

Housing and Property Chamber

First-tier Tribunal for Scotland



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

(Hereinafter referred to as “the tribunal”)

Under Section 48(6) of the Housing (Scotland) Act 2014 (‘the 2014 Act’)

Case Reference Number: FTS/HPC/LA/18/0967

The Parties:

Miss Ania Gieremek, formerly residing at 564b Flat 3 Lanark Road, Edinburgh EH14 5EL (the applicant)

Arden Property Management LLP, 43 Morningside Road, Edinburgh EH10 4DR (the Letting Agent)

Tribunal members: Sarah O’Neill (Chairing member), Mary Lyden (Ordinary member)

Decision of the tribunal

The tribunal determines that the Letting Agent has failed to comply with paragraphs 17 and 110 of the Letting Agent Code of Practice (‘the code’). It determines, however, that the Letting Agent has not failed to comply with paragraphs 19; 20; 22; 26; 68; 71; 85; 90; 91; 97; 98; and 108 of the code. The tribunal’s decision is unanimous.

Background

1. By application received on 26 April 2018, the applicant applied to the tribunal in terms of section 48 of the 2014 Act and Rule 95 of Schedule 1 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (‘the 2017 rules’) to determine whether the Letting Agent had failed to comply with the code. In her application, the applicant stated that the Letting Agent had failed to comply with the following paragraphs of the code: 17; 18; 19; 20; 22; 25; 26; 67; 68; 71; 82; 83; 85; 90; 91; 97; 98; 99; 100; 107; 108; 109; and 110.
2. On 31 May 2018, the Convener with delegated powers of the Chamber President, issued a notice of acceptance of the application under Rule 9 of the 2017 rules, stating that he had considered the application paperwork, comprising documents received between 26 April 2018 and 31 May 2018, and considered that no further documents or information were required before the application could be accepted for determination by the tribunal.

3. Further emails were received from the applicant on 4 and 14 June 2018, asking to add new material to her application. On 20 June 2018, the tribunal administration issued a notice of hearing to both parties, advising that a hearing would be held on 22 August 2018, and requesting written representations by 11 July 2018. Written representations were received from the applicant on 10 July 2018, and from the Letting Agent on 11 July 2018. Further detailed written representations were received from the applicant, responding to the Letting Agent's representations, on 16 July 2018.
4. On 25 July 2018, the tribunal issued a direction to the parties. This noted that some of the applicant's complaints appeared to relate to matters which occurred before the code came into force on 31 January 2018. It notified the parties that the tribunal was therefore unable to consider complaints about breaches of the code before that date. Bearing this in mind, the direction required the applicant to confirm in writing to the tribunal a list of the specific complaints that she wished the tribunal to consider.
5. The applicant was also directed to confirm to the tribunal whether: 1) the information received from her on 4 and 14 June was intended to support one or more of her existing complaints to the tribunal, and if so, which complaint it related to or 2) whether this information related to a new complaint not previously notified to the Letting Agent. If 2) was the case, the tenant was directed to confirm whether she wished to seek the tribunal's consent to amend her application to add a new complaint, and the details of that complaint. The direction also required the Letting Agent to provide certain specified information. Responses to the direction were received from both parties on 13 August 2018. Further written representations were received from the Letting Agent on 17 August, and from the applicant on 21 August 2018.

The hearing

6. A hearing took place before the tribunal on 22 August 2018 at George House, 126 George Street, Edinburgh EH2 4HH. The applicant represented herself and gave evidence on her own behalf. The Letting Agent was represented by Catriona Waugh, Partner and Lisa England, Property Manager, who gave evidence on its behalf. Neither party called any other witnesses to give evidence on their behalf.

Preliminary issues

7. The chairperson asked the parties to confirm whether they had received all of the papers for the hearing, including the representations sent by the Letting Agent on 17 August and those sent by the applicant on 21 August. Both parties

confirmed that they had seen these documents, and were content for these to be considered by the tribunal. The chairperson noted that while these documents had not been lodged 7 days before the hearing as required by rule 22 of the 2017 rules, most of them covered issues which were contained in previous representations. It may be useful to the tribunal to refer to some of these documents during the hearing; the tribunal would therefore consider these alongside all of the other evidence.

8. The chairperson noted that, in her response of 13 August to the tribunal's direction, the applicant had indicated that she wished to seek the tribunal's consent to amend her application to include further complaints under paragraphs 97 and 98 of the code, in relation to the outstanding rent which the Letting Agent alleged to be due. She had also included a new complaint under paragraph 17 in relation to the final rent invoice which had been sent to her on 14 June 2018. The invoice for rent due was received by the applicant after the date her application was accepted for determination by a tribunal, although she had sent it to the tribunal on 14 June 2018, stating that she wished to add it to her case. The Letting Agent had therefore been aware of this issue for some time, and it had since then submitted representations addressing this issue.
9. When asked whether the Letting Agent had any objections to the applicant's application being amended to include these complaints, Ms Waugh indicated that it did not, stating that she felt these formed part of the issues which were already under dispute. The tribunal agreed that these issues had been repeatedly previously raised by the tenant, and agreed to the applicant's request to amend her application to include these, in terms of rule 13 of the 2017 rules.
10. The chairperson indicated to the parties that the tribunal intended to use the list of complaints set out in the applicant's response of 13 August 2018 to the tribunal's direction as the basis of the complaints which it would consider. The parties indicated that they were content with this approach.

The evidence

11. The evidence before the tribunal consisted of the following:
 - The application form completed by the applicant.
 - Supporting documents submitted by the applicant with her application, namely:
 - 1) short assured tenancy agreement between the applicant and the landlord, Glenbridge Ltd, dated 27 September 2017.
 - 2) tenancy deposit scheme documentation relating to the applicant's tenancy.
 - 3) copy notification letter sent by the applicant to the Letting Agent by email on 26 March 2018, setting out her complaints under the code.

4) various email correspondence between the applicant and the Letting Agent dated between October 2017 and April 2018.

5) various photographs of the property which was the subject of the applicant's tenancy.

- Further email correspondence from the applicant to the tribunal dated 3 May, 24 May, 31 May, 3 June, 4 June and 14 June 2018.
- The applicant's written representations received on 10 July 2018.
- The Letting Agent's written representations received on 11 July 2018.
- The responses received from both parties to the tribunal's direction on 13 August 2018.
- Further written representations received from the Letting Agent on 17 August 2018
- Further written representations received from the applicant on 21 August 2018
- The oral representations of both parties at the hearing.
- Further information received from the Letting Agent on 23 August, which the tribunal had requested during the hearing.
- Further written representations received from the applicant on 24 August, in response to the Letting Agent's representations of 23 August.

Findings in fact

12. The tribunal makes the following findings in fact:

- a) The applicant entered into a short-assured tenancy agreement with the landlord, Glenbridge Limited, to rent a property at 546b Flat 3 Lanark Road, Juniper Green, Edinburgh EH14 5EL from 27 September 2017 until 27 March 2018. She left the property on or around 30 April 2018.
- b) The Letting Agent is the letting agent which was responsible for management of the applicant's tenancy on behalf of the landlord. The Letting Agent carries out letting agency work in Scotland.
- c) The Letting Agent is not yet registered as a letting agent with the Register of Letting Agents, but has applied to join the register. All of those currently carrying out letting agency work in Scotland (as defined in section 61 of the 2014 Act) are required to register by 1 October 2018.
- d) The Code of Practice sets out the standards which all those doing letting agency work must meet. The Code of Practice came into force on 31 January 2018. The Letting Agent's duty to comply with the Code of Practice arose from that date.

The applicant's complaints

Background

13. There were two main issues underlying most of the applicant's complaints. These were: 1) the condition of the property at the start of her tenancy, and the repairs which were required and 2) the notice given by the applicant that she wished to leave the property. These two issues were related and could be traced back to the start of her tenancy on 27 September 2017. From the time she moved into the property, she was unhappy with its condition. The Letting Agent acknowledged that there were a number of outstanding repairs at the time she moved in. The applicant had sent numerous emails to the Letting Agent regarding the repairs. In an email dated 3 October 2017, she detailed a list of issues which she thought required to be addressed. These included, among other things: replacement of carpets / flooring; insect infestation; a faulty fridge freezer; a bedroom window which did not close properly; and the fact that the property was not clean.
14. The applicant had not viewed the property herself before agreeing to rent it, as she was living in London at the time. Her brother and his girlfriend had viewed the property for her, and had told her that it was very dirty. She therefore told the Letting Agent that she would rent the property on the understanding that it was professionally cleaned before she moved in, but she said this had not happened. She had agreed to delay her agreed move in date by two days to 27 September 2017, to allow time for new carpets and flooring to be installed, but when she moved in, she discovered that this had not in fact been done.
15. Because the applicant was so unhappy about the state of the property, the Letting Agent had in October 2017 agreed to let her leave the tenancy early. The tenancy agreement stated at clause 1.13: *'If the agreement is not brought to an end by either party (Tenant or Landlord) on the above expiry date referred to in clause 1.9 [i.e. 27 March 2018], the agreement will continue thereafter on a monthly basis until terminated by either party giving no less than 2 months written notice to the other party on the anniversary day.'*
16. The Letting Agent had agreed to reduce the notice period to one month. The applicant then remained in the property until 30 April 2018. She sent an email to the Letting Agent on 27 March 2018, stating that she wished to give one month's notice. The Letting Agent refused to accept this, advising that, as she had remained in the property for the full six-month period, she was required in terms of the tenancy agreement to give them two months' notice.

The complaints

17. Some of the complaints contained in the applicant's original application clearly pre-dated 31 January 2018, the date on which the code came into force. In her response of 13 August 2018 to the tribunal's direction, she confirmed that she wished the tribunal to consider her complaints under the following paragraphs of the code: 17; 19; 20; 22; 26; 68; 71; 85; 90; 91; 97; 98; 108; and 110. Each of these complaints is set out in detail below.

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

18. The applicant's complaints under this paragraph of the code related to the notice issue and the ending of her tenancy. She complained that the Letting Agent had:
- a) failed to explain in detail the final rent invoice for £909
 - b) failed to accept her written notice of 27 March 2018 as providing the notice required from that date.
 - c) failed to keep its professional word about the one month's notice which had been agreed.
19. The applicant's complaint under point (a) related to the form which she received from the Letting Agent on 14 June 2018, which was headed 'Tenancy Deposit Return'. This set out the deductions which the Letting Agent proposed to claim from her deposit, stating only that there was £879 rent outstanding, plus a £30 late rent charge, making a total of £909. There was no indication as to how this figure had been reached. The £909 was set against the £730 deposit which the applicant had paid; the amount to be returned to the applicant was therefore nil.
20. The applicant had then made an application to the dispute resolution service run by Safe Deposits Scotland, which was holding her tenancy deposit, seeking to have her deposit returned. She argued that she had paid all rent due up until the end of April, which she believed to be the end of her notice period. As at the date of the hearing, that dispute resolution process was still ongoing: the deadline for the Letting Agent to submit evidence was 31 August, while the deadline for the applicant to do so was 3 September.
21. With regard to points b) and c), the applicant pointed to various emails from the Letting Agent, in which its staff had agreed to let her leave the tenancy early because she was so unhappy with the condition of the property. In an email to the applicant dated 13 October 2017, Laura Somerville, Office Manager with the Letting Agent had stated: *'a months notice is acceptable of course and we will work with you to make this work'*. In a further email dated 16 October 2017, Ms

Somerville said: *'Please take this email as written confirmation that we are allowing you to leave the lease early. If you advise us when you find something new and the date you are looking to check it (sic) we will work with you to ensure this date.'*

22. Following this, the applicant asked the Letting Agent for a legally binding contract amendment stating that she was only required to give one month's notice. Ms Waugh replied by email on 30 October stating: *'we have agreed in writing i.e. email that we will not hold you to your six month term and that you are free to leave whenever you find something else. We would ask only that you let us know as soon as you can once you find somewhere so that we can look for another tenant for the property. It is up to you whether you trust our word or not but we are a professional company and have no reason to go back on this.'*
23. On 26 March 2018, Ms England sent an email to the applicant advising that she had received a reference request from another letting agent. She went on to say: *'Please note that if you are going to give your notice we will require two months written notice from your anniversary date which is the 27th of the month.'*
24. The applicant sent an email to Ms Somerville on 27 March 2018, which stated: *'As agreed this is to confirm my one month notice, I will be moving out from the property at 546B/3 Lanark Road EH14 5EL.'* Ms England sent a reply to the applicant the following day, 28 March 2018, stating: *'The initial month notice was time sensitive at the time when all the issues at the start of your tenancy. You were given plenty of opportunity at the start to leave. You never let us know otherwise, therefore your lease continued on as per the Short Assured Tenancy which states 2 full months written notice must be given.'*
25. The applicant argued that the Letting Agent had never said that the offer of one month's notice was time limited, and that it had taken her months to find a new property, given the competitive rental market in Edinburgh. She said that it had never crossed her mind that there might be any issues as to the required notice period until the Letting Agent had refused to accept her notice.
26. The applicant remained in the property until 30 April 2018. She posted the keys to the Letting Agent on or around 1 May 2018. Ms England sent an email to the applicant on 3 May, which stated: *'We have received your sets of keys for the above, therefore can only assume that you have left the property. As we have not yet received your actual written notice giving us the mandatory 2 full calendar months from your anniversary date of the 27th, then please note that until we do so, you are still liable financially... We are unable to move forward with this until we receive your written notice by the 27th May 2018 to give us the full calendar 2 months and an exit date of 27.07.2018.'*

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

27. The applicant's complaints under this paragraph of the code were:
- a) as of April 2018, the Letting Agent had never provided to her an 'alleged pest control report' despite numerous requests for this by her.
 - b) the Letting Agent failed to accept her written notice dated 27 March 2018.
28. With regard to complaint (a), one of the issues which the applicant had complained about early in her tenancy was that there were insects (which Ms Waugh said were 'larder beetles' which were not harmful to health) in the kitchen of the property. She pointed to photographs of the property which she had submitted to the tribunal, which showed insects in the kitchen. She queried whether the pest control work had ever been carried out, and said that there had still been beetles in the property when she left it in April 2018. It was unclear what her complaint under this section was actually about, but it appeared that she thought the Letting Agent had provided false information to her by saying that the work had been carried out.
29. The applicant requested a copy of the pest control report from the Letting Agent by email on 15 October 2017, and a reply was sent to her on 16 October 2017 by Tommy Kirkwood, Maintenance and Compliance Manager, stating that the report had been requested, and would be sent to her. There was no further correspondence before the tribunal in relation to the pest control report.

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

30. The applicant's complaint under this paragraph of the code again related to the issue of the notice which she had given to the Letting Agent. She complained that the Letting Agent was in breach of this section because it had *'failed to keep its professional word (about one month notice) which was confirmed by agent in writing when notice was emailed by the tenant on 27 March 2018.'*

Paragraph 22. You must not unlawfully discriminate against a landlord, tenant or prospective tenant on the basis of their age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation.

31. It was not clear from her application or her written representations on which grounds the applicant believed the Letting Agent had discriminated against her. She told the tribunal that she felt she was an 'easy target', and that she felt the

Letting Agent was not taking her concerns about the state of the property seriously, as it had failed to respond to her.

32. When asked by the chairperson on which of the grounds in paragraph 22 she believed she had been discriminated against, she indicated that she felt she had been discriminated against on grounds of race. She said that she felt that she was treated differently because she was not from the UK and had an accent. She clarified that she did not feel that this was specifically because of her Polish nationality, but that she felt the Letting Agent thought that she would not know her rights within the UK, and that it knew that someone from the UK would not have rented the property.

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

33. The applicant's complaint under this paragraph was that:

- as of April 2018, works on lino floors in the bathroom and kitchen had not been completed.
- as of April 2018, the broken fridge had never been replaced.

These are very similar to those raised under paragraph 90, as discussed in more detail below.

Paragraph 68. If you are responsible for managing the check-in process, you must produce an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example marks on walls, carpets other fixtures) 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.

Paragraph 71. You must provide the tenant with a signed copy of the inventory for their records.

34. The applicant's complaint was the same under both of the above paragraphs of the code: that as at April 2018, she had not received from the Letting Agent an updated and signed inventory. She said that when she moved into the property she had received an inventory to complete, but as she was tired and hungry after a long journey to get there, and wished to add comments, she had done this later. She said that she had not signed the inventory at the time, and that the inventory had never been updated with her comments and sent to her.

Paragraph 85. If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing; annual gas safety inspections; Legionella risk assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.

Paragraph 90. Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

Paragraph 91. You must inform the tenant of the action you intend to take on the repair and its likely timescale.

35. The applicant's complaint under each of the three paragraphs above were identical. They were also the same as those under paragraph 26; namely that as at April 2018, the fitting of the bathroom and kitchen lino and the replacement of the fridge freezer had not been carried out by the Letting Agent. The tribunal therefore considered all of these complaints together.
36. As discussed earlier in this decision, the applicant was very unhappy about the state of the property when she moved in; she had complained about various issues at that time. Among other issues, she was upset to find that the flooring and carpets had not been installed, as promised. She had agreed to delay her tenancy start date by two days to give the Letting Agent time to do this before she moved in. This had resulted in her delaying her start date in her new job, and she had lost two days' earnings as a result. The carpets had been fitted fairly soon afterwards, but the lino had still not been finished when she left the property.
37. One of her complaints had been about a faulty fridge freezer, which was repaired shortly after she had moved in. It had later broken down again, and it had been decided that it should be replaced. It had still not been replaced by the time she left the property.

Paragraph 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.

Paragraph 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.

38. The applicant's complaints under the above paragraphs again related primarily to the notice issue. Her complaints under both paragraphs were identical, namely that the Letting Agent:

- a) failed to accept her written notice sent on 27 March 2018
- b) failed to *'keep its professional word (about one month notice) which was confirmed by agent to tenant in writing, when notice was emailed by the tenant on 27 March 2018.'*
- c) Was *'claiming apparent outstanding charges (never explained in details to the tenant) to be paid from Tenant's deposit held by Safe Deposits Scotland.'*

These issues are discussed at length above in relation to the paragraph 17 complaint.

Paragraph 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.

39. The applicant's complaint was that her 'legal adviser' had never received a call back from the Letting Agent when they tried to contact them to discuss her complaints. She said that her CAB adviser had twice tried to call the Letting Agent while she was present, and had been unable to speak to anyone. She said that on both occasions, the adviser had left their details, asking for someone to call them back, but no-one had done so. When asked by the tribunal chairperson when this had occurred, the applicant said that it was probably prior to 31 January 2018.

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

40. The applicant's complaint was that the Letting Agent had failed to make her aware of the code when it came into force. She told the tribunal that she had only found out about the code through her own internet search.

Summary of the issues

41. The issue to be determined was whether the Letting Agent had failed to comply with the various paragraphs of the code of practice complained about by the applicant on or after 31 January 2018.

Statement of reasons for decision

42. The tribunal's determinations in relation to each of the applicant's complaints are set out in turn below.

Paragraph 17

43. With regard to **part (a)** of the applicant's complaint, the tribunal notes that the tenancy agreement stated at clause 3.6 that any unpaid rent due would be deducted from the tenant's deposit, and that a final deposit statement would be sent to the tenant at check out. The information in the Tenant Information Pack on deposit return states that deductions will be made from the deposit to cover rent arrears. The tenancy agreement also stated (at clause 1.10) that an administration fee is payable for rent that is not paid or paid late. The Tenant Information Pack says that there is a £30 charge for late payment of rent.
44. Ms Waugh conceded that she should perhaps have sent out more detailed rent statements to the applicant. She said that, had the applicant requested such statements, she would have sent these out. While neither the tenancy agreement nor the Tenant Information Pack explicitly states that the final deposit statement should set out in more detail the rent which is due, the tribunal considers that this would be good practice. While the tribunal accepts that in most cases the calculation of any rent due is likely to be fairly straightforward, in the circumstances here, it was far from clear when the Letting Agent considered the tenancy to have ended. Aside from the £30 late rent charge, it was not at all clear how the figure of £909 had been reached.
45. In fact, as a result of this lack of clarity, the tribunal had directed the Letting Agent in its direction of 25 July to provide an explanation of how this figure had been reached, given that the monthly rent was £630. It then became apparent that this had been calculated by adding the monthly rent for May (£630) to the rent for 12 days in June (£249), plus the £30 late rent charge. A new tenant had moved into the property on 13 June, so the applicant had been charged up until 12 June.
46. Ms England's covering email to the applicant of 14 June, which was sent with the tenant deposit return form, made no mention of any of this, simply saying '*Please see attached a copy of the Tenants Deposit Return Form with the outstanding rent including a later rent fee which we will claim from the deposit.*' Given its failure to provide the applicant with a clear and detailed statement setting out the details of how the outstanding rent figure has been calculated, the tribunal considers that the Letting Agent did not act in a fair, open or transparent way. The tribunal therefore determines that the Letting Agent was in breach of this paragraph of the code as regards part (a) of the applicant's complaint.
47. In relation to parts (b) and (c) of the applicant's complaint, the Letting Agent's position was that the offer of reducing the notice period to one month was made early in the tenancy because the applicant was so unhappy. It was intended on the basis that she would find a new property soon, and would be released from

the tenancy early, once she had found somewhere. But she had remained in the property throughout the tenancy period, and the first time the Letting Agent was aware that she was intending to move out was when they received a reference request from another letting agent in March 2018.

48. Ms Waugh told the tribunal that now, looking back over the events as a whole, she could see why the applicant had interpreted the emails in the way she had. She felt that the problems had started with the applicant not having viewed the property herself at the outset, and that the relationship between the parties had been difficult from the start. She said that it had been difficult to have a conversation with the applicant about the issues because she was often frustrated and emotional when she called the Letting Agent. She said that she had invited the applicant to come in to discuss matters, but she had not done so. She also said that, had the applicant contacted the Letting Agent sooner to advise that she wished to move out, they may have been able to come to an agreement with her as to an end date for the tenancy.
49. As regards **part (c)** of the applicant's complaint, the applicant was correct to say that no time limit in respect of the reduced notice period was stated by the Letting Agent, and in hindsight the Letting Agent could perhaps have stated more clearly that the agreement to reduce the notice period was not intended to apply indefinitely. It is, however, fairly clear from the email correspondence that the Letting Agent's intention was to assist the applicant by allowing her to leave the lease early, because she was so unhappy with the property. In her email of 16 October 2017, Ms Somerville said: *'Please take this email as written confirmation that we are allowing you to leave the lease early'*, while Ms Waugh said in her email of 30 October: *'we have agreed in writing i.e. email that we will not hold you to your six month term'*.
50. The applicant, however, remained in the property for the full six-month term. She agreed at the hearing that she had signed the tenancy agreement, which provided for two months' notice of termination to be given by either party. While the tribunal has some sympathy with the applicant, it considers that, because she had remained in the property until the end of the original tenancy period and beyond, she could be deemed to have accepted the terms of the tenancy agreement, including the requirement to give two months' notice. In any case, although the parties agreed that she had paid the rent up to the end of April, she did not actually leave the property until 30 April, more than a month after she gave notice, and did not post the keys until 1 May. She herself had not therefore observed the alleged one month notice period. The tribunal does not therefore consider that the Letting Agent failed to comply with the code in respect of this aspect of her complaint.

51. With regard to **part (b)** of her complaint however, the tribunal does not consider that the Letting Agent was fair or reasonable to the applicant in its interpretation of what was required in terms of written notice. Clause 1.13 of the tenancy agreement required her to give *'no less than 2 months written notice to the other party on the anniversary day.'* It was clear from the correspondence that the Letting Agent considered the 'anniversary day' to be the 27th of the month. The applicant had sent an email to the Letting Agent on 27 March 2018, clearly stating that she wished to give notice, albeit it that she said she was giving one month's notice. The Letting Agent's position was that she had not given 'proper notice'; it appeared to consider that the applicant was still liable to pay the rent for the property until 12 June 2018, the day before the new tenant moved in. In her email of 3 May 2018, Ms England had even suggested that she was still required to give written notice by 27 May 2018, and was therefore liable to pay rent until 27 July 2018.
52. While the tenancy agreement required the parties to give 'written notice', it did not provide any further details as to what form that notice should take. When asked whether, had the applicant stated in her email that she was giving two months' notice, she would have accepted this as providing sufficient written notice, Ms Waugh said that she would have done, and then asked the applicant to put this into a letter. She said that she had on occasion accepted an email from a tenant as providing written notice, but that the usual procedure would be to write back to the tenant asking them to send a letter confirming this. This had not been done on this occasion, because the applicant had said she was giving one month's notice. The applicant told the tribunal that she would have provided such a letter, had she known that this was a requirement.
53. When asked by the chairperson whether she had considered telling the tenant that her email would be accepted as notice, but that a two month notice period would apply, Ms Waugh said that she might do so now, but had not seen things that way at the time. She said that had the applicant made clear that she was definitely moving out, the Letting Agent would have worked with her to sort things out.
54. As regards the form of the notice which a tenant is required to provide, section 112(1) of the Rent (Scotland) Act 1984 provides that a notice to quit by a landlord or a tenant is not valid *'unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect.'* While there are clear statutory requirements on landlords regarding the giving of notice to a tenant under a short-assured tenancy, there appears to be no prescribed information for a notice to quit by a tenant.

55. The applicant's email was sent at least 4 weeks before it was due to take effect, regardless of whether the end date was considered to be one or two months ahead; the contractual provision in the tenancy agreement was in any case two months. The notice was sent by email, and the email was acknowledged by the Letting Agent. Ms Waugh had admitted that she had previously accepted emails as providing satisfactory notice, and in her email of 30 October to the applicant, she herself had indicated that an email could constitute an agreement 'in writing'.
56. The tribunal therefore considers that the applicant's email of 27 March should have been accepted by the Letting Agent as notice, as it was sent on the anniversary date, and met the requirements for written notice by a tenant. The applicant's intention to leave the property was clear from her email. The tribunal takes the view that the Letting Agent should have accepted the email as providing two months' notice from the date it was sent, and that the tenancy would therefore come to an end on 27 May 2018. The applicant should therefore only have been charged rent up until that date. The tribunal determines that the Letting Agent was in breach of this paragraph of the code as regards part (b) of the applicant's complaint.

Paragraph 19

57. Ms Waugh told the tribunal that she could not say for definite whether the Letting Agent had obtained a full pest control report, but said that to her knowledge the matter had been resolved. She produced an invoice from the pest control company dated 13 October 2017 in respect of treatment for beetles at the property.
58. While it was unclear whether or not a report had been provided, there was evidence that the work had been carried out. In any case, the emails relating to the report were all dated prior to the code coming into force. The tribunal does not therefore consider that there was a breach of paragraph 19 in relation to this complaint.
59. As regards complaint (b), the issue of the notice is discussed at some length above in relation to the paragraph 17 complaint. While the tribunal considers that the Letting Agent erred in failing to accept the applicant's email of 27 March 2018 as valid notice, it does not find that in doing so, the Letting Agent provided information that was deliberately or negligently misleading or false. The tribunal does not therefore uphold the applicant's complaint under this paragraph of the code.

Paragraph 20

60. As discussed above in relation to the paragraph 17 complaint, the tribunal does not consider that the Letting Agent treated the applicant fairly in failing to accept her written notice of 27 March 2018 as valid. It is arguable that as a result, the Letting Agent did not apply its policies and procedures reasonably in relation to that issue. The applicant's specific complaint under this paragraph, however, was that the Letting Agent had failed to keep its word that she would only have to give one month's notice.
61. When considering this particular complaint under paragraph 17, the tribunal did not consider that the Letting Agent was unfair to the applicant in the circumstances. It does not therefore consider that the Letting Agent failed to apply its policies consistently and reasonably as regards this issue. The tribunal does not consider that the email which stated that she was only required to give one month's notice could be viewed as being a 'policy or procedure'. The tribunal does not therefore uphold the applicant's complaint under this paragraph of the code.

Paragraph 22

62. It appeared to the tribunal that the applicant's complaint was essentially based on a 'feeling', and she conceded that she had no hard evidence to support her complaint.
63. Ms Waugh and Ms England appeared to be visibly upset by what the applicant said. Ms Waugh said that she entirely refuted the applicant's allegations. She said that there was absolutely evidence of such discrimination against the applicant. She said that the Letting Agent dealt with hundreds of tenants from both EU and non-EU countries, and that many of these were very happy with the service. The tribunal found her evidence on this point to be entirely credible.
64. While there was clearly a difficult relationship between the parties, and the applicant was obviously upset and frustrated about issues relating to the property, the tribunal found that there was no evidence before it to support her complaint. It therefore determines that the Letting Agent is not in breach of paragraph 22.

Paragraph 26

65. The issues raised in this complaint are very similar to those raised under paragraph 90, as discussed in more detail below. The evidence before the tribunal shows that repair requests made by the applicant were generally dealt with within a reasonable time. The initial repair to the fridge freezer was not instructed until 9 October 2017, 6 days after the applicant reported the problem.

While this appears to be outwith the 48-72 hours for such repairs as set out in the Letting Agent's Tenant Information Pack, this occurred prior to the code coming into force.

66. It was not clear from the evidence when the problem that resulted in the decision to replace the fridge freezer was reported by the applicant. The 'job sheet' from the Letting Agent shows, however, that this was instructed on 11 January 2018, again prior to the code coming into force. As regards the lino installation, the job sheet shows that this was instructed on 31 October 2017, again before the code came into force. It also appears that the delay may be at least partly attributed to the applicant's refusal to allow access to contractors without her being present, as discussed further in relation to the paragraph 90 complaint below. The tribunal determines that, on the basis of the evidence before it, the Letting Agent was not in breach of this paragraph of the code after 31 January 2018.

Paragraphs 68 and 71

67. The Letting Agent's position was that the updated inventory had been sent to the applicant on 18 October 2017. It had produced a copy of an email of that date from Ms England to the applicant, stating that the updated inventory was attached. In response to the tribunal's direction asking for a copy of the updated inventory, the Letting Agent had sent several pages of what appeared to be an inventory, with typed comments, but with no property name or signatures. Ms Waugh apologised to the tribunal at the hearing for having sent the wrong version of the inventory, without a front or back page. The tribunal asked her to send it the correct version, with the applicant's comments and signature.
68. On 23 August 2018, an email was received from Ms Waugh, attaching what appeared to be a complete copy of the inventory for the property, together with handwritten comments which appeared to have been made by the applicant, and which appeared to have been signed by both Ms England and the applicant. An email was received from the applicant on 24 August in response to Ms Waugh's email, which made no reference to the inventory issues. The tribunal considers, based on its experience of this case to date, that if the applicant had disputed that the inventory showed her comments and/or had been signed by her, she would have mentioned this.
69. The tribunal considers that in any case, the wording of paragraph 68, which refers to producing an inventory at the check-in process, implies that the duties under paragraphs 68 and 71 arose at the start of the applicant's tenancy. As this was prior to the code coming into force, the tribunal does not uphold the applicant's complaints under these paragraphs.

Paragraphs 85, 90 and 91

70. It was apparent from the evidence before the tribunal that there had been a number of repairs issues raised by the applicant shortly after moving in, and that the Letting Agent had responded fairly quickly to the majority of these. There had, however, been some ongoing issues with the flooring works and the fridge freezer.
71. Ms Waugh told the tribunal that there had never been any question that the landlord was not willing to do the works that were required. The lino and carpets had originally been scheduled for installation before the applicant moved in, but that this had not happened due to the contractor experiencing a bereavement. The contractor had not informed the Letting Agent that the work had not been done, and this only became apparent when the applicant was moving in. The carpets had been fitted at a later date, but the lino could not be fitted due to the beetle problem, as the pest control work had to be carried out before this could be done.
72. There was a 'job sheet' from the Letting Agent dated 31 October 2017, requesting the contractor to replace the kitchen and bathroom flooring. Another job sheet showed that the fridge freezer repair had first been requested on 9 October 2017. The fridge freezer had been repaired, but it had later broken down again. There was a further 'job sheet' dated 11 January 2018, requesting a quote to replace the fridge freezer.
73. Ms Waugh said she was aware that the repairs had taken a long time, but told the tribunal that the main difficulty was the applicant's refusal to co-operate with contractors and allow them into the property unless she was there. She had initially signed a 'key agreement', which would allow contractors to enter the property in her absence, but later changed her mind. She had asked the fridge freezer contractor to come after 6pm when she was at home, but they were unable to accommodate this. Ms Waugh produced an email from the contractor with a 'call log', recording numerous voicemail messages which they said they had left for the applicant between 11 January and 20 June 2018. The applicant queried this, pointing out that her phone number was not included, and also that some of the dates on the list were after she had left the property.
74. The applicant said that she had initially allowed contractors to access the property, but that they had left a mess behind them, and she didn't feel they were doing their jobs properly. She was not therefore willing to let them in to the property unless she was there, and she had run out of annual leave to take time off during the day. She said that she was very upset and emotionally drained by the ongoing situation, and felt that she had to take time off to deal with matters which should have been dealt with before she moved in.

75. She agreed with Ms Waugh that there had been a breakdown of communication between the parties, and acknowledged that she may have contributed to the delays by refusing to permit access to contractors unless she was present. She said that she felt the Letting Agent had had enough time to carry out the repairs before she began to refuse access, and she had then lost trust in the Letting Agent.
76. The chairperson asked Ms Waugh whether she was aware of the possibility of making an application to the tribunal to exercise the landlord's right of entry to carry out repairs. Ms Waugh replied that she had not been aware of this at the time, but now knew that the process was available.
77. **Paragraph 85:** It was not entirely clear exactly what the applicant's complaint was under this paragraph. The tribunal assumes that it relates to the Letting Agent's responsibility for pre-tenancy checks, as the complaints do not relate to statutory repairs, maintenance obligations or safety regulations.
78. Ms Waugh told the tribunal that the Letting Agent's usual process was to 'check out' the previous tenant, and then instruct any jobs which were needed before 'checking in' the new tenant. She said that this process usually worked, but there had been a 'hiccup' in this case. The Letting Agent had now changed its process so that it was less likely that in the future tenants would move into a property where repairs were outstanding.
79. While the tribunal understands the applicant's frustration about the outstanding repairs at the time she moved into the property, the Letting Agent's responsibilities did not come into effect until 31 January 2018, some months after the applicant moved in, and therefore after any pre-tenancy checks were carried out. The tribunal therefore determines that the Letting Agent has not failed to comply with this paragraph of the code.
80. **Paragraph 90:** the applicant sent an email to the Letting Agent on 3 October 2017, listing all of the issues which she considered needed to be addressed. The email correspondence before the tribunal, together with the 'job sheets' from the Letting Agent instructing various contractors, show that most of the works were instructed before 9 October 2017, and that most were addressed within a week to ten days of this date. It was not entirely clear from the evidence before the tribunal why the lino had still not been fitted when the tenant left the property. The pest control work appeared to have been completed by 17 October 2017, and the flooring works had been instructed on 31 October 2017. The fridge freezer was repaired quickly, but broke down again, and a job sheet dated 11 January 2018 was sent to the contractor, asking them for a quote to replace it.

81. It appeared to the tribunal that the Letting Agent had taken action fairly quickly to deal with the outstanding repairs, and that at least part of the reason for the delays was that the applicant had refused access to the property unless she was present. While the tribunal appreciates her frustrations, it was very difficult to carry out works in the absence of authorised access. The applicant had a responsibility to co-operate with the Letting Agent if she wished repairs to be done. In any case, both the flooring works and the fridge freezer replacement were first instructed before 31 January 2018, before the code took effect. The tribunal determines that the Letting Agent did not fail to comply with this paragraph of the code after 31 January 2018.
82. **Paragraph 91:** the applicant said that the Letting Agent had been generally too slow in attending to repairs. Ms Waugh said that the applicant had been informed of the Letting Agent's general repairs timescales, as these were contained in the Tenant Information Pack which the tenant had been given on moving into the property. The applicant said that she did not recall receiving the pack. In any case, the flooring works and the fridge freezer replacement were first instructed before 31 January 2018, when the Letting Agent's duty to comply with the code arose. The tribunal therefore determines that the Letting Agent did not fail to comply with this paragraph of the code after 31 January 2018.

Paragraphs 97 and 98

83. The tribunal considers that paragraph 97 appears to relate to the situation where the letting agent is ending a tenancy, rather than when the tenant does so. The applicant's complaint was clearly about the notice which she gave as a tenant in order to end her tenancy. The tribunal therefore determines that there is no evidence of a breach of this paragraph of the code.
84. In terms of the paragraph 98 complaint, the applicant did not provide any evidence that the Letting Agent did not have clear written procedures in place for managing the ending of the tenancy. Her complaints were more about whether they accepted the way in which she had attempted to end the tenancy, and this is dealt with in relation to her paragraph 17 complaint. In relation to part (c) of her complaints, the tenancy agreement and the Tenant Information Pack set out procedures for dealing with the deposit at the end of the tenancy. It was also clear from the evidence before the tribunal that the Letting Agent had placed the applicant's deposit with an approved tenancy deposit scheme, in line with legal requirements. The tribunal therefore determines that on the basis of the evidence before it, the Letting Agent has not failed to comply with paragraph 98 of the code.

Paragraph 108

85. Ms Waugh told the tribunal that, as the applicant had not mentioned the CAB in her initial application, she had been confused about this complaint, having assumed that her 'legal adviser' was a solicitor. Ms England said that she was only aware of one call having been received from the CAB. She had tried to call them back several times, but was unable to get through, and had been unable to leave a message, as there was no answerphone. The tribunal found her evidence to be credible on this point. The applicant had, in any case, told the tribunal that the incident complained about had probably occurred prior to 31 January 2018. The tribunal therefore determines on the basis of the evidence before it that the Letting Agent has not failed to comply with this paragraph of the code.

Paragraph 110

86. Ms Waugh said that the applicant had not requested a copy of the code, and that had she asked for it, a copy would have been provided to her. She accepted, however, that the Letting Agent had not made the applicant aware of the code after it came into force. She said that when the code came into force, she had emailed all of her landlord clients to inform them about it. She had not, however, informed existing tenants in the same way. She explained that previously the Letting Agent had relied on giving tenants a copy of the Tenant Information Pack when they moved in, which included all of the information that they were required to give to tenants. The Letting Agent was currently improving its procedures to take account of the recent changes. In future, new tenants would receive a copy of the updated Tenant Information Pack, which contained details of the code.
87. While paragraph 110 does not explicitly state the date from which the duty to make tenants aware of the code took effect, the implication is that this duty came into force when the code itself came into force i.e. 31 January 2018. While the duty was not in place at the start of the applicant's tenancy, it was incumbent on the Letting Agent to inform tenants of the code from that date. The Letting Agent was clearly aware of the need to inform landlords about the code: it should also have been alive to the need to inform existing tenants about it. While the tribunal accepts that the failure to make the applicant aware of the code appears to have been an oversight, and notes that the Letting Agent is now aware of the issue, it therefore determines that the Letting Agent failed to comply with this paragraph of the code.

Observations by the tribunal

88. The tribunal wishes to make some additional observations in relation to the applicant's complaints. Firstly, it was clear that there had been a difficult relationship between the parties from the start of the applicant's tenancy. This

appears to have led to a breakdown in communication following the initial exchanges of emails in October 2017 regarding the various issues which the applicant had complained about. This was unfortunate because, as both parties acknowledged at the hearing, had this not happened, it may have been possible to resolve the issues earlier, without the need for a tribunal hearing.

89. It was equally clear that there had been numerous issues with the property at the outset, which the tribunal considers should have been dealt with before the applicant moved in. The property should not have been let to the tenant in the condition which it appears to have been in. While the tribunal has considerable sympathy with the tenant regarding the problems she experienced early in her tenancy, however, it was unable to consider whether the code had been breached in relation to these, because they occurred before the code came into force. The tribunal notes that the Letting Agent has been working to improve its processes. It hopes that the new 'check in' processes which the Letting Agent says it has put in place will help to avoid any future tenants experiencing similar problems.
90. Before being handed over to a tenant, a property should be in a decent lettable condition. The landlord has a duty to ensure that the property meets the statutory repairing standard at the start of a tenancy, and at all times during a tenancy, in terms of section 14 (1) of the Housing (Scotland) Act 2006. Any necessary repairs or other works, such as gas and electrical checks, should have been carried out, and the property should be cleaned to a high standard, before a tenancy begins. This should also help to avoid any future applications to the tribunal from future tenants about similar issues.
91. The tribunal notes however that, while the applicant appears to have had justifiable cause for complaint, most of the repairs issues were dealt with promptly at the start of her tenancy. As she herself acknowledged, the applicant contributed towards the delays that then occurred with some of the repairs, due to her unwillingness to allow entry to contractors during working hours when she was present at the property.

Summary of the decision

92. The tribunal determines that the Letting Agent has failed to comply with paragraphs 17 and 110 of the code of practice. It therefore makes a Letting Agent Enforcement Order (LAEO) as required by section 48 (7) of the 2014 Act.

Right of appeal

93. 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.

S O'Neill

Signed

Date..19/9/18.

Sarah O'Neill, Chairperson