

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Statement of Decision: Section 48(7) Housing (Scotland) Act 2014**

**Reference number: FTS/HPC/LA/20/2187**

**The Property: 25/6 Milton Street, Edinburgh, EH8 8HA (“the Property”)**

**The Parties: Miss Laurie Donald, 7 Broom Crescent, Falkirk, FK1 5RE (“the Applicant”) and**

**Mr David Donald, 7 Broom Crescent, Falkirk, FK1 5RE ( “the Applicant’s Representative); and**

**Silver Linings Apartments Ltd, 25 Home Street, Edinburgh, EH3 9JR (“the Respondent”)**

**Tribunal Members: G. McWilliams (Legal Member) and M. Scott (Ordinary Member)**

### **DECISION**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with Paragraphs 16, 17, 19, 26, 43, 45, 46, 68, 107, 108 and 110 of the Letting Agent Code of Practice (“the Code”) as required by Section 46 of the Housing (Scotland) Act 2014 and that a Letting Agent Enforcement Order (“LAEO”) should be made. The Tribunal’s decision is unanimous**

### **Background**

1. The Applicant applied to the Tribunal by lodging an Application and supporting papers between 16<sup>th</sup> and 26<sup>th</sup> October 2020. The Applicant sought a determination from the Tribunal that the Respondent had failed to comply with the Code. The Applicant stated that the Respondent had failed to comply with the requirements set out in Section 2, Paragraphs 16, 17, 19 and 26, Section 4, Paragraphs 43, 45, 46,

57, 68 and 72, and Section 7, Paragraphs 107, 108 and 110 of the Code. Included with the papers lodged with the Application was a copy of a Short Term Rental Agreement between the parties for the period 30<sup>th</sup> August 2020 until 10<sup>th</sup> January 2021, and copies of e-mails between the Applicant's representative, her father Mr D. Donald, and the Respondent between 23<sup>rd</sup> September and 9<sup>th</sup> October 2020.

2. On 17<sup>th</sup> November 2020 a Legal Member of the Tribunal, on behalf of the President of the Tribunal, referred the matter to a Tribunal for a determination. Parties were advised that a Hearing would take place by telephone conference call on 14<sup>th</sup> January 2021.

3. The Hearing took place by telephone conference call on 14<sup>th</sup> January 2021 at 10am. The Applicant and the Applicant's Representative Mr Donald attended. The Respondent did not attend and was not represented. The Respondent had not lodged any representations, or engaged, with the Tribunal in respect of the Application.

### **The Hearing**

4. At the commencement of the Hearing the Applicant confirmed that she had conveyed all relevant information regarding her dealings with the Respondent to her Representative, her father Mr Donald. The Applicant confirmed that Mr Donald had entered into e-mail communications with the Respondent, on her behalf, between 23<sup>rd</sup> September and 9<sup>th</sup> October 2020, in terms of the copy e-mails which had been lodged with the Application. The Applicant confirmed that she was content for Mr Donald to provide all relevant information and evidence, as well as submissions, to the Tribunal on her behalf. The Tribunal proceeded to hear evidence from the Applicant's Representative regarding the Sections and Paragraphs referred to in the Application.

### **Section 2 of the Code – Overarching Standards of Practice**

5.

“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).

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

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

6. Mr Donald stated that the Applicant understood that the Respondent had not conducted their business in compliance with relevant legislation as they had breached the Code. He stated that the Applicant believed that the Respondent had not been transparent and fair in their dealings with her as it had been agreed that prior to the Applicant taking entry to the Property the existing tenants would have vacated the Property. The Applicant discovered that a 34 year old man remained resident in the Property when she took entry on 30<sup>th</sup> August 2020. Mr Donald stated that the Applicant would not have let the Property if a previous tenant, in particular an older male, was to remain resident there. Mr Donald reiterated that, at the time of the Applicant's agreement with the Respondent, to let the Property, it was expressly agreed that the tenants then resident in the Property were to vacate the Property. It was further agreed that, after the Applicant had taken entry, any prospective new tenant of the Property would be discussed and agreed with the Applicant.

7. Mr Donald stated that the Respondent only replied to one of his e-mails sent to them in September and October 2020, being his first e-mail dated 23<sup>rd</sup> September 2020 which was replied to on 25<sup>th</sup> September 2020. They did not respond to any other e-mails.

#### **Section 4 of the Code – Lettings**

8.

“43 You must give prospective tenants all relevant information about renting the property.

45. You must make prospective tenants aware of the Code and give them a copy on request, this may be provided electronically.

46. You must not knowingly omit relevant information or evade questions from prospective tenants relating to the letting of the property in line with consumer protection legislation.

57. You must agree with the landlord what references you will take and checks you will make on their behalf.

68. If you are responsible for managing the check in process you must produce an inventory unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct.

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

9. Mr Donald submitted that the Applicant was not given all relevant information about renting the property. He stated that she was given two Short Term Rental

Agreements, one running for 30<sup>th</sup> August 2020 to 10<sup>th</sup> January 2021 and the other running from 10<sup>th</sup> January to 23<sup>rd</sup> May 2021. Mr Donald stated that he would send a copy of second Agreement to the Tribunal by e-mail on the day of the Hearing, and this was subsequently received by the Tribunal. Mr Donald submitted that the Short Term Rental Agreements provided to the Applicant for signature by the Respondent were incorrect as the parties had, in fact, entered into a Private Residential Tenancy Agreement which the Applicant expected to run until at least May 2021. Mr Donald stated that the Respondent did not carry out any pre-tenancy checks. Mr Donald said that the Respondent did not take any references from the Applicant before the commencement of the tenancy, even though these were available. He stated that the Applicant was not made aware of, or given a copy of, the Code. He submitted that when he raised this point by telephone with the Respondent's representative, he had the impression that the Respondent was not aware of the existence of, or the terms of, the Code.

10. Mr Donald further submitted that the Respondent knowingly omitted relevant information regarding the letting of the Property by not disclosing to the Applicant that the 34 year old male existing tenant had remained resident in the Property, contrary to the parties' agreement. He stated that in a telephone call with the Respondent's representative regarding the other person's continued occupation of the Property, the representative had stated that they had intended to send an email to the Applicant confirming the position but this had remained in their e-mail outbox and not been sent. Mr Donald reiterated that no pre-tenancy checks had been made. He stated that the Applicant had sought that an inventory be produced at the outset of the letting agreement but that an inventory was never given to the Applicant.

11. The Applicant's Representative Mr Donald referred to his e-mail communications with the Respondent, and their only reply, of 25<sup>th</sup> September 2020, in which the Applicant requested the landlord's details and the Respondent stated that they were not able to provide the landlord's name and address without the latter's permission.

## **Section 7 – Communications and Resolving Complaints**

12.

"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 the 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”.

13. The Applicant's Representative Mr Donald submitted that the Applicant was not aware of the Respondent having a Letting Agent Registration Number and that such a Number had not been included in any communications or documents exchanged between the parties. He stated that there was no Letting Agent Registration Number on the two Rental Agreements provided to the Applicant. Mr Donald referred to his various e-mail communications to the Respondent, between 23<sup>rd</sup> September and 9<sup>th</sup> October 2020, and stated that the Respondent had only replied to one of his e-mails, on 25<sup>th</sup> September 2020. Mr Donald reiterated that the Respondent had not made the Applicant aware of, or provided her with a copy of the Code.

14. Mr Donald reiterated the Applicant's request in the Application that she be reimbursed the sum of £735.00, being the monies which she had paid for letting the property in the month of October 2020, in advance of her leaving the property on 25<sup>th</sup> September 2020 when she realised that she had been misled regarding the arrangements at the property. Mr Donald submitted that, as also stated in the Application, the Applicant further sought reimbursement of the sum of £90.00, being an administration fee which was unilaterally deducted by the Respondent from the Applicant's deposit sum of £735.00, with a balance of £645.00 being returned to the Applicant.

### **The Tribunal made the following Findings in Fact**

15. The Applicant was the tenant of the Property from 30<sup>th</sup> August 2020 until she left the Property on 25<sup>th</sup> September 2020. The tenancy was due to run from 30<sup>th</sup> August 2020 to 23<sup>rd</sup> May 2021.

16. The Applicant had agreed to let the Property from the Respondent on the basis that existing tenants in the property would vacate the Property before the Applicant began her let.

17. When the Applicant took entry to the Property, on 30<sup>th</sup> August 2020, an older male person, who was one of the said existing tenants, remained in occupation, contrary to the parties' agreement. The Respondent did not inform the Applicant that this was the case. The Respondent was not open and fair in their dealings with the Applicant in this regard. The Respondent had agreed with the Applicant that the Property would be vacant and this turned out not to be the case. Accordingly the Respondent breached the parties' agreement.

18. When the Applicant's representative questioned the Respondent regarding the continued occupation of the existing tenant, and in relation to other matters pertaining to the letting agreement, the Respondent only responded on one occasion, on 25<sup>th</sup> September 2020, and failed to respond to the Applicant's

Representative's subsequent e-mails dated 25<sup>th</sup>, 28<sup>th</sup>, and 30<sup>th</sup> September, and 1<sup>st</sup> and 9<sup>th</sup> October 2020. In his last e-mail the Applicant's Representative stated that in the absence of a satisfactory response the Applicant would refer the matter to the Tribunal.

19. The Respondent did not carry out any pre-tenancy checks in respect of the let to the Applicant. The Respondent did not make the Applicant aware of the Code or give them a copy of it.

20. The Respondent did not provide relevant information to the Applicant regarding the letting of the property, in particular regarding the continued occupation by an existing tenant, contrary to the parties' agreement.

21. The Respondent did not take any references from the Applicant at the outset of the tenancy.

22. The Respondent did not produce an inventory at the outset of the tenancy, despite the Applicant's request in this regard.

23. The Respondent did not provide the Applicant with the landlord's full name and contact address, in response to her request. This was first requested by the Applicant in her Representative's e-mail to the Respondent dated 24<sup>th</sup> September 2020.

24. The Respondent did not include Letting Agent Registration details in the Rental Agreements provided to the Applicant nor in any other papers and communications sent to the Applicant and her Representative.

25. The Respondent did not respond to the Applicant's enquiries and complaints, sent through her Representative, either within a reasonable timescale, or, in respect of certain enquiries and complaints, at all.

26. The Respondent has withheld from the Applicant advance rental monies of £735.00, paid for the month of October 2020 and has deducted the sum of £90.00 from the deposit monies returned to the Applicant without any contractual basis or entitlement to do so, given the Respondent's breach of the parties agreement.

## **Reasons for Decision**

### **The Code**

27. The Tribunal considered the Application and all of the documents lodged in support of it and further considered the evidence and submissions given at the Hearing. Having done so the Tribunal was satisfied that the Respondent acted in breach of Paragraphs 16,17,19,26,43,45,46,68,107,108 and 110 of the Code. The Respondent replied on one occasion only to the Applicant's Representative's e-mails

sent between 23<sup>rd</sup> September and 9<sup>th</sup> October 2020. The Respondent did not engage with the Tribunal at all in respect of the Application. The Respondent did not attend or arrange to be represented at the Hearing and there was therefore no contradictor to the evidence and submissions given on behalf of the Applicant. Mr D. Donald gave evidence in a very clear and straightforward way. His oral evidence was consistent with the terms of the said e-mails sent to the Respondents between 23<sup>rd</sup> September and 9<sup>th</sup> October 2020. The Tribunal placed considerable weight on the documentation, produced in support of the Application, and on Mr Donald's oral evidence which they found to be reliable and credible. Accordingly, and having made the above findings in fact, the Tribunal found, on a balance of probabilities, that the Respondent had breached the above stated Paragraphs of the Code.

28. The Tribunal found that the Respondent had not acted in breach of Paragraph 57 of the Code as this relates specifically to the Respondent's relationship with the landlord, and not with the tenant. The Tribunal also found that Paragraph 72 of the Code was not breached by the Respondent as Lettings Section 4 of the Code relates to information requested at the time of a tenant moving into a property. The information regarding the landlord's full details had been requested by the Applicant's Representative at the time that she was leaving the Property, and ending her occupation there, on 24<sup>th</sup> September 2020

#### **Letting Agent Enforcement Order ("LAEO")**

29. The Tribunal proceeded to consider the terms of the LAEO to be issued, following their determination that the Respondent has acted in breach of certain requirements of the Code. Having placed considerable weight on the terms of the documentation lodged in support of the Application, and Mr Donald's oral evidence, the Tribunal found that the Respondent had obtained and withheld rental monies from the Applicant, in the sum of £735.00, for the month of October 2020, following their having acted in breach of the parties' agreement, by failing to ensure that the Property was vacant when the Applicant took entry. The Tribunal found that the Applicant had returned the Applicant's deposit of £735.00 to her after the Applicant left the property on 25<sup>th</sup> September 2020, but had deducted an "administration" charge of £90.00 without any contractual or other basis for doing so, given their breach of the parties' agreement. The Tribunal found that the Applicant had suffered losses in the sums of £735.00 and £90.00 as a result of the Respondent's breach of the parties' agreement and is entitled to be compensated for her losses in this regard. The Tribunal accordingly found, on a balance of probabilities, that an LAEO should include those sums in order that they may be repaid in compensation to the Applicant. The Tribunal also found that the Applicant and her Representative father Mr D. Donald had suffered inconvenience as a result of the Respondent's failure to engage with them, and/or repay monies due to the Applicant, and in having to proceed with the Application. The Tribunal further found, on a balance of probabilities, that it was appropriate to include an additional sum of £100.00 in the LAEO as compensation for the inconvenience suffered by the Applicant. Accordingly

the Tribunal determined that the sum of £925.00 should be paid to the Applicant by the Respondent. The Tribunal also determined that it was appropriate for the Respondent to issue a written letter of apology to the Applicant for their breach of the parties' agreement, failure to meet the standards expected of Letting Agents operating in Scotland, and their breaches of various Sections of the Code. The Tribunal also determined that, given the various breaches of the Code by the Respondent, it is appropriate that the Respondent should undertake staff training to better understand Letting Agents' obligations in terms of the Code. The LAEO is issued to the parties with this Decision.

### **Appeals**

**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.**

**G McWilliams   Legal Member**

**18<sup>th</sup> January 2021**