 months duration was entered into. Rather than allowing the tenancy to renew by way of tacit relocation, the Respondent insisted that a fresh lease be entered into every six months. In early 2018 the Applicant and her partner separated and the Applicant became the sole resident in the Property. In April 2018, the Applicant and Respondent agreed that the Applicant would move out with effect from June 2018.

In June 2018, the Applicant vacated the Property. She considered that she had left the Property in good condition and expected that she would receive the return of her full deposit of £725. An employee of the Respondent had carried out the inspection of the Property at the end of the lease. That employee had taken photographs and indicated that there were no problems and that a report would be provided to the Landlord. The Applicant's parents had been in attendance. That employee had not had a copy of the moving in inspection report with her.

In early July 2018, the Applicant was advised that the Landlord (the Respondent's client) wished to retain the whole deposit and claimed to be due further sums by the Applicant. The Applicant's parents had attended the Respondent's office on 13 July 2019. When there, they had had a discussion with the Respondent's staff and its director, Karen Stephen. They had found the Respondent's staff and director to be unco-operative and unhelpful. Mrs Stephen had advised that she had no copy invoices for the repairs which were the reason for withholding the deposit but that the matter was one for the landlord alone and nothing to do with the Respondent as the letting agent.

The deposit was held by LPSS. The parties entered into LPSS's dispute resolution process. The final result of that process was that the sum of £575 was ordered to be returned to the Applicant and the sum of £150 was found to be due to the Landlord.

Throughout that whole process the Applicant had requested a copy of the report and photographic schedule produced at the moving out inspection. The Respondent had failed to produce it.

It should be noted that the Respondent was previously called Homes 4U(Scotland) Ltd but has changed its name in the context of a recent sale of its assets to a third party, which third party now uses that name.

Deposit

The Applicant complains that the Respondent has behaved in a way which is not honest, open, transparent and fair by falsely claiming that it had no quotations or invoices relating to the repairs which were given as the reason for withholding the deposit. We accept the evidence that the Respondent made such a representation to the Applicant's parents at the meeting on 13 July 2018. We further accept the Applicant's evidence that those quotations and invoices subsequently came to light and revealed that the Respondent had dealt with procuring the repairs.

We consider that the Respondent has not behaved in an open, honest and transparent manner by its refusal to produce to the Applicant the relevant quotations and invoices and that there has been a breach of Code Section 17.

Further, the Respondent is under specific duties to carry out the check-out process in accordance with the Code. The Applicant failed to provide information to the Applicant about the condition of the Property; it refused to communicate with the Applicant such that the parties could not attempt to come to an agreement. These failings amount to breaches of Code Sections 104-105. The Respondent complains that the same lack of communication constituted a breach of the LPSS deposit scheme rules although we have insufficient evidence in respect of those rules to make such a finding. We do observe that the failure to communicate certainly went against the advice contained in LPSS's email to the Applicant of 3 August 2018.

Failure to Provide Landlord's Contact Address

Although there had been a request for this information and a clear obligation upon the Respondent to provide it within 21 days, we find there to have been no breach since the Applicant had withdrawn her request for the information within 21 days of having made that request, the Applicant having obtained the information by other means.

Additional Charges

The Applicant complains that additional unlawful charges were threatened to be imposed upon the Applicant although she accepts that no such charges were ever in fact imposed. In particular, on 17 April 2018, the Respondent had threatened charges in respect of any failure to attend a lease renewal appointment. On 23 April 2018 a charge was threatened for failure to provide access to the Property for the purpose of an inspection. On 7 June 2018 a further charge was threatened for lack of access at the time of the moving out inspection. Leaving aside the question whether any such charges would have constituted a breach of section 82 of the Rent (Scotland) Act 1984, the factual position is that no charges were ever actually

imposed upon the Applicant. In those circumstances, we do not consider that there has been a breach of Code sections 47 and 48.

Repairs

The mirrored wardrobe doors had been in poor condition since the beginning of the tenancy. The need for repair had been reported at that time but the Respondent had failed to address the repairs. The Respondent eventually gave up reporting the matter. The Applicant's agent accepted that the matter had not been reported after the coming into force of the Code and so we do not identify any breach of the Code in respect of this matter.

Abusive etc Communications

The Applicant complained of the terms of Karen Stephen's email of 17 July 2018 which indicated that the Applicant should not contact the Landlord directly.

The Applicant also complained regarding a communication of 27 April 2018 which indicated that the Landlord would not withhold any of the deposit by reason of problems with recurring mould in the bathroom. On another occasion, the Respondent had wrongly blamed the Applicant for a "miscommunication" in relation to a visit for a contractor where the Applicant's parents had waited in for his arrival but he had not appeared and the fault had truly been that of the Respondent.

At the meeting on 13 July 2019, the Applicant's parents had found the Respondent's staff unhelpful and their manner aggressive although there was no evidence that any particular abusive intimidating or threatening language had been employed.

However, the Tribunal is of the view that on an objective approach nothing in those communications would come close to being "abusive, intimidating or threatening" and that, accordingly, there is no breach of the Code in this respect.

Lease Inaccuracies

Every lease produced by the Respondent failed to accurately record the correct rent due dates. Each showed rent as being due on the 24th of the month whereas it was due on the first of each month. The leases further failed to include the Landlord's Registration Number.

Further, the Respondent was insisting in April 2018 that a new short assured tenancy agreement was entered into. That was not a legally correct approach at that stage since either the existing short assured tenancy could have continued or a new Private Residential Tenancy should have been offered. As a matter of law, new short assured tenancies could not competently be offered after 1 December 2017 by virtue of the Private Housing (Tenancies)(Scotland) Act 2016.

We find there to have been a breach of Code section 16 and 62 in these respects.

Insufficient Notice of Landlord's Contactors' Visits

On 31 January 2018 at 4.03pm the Respondent emailed to advise that a contactor would visit after 5pm that evening. On being advised that that was not convenient, the following day at 9.59am the Respondent again advised that the contractor would visit after 5pm. The Applicant complains that this constituted insufficient notice. On the available evidence however, we do not find there to have been a breach of the Code in this respect; it seems that the Respondent was offering to provide a contractor quickly as opposed to insisting upon a visit at a particular time and there was no insistence that the contractor should visit at the times in question after the Respondent was informed of the unsuitability of the suggested times.

Misrepresentation as to links with Third Parties

The Applicant complains that the Respondent's website carried the logos of third party organisations despite the Respondent having no connection with those third parties. This included Client Money Protection of which the Respondent was not, in fact, a member. This may well be accurate, but the Applicant has complained by reference to Code Section 126 which is concerned with the Respondent's duty to have in place client money protection insurance or equivalent protection and the Tribunal has no information as to whether this aspect of the Code was breached.

Observations

The Respondent had lodged no response of any kind nor any documentary evidence in advance of the hearing. The Respondent failed to be represented at the hearing. The Respondent's serious failings identified in this Decision and its failure to engage with the Tribunal process are matters of significant concern such that those responsible would be expected to have a basis for serious concern should there be an attempt by the Respondent or those responsible for its management for registration as a letting agent at any point in the future.

We found Mr and Mrs Stewart to be entirely credible and reliable and accepted their evidence.

LETTING AGENT ENFORCEMENT ORDER

In terms of section 48(7) of the 2014 Act we will make a letting agent enforcement order ("LAEO"). The terms of the proposed LAEO are set out in the attached document.

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 Applicant of £500. This reflects the fact that the Applicant has been caused significant distress and inconvenience by the Respondent's conduct in breach of the Code.

APPEALS

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.

JOHN M MCHUGH

CHAIRMAN

DATE: 22 October 2019