

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/22/3936

tfr 88 Walker Road, Aberdeen, AB11 8BR ("the Property")

The Parties:-

**Mr Petr Bartek, 47 Slavkov pod Hostynem, 76861, Czech Republic
("the Applicant")**

**Martin & Co, 123 Rosemount Place, Aberdeen, AB25 2YH
("the Letting Agent")**

Tribunal Members

Miss Gillian Buchanan (Legal Member)

Mr Mike Scott (Ordinary Member)

Decision

In that by Decision dated 20 June 2023 the Tribunal determined that the Letting Agent has failed to comply with paragraph 29(d) of the Code of Practice for Letting Agents ("the Code"), the Tribunal made a letting agent enforcement order under and in terms of Section 48(7) and (8) of the Housing (Scotland) Act 2014 and now requires the Letting Agent to take such steps as are necessary to rectify that failure and requires the Letting Agent to pay to the Applicant the sum of £800 as compensation for the loss suffered by the Applicant as a result of the failure to comply with the Code.

Background

1. Following a Hearing on 10 May 2023 and by Decision dated 20 June 2023, the Tribunal found it established that the Letting Agent had failed to comply with paragraph 29(d) of the Code.
2. The Tribunal must therefore issue a letting agent enforcement order under and in terms of section 48(7) and (8) of the Housing (Scotland) Act 2014.
3. The Hearing on 10 May 2023 was adjourned to a further Hearing to take place on 11 September 2023 to hear submissions from the parties on :-
 - i. Any steps necessary for the Letting Agent to rectify its failure;
 - ii. Any sums that should be paid to the Applicant by way of compensation; and

- iii. The period within which such steps and any payment should be made.
- 4. The Tribunal required that any financial claims being made by the Applicant be properly vouched with all supporting documentation being lodged with the Tribunal no later than seven days prior to the adjourned Hearing.
- 5. Prior to the Hearing the Tribunal received from the Applicant an email dated 4 September 2023 with attachments.

The Hearing

- 6. The Hearing took place by conference call on 11 September 2023. The Applicant attended the Hearing. The Letting Agent was represented by Mr Eduardo Prato and Ms Maxine Card.
- 7. At the Hearing the Applicant made oral representations to the Tribunal as follows:-

- a. The Applicant sought repayment of Council Tax for eight months – £885.26.

Council tax was then payable at £110.65 per month. The Letting Agent took from April until 24 August 2021 to rent out the Property. The tenant was in occupation from 25 August 2021 to 4 October 2021 and was responsible for payment of Council Tax during that period. It took six months for the Letting Agent to tell the Applicant that they did not have a client base for the Property.

The Applicant changed letting agent and the Property was ready to go on the market again at the beginning of January 2022. Accordingly, the Applicant paid Council Tax from 5 October 2021 to 31 December 2021.

- b. After the tenant moved out in October 2021 the Applicant installed a new integrated oven. He travelled to Aberdeen from the Czech Republic and spoke to a new letting agent who advised him that a built-in oven would be better. The new oven was bought online and installed in November 2021. The oven just required to be purchased and plugged in which the Applicant attended to himself.
- c. Before the Property could be placed back on the market for let there was extra paperwork to complete respect of the Applicant's wife who had stayed behind in the Czech Republic with their new baby. Accordingly, it was only on 29 November 2021 that the new letting agent was able to inspect the Property.
- d. The new rent for the Property was £395 per month and has since gone up to £405 per month.
- e. The Applicant paid Aberdeen City Council the Council Tax during the periods when the Property was empty. He had no vouching of payments made. He said he had been unable to download invoices and was waiting for copies from Aberdeen City Council.
- f. The Applicant seeks to recover fees deducted by the Letting Agent from rent paid by the tenant who occupied the Property between 25 August and 4 October 2021. A total of £531.51 was paid by way of rent from which the Letting Agent deducted the set-up fee of £300 for finding the prospective tenant and £60 for each of the check-in and the check-out reports. The Applicant does not consider these sums to be payable to the Letting Agent as they did not find a prospective tenant. The tenant who occupied the

Property was not happy with the conventional oven. He complained about it on the day he moved in and thereafter left as there was no freestanding oven within the Property. He felt sure he was going to get a new oven when he decided to move in.

- g. When the Letting Agent determined that there was no client base for the Property the Letting Agent ended the relationship with the Applicant.
 - h. There is also £11.51 missing and unaccounted for in the sums paid by the tenant.
 - i. The Applicant travelled from Prague to Amsterdam and then from Amsterdam to Aberdeen to deal with the Property following the tenant's departure. His flights cost £189.54. He did not know the date of the flights. He required to travel by train to get to the airport in Prague. This took three hours at a cost of £23.10. His bank statement vouched these figures. The Applicant emailed the new letting agent on 18 November 2021 indicating that he would be flying the following week and arranged to meet.
 - j. The Property was thereafter unoccupied for 3.5 months at what would have been a monthly rent of £395. The current tenant of the Property has been living there for a year now.
 - k. The Applicant required to take time off work to deal with the situation that had arisen.
 - l. The Applicant is employed as a technician providing software product assistance.
 - m. The Tribunal noted the total value of the Applicant's claim per his email of 4 September 2023 to be £3,116.90. However, his claim in the application is in a sum of £2,000.
8. At the Hearing Mr Prato for the Letting Agent made oral representations to the Tribunal as follows:-
- a. Mr Prato stated that if the Applicant had followed the Letting Agent's advice to install an oven when the tenant moved into the Property in August 2021, none of what happened subsequently would have occurred. The Applicant did not follow that advice.
 - b. Mr Prato could not see any grounds for the Applicant's claim. The tenant vacated and Property was empty until the Applicant bought and installed a new oven following the advice of the new letting agent.
 - c. Mr Prato accepted that the advice to install a new oven was only given in August 2021. However he said the Property was fully compliant nonetheless.
 - d. The Letting Agent found the Property harder to let but eventually found a tenant who asked for a traditional oven to be installed. If the Applicant had accepted the Letting Agent's advice to install an oven the problem would have been resolved.
 - e. Post COVID19 and during the second quarter of that year rents were generally coming down. In a good market, rents go up. The rent for the Property was reasonable. In advertising the Property for let the rent reduced from £450 to £400 on 22 April 2021.

- f. With regard to Council Tax, Mr Prato stated that after the tenant vacated the Property the Applicant and his wife made their way back to the UK and stayed at the Property. The Letting Agent should not have any liability therefore. Mr Prato said the Applicant should prove where the Applicant and his wife were staying in the UK.
- g. The Letting Agent ought not to be liable for Council Tax for the Property whilst it is being marketed for let by another agent. The Applicant delayed the process of putting the Property back on the market. If the new letting agent took longer to put the Property on the market that is not the Letting Agent's responsibility.
- h. With regard to fees the Letting Agent charged for the services provided. A tenant moved in and arrangements were made in accordance with the contract and legislation. The same applied when the tenant moved out. The Applicant has to cover the costs of procuring the tenancy and the Letting Agent's fees. Any tenancy may last only 28 days according to law. The inventory is prepared by a third party company and formed part of the tenancy. The tenancy came to an end as the Applicant failed to install an oven that he eventually installed anyway.
- i. If the Applicant chose to fly over from the Czech Republic to install an oven that is his prerogative. He could have authorised the new letting agent to deal with the installation of the oven. One phone call would have sufficed. It was a personal choice to travel and no claim should be allowed. The Letting Agent has landlords in the UK and all around the world.
- j. Mr Prato did not understand the Applicant's claim for £11.51 which was paid back to him per the statement previously provided by the Letting Agent within the paperwork lodged.
- k. The Letting Agent obtained a rent of £400 for the Property. The new letting agent achieved a rent of only £395 per month some time later and with a new oven installed. The Applicant did not follow the Letting Agent's advice. More rent would have been generated had he done so.
- l. The Property was fully compliant at the point of giving the advice with regard to the oven. There is no requirement for a traditional oven to be installed.
- m. With reference to the timing of the Letting Agent giving advice about the need for the oven to be changed, the Tribunal asked why that was not given earlier. Mr Prato stated that when the Property was placed on the market it was fully compliant. The Property may not have been the most appealing property but after reviewing market evidence and the Property having been on the market for a few months, adjustments were made. The Applicant failed to take the Letting Agent's advice but then does what he ought to have done had he accepted the Letting Agent's advice.
- n. The Letting Agent did a superb job of renting the Property.
- o. The Tribunal asked Mr Prato about Ms Card's email of 27 October 2021 and the admission therein that it should have been brought to the Applicant's attention previously that the demand for a property with no freestanding/integrated oven is very little – a situation for which she apologised. Mr Prato stated that in Ms Card's eyes the Property would have benefited from a freestanding oven at the beginning of the tenancy. He accepted advice to change the oven was not given at the outset.

9. The Applicant made the following further submissions:-

- a. There was no reason for him to come back to the UK other than one weekend to deal with the oven and appoint a new letting agent. The Applicant could not deal with everything from the Czech Republic.
- b. The Applicant accepted that the sum of £11.51 had been paid to him. However, the Letting Agent took the rental income from him and did not provide the service required. The service included the provision of a "Rental Assessment" in current market conditions. The Letting Agent should have recommended a lower price.

Reasons for decision

10. By email dated 27 October 2021 the Letting Agent accepted that the Applicant ought to have been advised at the outset that the Property would have benefited from having a freestanding or integrated oven within the kitchen. That advice was not given until the tenant moved in in August 2021. In that email the Letting Agent accepted that the demand for a property with no free standing or integrated over is "very little" and an apology was tendered to the Applicant for the position not having been brought to the Applicant's attention previously.
11. Had the Property included a freestanding or integrated oven the Property would have been more lettable within the market and is unlikely to have taken so long to rent out.
12. The Tribunal noted too that when the Property was put back on the market by the new letting agent in January 2021, a tenant was found who moved in after a period of around 2 months.
13. With regard to Council Tax, the Applicant produced no vouching of the Council Tax payable to Aberdeen City Council nor of the Council Tax having been paid by him. The Tribunal was not satisfied that the Applicant's claim for payment of Council Tax had been vouched to any extent. Further and in any event, the claim is significantly overstated on any view. The Applicant appeared to maintain that he should have had no liability for payment of Council Tax at all from the point at which the Property was placed with the Letting Agent to rent out. That is simply not correct.
14. The Tribunal accepted that, ultimately, the Letting Agent found a tenant for the Property and was therefore entitled to the associated set up and check-in/check-out fees due in terms of the contract between the parties. The rent recovered from the tenant had been fully accounted for to the Applicant and the Applicant has no further claim in that connection.
15. The Tribunal accepted that the Applicant failed to mitigate his loss. He accepted the advice of the new letting agent to install an integrated oven and did so. Had the Applicant installed such an oven in August 2021 when the issue was first raised, everything that followed would not have occurred. The Tribunal does not therefore consider the Letting Agent to have any responsibility for any sums incurred by the Applicant after August 2021 when the advice to change the oven was first given which the Applicant refused to accept.
16. In respect that the advice tendered by the Letting Agent that the Property ought to have an integrated oven was only given in August 2021 and in respect that it is accepted that

the absence of such an oven affected the marketability of the Property there being "very little" demand for such a property, the Tribunal determined that it is reasonable to require the Letting Agent to make a payment of compensation to the Applicant of £800 being the equivalent of two month's rent at £400 per month. Two months generally reflects the period that was required for the Property to be rented out after the integrated oven had been installed. This is fair, proportionate and just having regard to the Letting Agent's breach of the Code.

Letting Agent Enforcement Order

17. The Tribunal made the following letting agent enforcement order:-

The Letting Agent shall pay the sum of £800 to the Applicant within a period of 28 days following service of the order.

Right of Appeal

18. 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 Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

**Signed
Legal Member**

**Date
2 October 2023**