



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/18/2339

Re: 166B Montrose Street, Brechin, Angus, DD9 7DZ (“the Property”)

Parties:

Louise Edmunds, 4 Napier Close, Aldershot, Hampshire (“the Applicant”)

Ivyleaf Homes Ltd., 4 High Street, Brechin, Angus, DD9 6ER (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

- Background

This application seeks compensation for various alleged breaches of the Letting Agent Code of Practice (‘LACP’). It called for hearing at 11am on 23 November 2018. The Applicant was present in person and accompanied by her husband, who was also a landlord of the Property and who gave evidence as a witness. The Respondent was represented by its director, John Grimes.

- Relevant Law

The following provisions are of relevance to this application:

Section 46 of the Housing (Scotland) Act 2014 (‘the Act’) states:

“Letting Agent Code of Practice

(1) The Scottish Ministers may, by regulations, set out a code of practice which makes provision about—

(a) the standards of practice of persons who carry out letting agency work,

(b) the handling of tenants' and landlords' money by those persons, and

(c) the professional indemnity arrangements to be kept in place by those persons.

(2) The code of practice is to be known as the Letting Agent Code of Practice.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate on a draft of the code of practice.”

In terms of the powers granted under this section, the Scottish Ministers produced the Letting Agent Code of Practice (Scotland) Regulations 2016, which contained the LACP in its Schedule. This came into force on 31 January 2018.

The following paragraphs of the LACP were referred to (in this context 'you' refers to the letting agent in question):

“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).

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

...

20. You must apply your policies and procedures consistently and reasonably.

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

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.

24. You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code's requirements.

...

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.

...

32. Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out:

...

(j) that you are subject to this Code and give your clients a copy on request. This may be provided electronically;

(k) how you will communicate (including the use of electronic communication¹ with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;

(l) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond;

(m) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.

...

36. If a landlord or tenant (including former landlord and tenant) applies to the Tribunal because they think you have failed to meet your Code obligations, the Tribunal may, depending on the nature of the circumstances, expect you to show how your actions meet your agreed terms of business as part of complying with the Code.

37. When either party ends the agreement, you must:

(a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the arrangements including timescales for returning the property to the landlord — for example, the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed, you must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill.

...

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 (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).

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.

...

78. You should inform the landlord in writing of the late payment of rent, in line with your written procedures or agreement with the landlord.

79. In managing any rent arrears, you must be able to demonstrate you have taken all reasonable steps to recover any unpaid rent owed to the landlord (see also section 8).

...

89. When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

...

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.

...

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.

98. You must have clear written procedures in place for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction

and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information.

99. You must apply your policy and procedures consistently and reasonably.

...

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.

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.

...

107. You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act.

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.

...

110. You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.

...

112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.

113. The procedure must also set out how you will handle complaints against contractors and third parties; any recourse to the complaints procedures of a professional or membership body you belong to; whether you provide access to alternative dispute resolution services; if you are also subject to another regulatory body (for example the Scottish Legal Complaints Commission); and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.

...

127. You must have a clear written policy and procedure for debt recovery that lists a series of steps you will follow unless there is good reason not to. This should include setting out at what point you will contact any guarantor. The procedure must be clearly, proportionately and reasonably applied. It must set out how you will deal with disputed debts.”

Section 48 of the Act states (so far as relevant to this application):

“Applications to First-tier Tribunal to enforce code of practice

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is ... in relation to an application by a landlord, a letting agent appointed by the landlord, ...

(3) An application under subsection (1) must set out the applicant’s reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

(7) 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.

(8) A letting agent enforcement order—

(a) must specify the period within which each step must be taken,

(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.

(9) References in this section to ... a landlord include a former landlord."

- Findings in Fact

Many of the complaints made by the Applicant concerned events prior to the coming into force of the LACP on 31 January 2018. The Tribunal did not consider that it could competently find the Respondent to be in breach of the LACP at that time. Except in regard to some preliminary matters of continuing significance, the Tribunal therefore restricted itself to consideration of the period following the coming into force of the LACP. On that basis, the following relevant facts were found to be established:

1. The Applicant and her husband engaged a company called AMFS Properties Ltd. to act as their letting agent in relation to the Property on 16 July 2009. In March 2010, AMFS Properties Ltd. was replaced as letting agent by the Respondent, on identical contractual terms.
2. Around November 2017, the Applicant and her husband, wishing to regain possession of the Property, contacted the Respondent for advice and to instruct them to take the necessary steps to achieve that aim. Among other advice, the Respondent indicated that it would not undertake routine inspection visits to the Property following service of a notice to quit. The Applicant and her husband accepted that position. Notice to quit and Form AT6 was served on the tenant on 22 December 2017.
3. The Applicant contacted solicitors towards the end of February 2018 and instructed them to take over the eviction of the tenant. A further notice to quit and Form AT6 was served. The Respondent continued to forward such rental payments as were received until 20 April 2018, under deduction of its agreed fee. After that date, no further payments were made to the rental account. The Respondent did not take any further part in the eviction process. In accordance with the position accepted previously by the Applicant and her husband, it did not visit the Property at any time during that process.
4. The agency contract came to an end by mutual consent of the parties upon the Applicant collecting the keys to the Property from the Respondent following eviction of the tenant on 2 July 2018. No written confirmation of the ending of the relationship was sent by the Respondent.
5. On 2 March 2018, the Applicant e-mailed the Respondent requesting information in relation to collection of overdue rent, inspection of the condition of the property and any action taken following service of the notice to quit of 22 December 2017. An employee of the Respondent acknowledged receipt and stated the matter would be looked into later the same day. On 7 March

2018, a further e-mail from the Respondent stated that the information would be looked at that day and a response sent, "as soon as possible." On 23 March 2018, the Applicant contacted the Respondent again by e-mail, referring to previous correspondence and stating that no response had yet been received. The Respondent has never replied to that e-mail or sent on the requested information.

6. On 17 July 2018, the Applicant sent a letter to the Respondent requesting a copy of its complaints procedure. This was received by the Respondent on 19 July 2018. The Respondent did not reply to this letter.
7. On 30 July 2018, the Applicant sent a further letter, stating that she wished to make a formal complaint. This letter gave notice of the various breaches of the LACP that the Applicant relied upon in this application. It was received by the Respondent on 2 August 2018. On 8 August 2018, the Applicant sent a follow-up letter, stating that she intended to refer the matter to the First Tier Tribunal. This was received by the respondent on 10 August 2018. On 17 August 2018, the Respondent sent a letter replying to the letter of 30 July 2018. This acknowledged receipt of that letter and stated that further investigation would be undertaken. The Applicant was out of the country when delivery was attempted and did not return in time to claim the letter. It was returned as undelivered on 6 September 2018. The Respondent sent a further letter on 4 September 2018 stating that it was waiting for information to come from a member of staff on maternity leave to respond to the complaint. It also asked the Applicant to, "expand on [her] comments," as to how it had breached the LACP. The Applicant received this letter on 5 September 2018. She did not respond to it and made this application to the Tribunal on 14 September 2018.
8. The Respondent does not have either a clear written complaints procedure or a clear written policy or procedure for debt recovery.
9. Notwithstanding the terms of the letter of 4 September 2018, the Respondent was given sufficient notice of the breaches of the LACP alleged by the Applicant. It was given approximately 6 weeks to rectify them, which was reasonable time in which to do so.

- Decision

On the basis of these findings in fact, the Tribunal considered that the Respondent has breached the terms of paragraphs 37(a), 108, 110, 112 and 127; and, consequently, of the overarching duties contained in paragraphs 16, 17, 18, 21 and 26. In order to rectify these failures, the Tribunal considered it necessary for the respondent to produce a clear written complaints procedure and a clear written policy or procedure for debt recovery, fully compliant with the terms of the LACP, both within a period of one month. It therefore made a letting agent enforcement order to that effect.

The Tribunal further considered that, as a result of these breaches, the Applicant suffered loss, in the form of considerable inconvenience, having to expend time and

effort attempting to communicate with the Respondent. The Tribunal adjudged that it was appropriate to order the payment of compensation of £500 in respect of this loss.

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.

N Young

Legal Member/Chair

10 NOVEMBER 2018

Date