



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26

Chamber Ref: FTS/HPC/LA/19/0620

Parties:

Agnes Donis Parker (“the Applicant”)

Rent Locally Lanarkshire Limited t/a Rent Locally (“the Respondent”)

Tribunal Members:

Colin Dunipace (Legal Member), Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has failed to comply with the Letting Agent Code of Conduct as required by section 46 of the Housing (Scotland) Act 2014 in respect that the Respondents have failed to comply with paragraphs 24 and 85 of the Letting Agent Code of Practice (Scotland) Regulations 2016 and determines that that a Letting Agents Enforcement Order (“LAEO”) should be made in terms of Section 48 of the Housing (Scotland) Act 2014 (the Act) whereby the respondent should pay to the Applicant the sum of Two Hundred and Fifty Pounds (£250) Sterling

Background

The Tribunal received an Application from the Applicant dated 26 February 2019, in which the Applicant sought an Order from the Tribunal in respect of the Respondents’ failure to comply with the Letting Agent Code of Practice (hereinafter referred to as “the Code of Practice”) as set out in the Letting Agent Code of Practice (Scotland) regulations 2016. The Applicant alleged failure of the part of the Letting Agent to comply with paragraphs 16; 17; 18; 19; 21; 24; 26; 29(b); 31; 38; 62; 73; 74; 84; 85; 86; 89; 90; 91; 93; 94; 107; 108; and 111 of the aforementioned Code of Practice. The Applicant asserted there had been breaches of the Code as set out in the overarching standards of practice (Section 2); in relation to engaging landlords (Section 3); Lettings (Section 4); Management and Maintenance (Section 5); Communications and resolving complaints (Section 7).

In the Application before the Tribunal the Applicant stated that she has suffered loss, injury and damage as a result of the aforementioned breaches in that she had suffered distress and inconvenience, occasioned by her repeated attempts to inform the Letting Agents of the repairing issues and requesting the necessary repairs. The Applicant sought a payment order in the sum of £3,000 in respect of the distress and inconvenience occasioned by the alleged breach of the Letting Agents' breaches.

The Respondents responded to the Application by submitting written representations which were received by the Tribunal. The Respondent resisted the Application and indicated that he had fulfilled their duties.

On 4 March 2019 the In-house Convener acting under delegated powers of the Chamber President issued a notice of acceptance of the Application under Rule 9 of the 2017 Rules.

The Hearing

A Hearing was held in Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT on 29 April 2019. The Applicant attended in person at this Hearing, and was represented by Ms Nichola McAtier of Messrs Miller Samuel Hill Brown LLP. The Respondent was present but not represented at this Hearing. Also in attendance at the Hearing were Ms Caroline McDonald and Mr Steven Murray who were present as observers and took no part in the proceedings.

The Hearing proceeded on the basis of the written evidence submitted by the parties, together with the oral evidence provided by the Applicant.

During this Hearing the Applicant's representative accepted at the outset that in terms of the written representations which had been made on behalf of the Applicant that it was accepted that a number of the alleged breaches, that these had allegedly occurred prior to the implementation of the Code of Practice which came into force on 31 January 2018. Ms McAtier indicated that to a large extent that the factors mentioned in the Application, and in particular those matters mentioned in paragraphs 1 – 19 of the Application all pre-dated the coming into effect of the Code of Practice. Ms McAtier did however state that these matters were of some significance in that they referred to breaches of the Code, some of which were still ongoing at the present time. In particular Ms McAtier made reference to ongoing difficulties which had been experienced as a result of electrical work which had been carried out. Further reference was also made to the Respondents had not maintained records of the works which had been carried out by workmen at the property. Reference was also made to the fact that the Environmental Health Officer from East Ayrshire Council had attended the property in December 2017 and that a number of repairing issues had been identified including windows not being sealed; exposed live electrical cables in the kitchen; no ventilation provisions within the bathroom; and faulty electrical wiring in the bedroom. The Applicants stated that these works were still outstanding as the date of the coming into force

of the Code of Practice. The Applicant stated that a surveyor had been instructed to attend at the property on 1 February 2018, and that the Respondent had advised Environmental Health that he was due to meet with the surveyor on 7 February 2018 and that he would revert with a programme of works thereafter. The Applicant stated that the time-frames for this work were not met by the Respondent, and that as the works required were extensive, that Applicant's lease would require to be terminated and she would have to move into a new lease if they were to proceed with an offer for alternative accommodation. The Applicant stated that the Respondent did not indicate that they would assist with removal costs. The Applicant actually vacated from the property on or about 1 May 2018. The Applicant indicated that throughout the currency of the tenancy there were a number of repairing issues which had been reported to the Respondent but that they had failed to maintain appropriate records of the reported repairs, despite having advised that these would be logged on the online portal. The Applicant also advised that the Respondent did not take steps to advise the available authorities that the Landlords were failing to meet their obligations. The Applicant also indicated that upon becoming aware that the Respondent was advertising the property for lease again that the photographs did not properly reflect the condition of the property and the various changes that had occurred to the property during the Applicant's tenancy, thereby utilising an advertisement that the respondent knew was inaccurate and was knowingly or negligently misleading.

The Respondent issued written representations indicating that there had been difficulties with the property and that what had been thought to be a damp problem transpired to be a more substantial issue. The Respondent disputed that he had not attended to the concerns which had been raised by the Applicant during the currency of the lease, and that during the currency of the lease for 24 months that a good standard of service had been supplied by him. The Respondent advised that he had been responsible for tradesman attending at the property on approximately 15 occasions to attend to ongoing repairs. The Respondent believed that he had been fair and honest in his dealings with the Applicant, and that he had been timely in his dealings with the Applicant and that the Applicant had been advised regarding the ongoing repairs which had been carried out. The Respondent advised that the advertising issued was not misleading and that he only historical photograph which had been used in the advertising was an external photograph. The Respondent advised that he had attempted to obtain alternative accommodation for the Applicant, but that this had proved to be difficult, particularly due to the number of pets kept by the Applicant. The Respondent indicated that if he had been at fault, that it would have been in relation to his record keeping which he accepted had not always been of the requisite standard. In this regard the Respondent advised that lessons had been learned in this regard.

Findings in Fact

The Tribunal made the following findings in fact;

1. The Applicant and her husband entered into a Short Assured Tenancy with the Landlords Mrs Ann Treherne and Mr Iain Traherne to rent the property at 41 Sorn

Road, Auchinleck, Cumnock, KA18 2LY from 20 May 2016. The monthly rental in respect of this property was £550 per month.

2. The letting agent which was responsible for the management of the Applicant's tenancy on behalf of the landlord was Rent Locally Lanarkshire Limited t/a Rent Locally. This letting agency carries out letting agency work in Scotland.
3. The Applicant vacated the property on or about 1 May 2018.
4. The Code of Practice came into force on 31 January 2018.
5. Between 31 January 2018 and 1 May 2018 there were a number of contacts between the Applicant and the Respondent in relation to ongoing repairs to the property, which included contact with the Environmental Health Department of East Ayrshire Council. Whilst the Respondent maintained an online portal in relation to contact, that this did not maintain records of all contacts made and works carried out.

Reasons for Decision

Having considered the oral and written representations of the parties, the Tribunal was satisfied that the Applicant had entered into a Short Assured Tenancy to rent the property and that the Respondent was the Letting Agent for this property. Whilst the Applicant had outlined a considerable list of ongoing difficulties in respect of the property, it was accepted at the outset of the Hearing that this Tribunal only had jurisdiction to deal with matters arising following the implementation of the Code of Practice on 31 January. Accordingly the Tribunal could only consider the alleged breaches said to have occurred after this date. In this regard the Tribunal were only able to identify breaches of Rules 24 and 85 of the Code. In this regard the Tribunal observed that the Respondent accepted that there had been failings on his part in relation to the failure to maintain appropriate records of dealings with landlords, tenants and prospective tenants.

Having considered the submissions of the parties the Tribunal accepted that there had been a degree of distress and inconvenience occasioned to the Applicant. In this regard it was noted that the Applicant's solicitor accepted that the sum sought was excessive given the restricted period of the breaches of the Code. The Tribunal accordingly determined that a payment of £250 would adequately reflect the amount of distress and inconvenience occasioned as a direct result of the breaches of the Code of Practice.

Outcome

The Tribunal therefore required the Letting Agent to pay to the Applicant the sum of £16.46 in respect of the overpayment of rental not previously returned to the Applicant. The Tribunal orders that this payment must be paid within 28 days of the date of service of this order.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Colin Dunipace

Legal Member/Chair

29/4/19

Date