

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(6) of the Housing (Scotland) Act 2014 and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No. 328)) (“the Procedure Rules”) Rule 95

Chamber Ref: FTS/HPC/LA/18/3416

The Parties:-

Mr Roger Cooke, 28 Mountsandel Road, Coleraine, County Londonderry BT52 1JE (“Applicant”)

Factotum (Scotland) Ltd, t/a Factotum, incorporated in Scotland under the Companies Acts (Registered No. 246244), 63 Dublin Street, Edinburgh EH3 6NS (“the Respondent”)

Tribunal Members:

Mark Thorley – Legal Member

Ann MacDonald – Ordinary Member

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) having made such enquiries as it saw fit for the purposes of determining whether the letting agent has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that, in relation to the present application, the letting agent has not complied with the Code of Practice and determined to issue a Letting Agent Enforcement Order (“LAEO”).

Background

The Applicant lodged an application with the Tribunal by application dated 10 December 2018 and received by the Tribunal on 14 December 2018.

The Applicant sought to enforce the Letting Agent Code of Practice against the company Factotum, 63 Dublin Street, Edinburgh EH3 6NS.

The Applicant had previously served a Letting Agent Code of Practice Notification to the Respondent on 28 September 2018.

A significant amount of documentation was also provided by the Applicant in respect of the application. In addition there were lodged with the Tribunal a total of 237 documents.

The Applicant complains under reference to paragraphs 16, 17, 18, 19, 20, 21, 25, 26, 28, 32, 33, 34, 35, 36, 37, 37, 40, 41, 43, 46, 62, 63, 68, 69, 70, 71, 73, 74, 78, 98, 99, 102, 104, 106, 107, 108, 111, 112, 124, 125 and 127 of the Code which are referred to for their terms.

The Hearing

The hearing took place on 6 March 2019. The Applicant gave evidence along with his wife Mrs Sarah Cooke.

The Respondent was represented by Mr Chris Boisseau and also Ms Natasha Donnellan.

The Applicant is the owner of three properties in Edinburgh at 12(TF) Broughton Street, Edinburgh, 209 Dalkeith Road, Edinburgh and 2(TFR) Cochran Terrace, Edinburgh. The Respondents have been managing these properties from in or about August 2017.

Findings in Fact

The Applicant is the owner and landlord of the properties at 12(TF) Broughton Street, Edinburgh, 209 Dalkeith Road, Edinburgh and 2(TFR) Cochran Terrace, Edinburgh.

The properties were let by the Respondent, on behalf of the Applicant who acted in their capacity as a letting agent.

SECTION 2

Paragraph 16

You must conduct your business in a way that complies with all relevant legislation.

It was not clear from the paperwork or indeed the oral submissions that were made as to what way the Respondents had failed to comply with relevant legislation. The Applicant provided no other information about this alleged breach.

The Tribunal did not consider that the Respondent had breached this paragraph of Section 2 of the Code.

Paragraph 17

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

The Applicant complained that he received an invoice from the Respondents for the sum of £3,060 for “early landlord termination”. It was indicated that this could not be regarded as being “transparent and fair”. The Respondent indicated that, and evidenced from the documents submitted, that in their terms of business the following applied “However, a one-off fee equivalent of one month’s rent, would be payable, if you, the landlord terminates this

agreement before the end of the lease (including tacit relocation) and when a tenancy or a renewal of a tenancy has been entered into on behalf of the landlord.” The property at Broughton Street had been “let” by the landlords. Agency in respect of the Applicant’s properties was transferred on or about 19 September 2018. The Respondents in terms of their terms of business were entitled to charge. There were clearly accepted issues as to what terms of business had ever been signed and indeed commissions.

The Tribunal found that the Respondent did not fail to comply with Paragraph 17 of Section 2 of the Code.

Paragraph 18

You must provide intimation in a clear and accessible way.

The Applicant’s position is that the Respondent’s terms of business make reference to three different versions of a complaints procedure. In the terms of business dated 25 July 2017 the reference is as follows –

“Complaints Procedure: If any complaint cannot be resolved by negotiation with the factor or a member of staff the complaint may be escalated by either party to a director of the company, failing resolution, the next stage is an Ombudsman (if and where there may be membership) or the Government First-tier Tribunal (whence constituted). Final decision rests with Edinburgh Sheriff Courts under Scots Law. For full details of our dispute resolution and mediation service please ask for details.”

The second terms of business dated 6 February 2018 make no reference to a complaints procedure.

The third terms of business dated 13 April 2018 make reference to a specific complaints procedure which again makes reference to the following –

“It should always be subject first to mediation (see mediation)
By subject to First-tier Tribunal (FTT) where in place. An Ombudsman. Final decision rests with the Sheriff sitting at Edinburgh Sheriff Courts under Scots Law.”

The reference to mediation is as follows –

“Factotum encourages mediation between parties where there is a complaint or dispute and offers clients a mediation service to resolve any dispute. There may be associated costs and a small fee for such a service but this can be in the form of a donation to a registered charity. Indeed where disputes between parties involve financial consideration as part of a resolution then such charitable donations on behalf of all parties will be encouraged. The emphasis on such mediation will promote a bias towards pragmatism over principle, reconciliation or retribution.”

The Applicant’s point is that reference to an Ombudsman is simply incorrect because there is no Ombudsman which governs letting agents. Further that mediation as set out appears to involve a third party. The mediation sought to be invoked by the Respondents was simply a mediation between the Respondent and the Applicant which was in itself not clear from the

documentation. Finally the reference to the final decision resting with a Sheriff sitting at Edinburgh Sheriff Courts is simply incorrect.

The Respondents acknowledged that the mediation that they sought to invoke was between the parties themselves.

The terms of business “speak for themselves”. The information is not clear. Certain of the information is simply wrong.

The Tribunal finds that the Respondent failed to comply with Paragraph 18 of Section 2 of the Code.

Paragraph 19

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

For the reasons given under Section 18 there is also a breach of this section by the Respondents. The reference to the Ombudsman is simply false. The reference to the matter being dealt with by the Sheriff is false. The reference to mediation service is correct as is set out in the Complaints Procedure but is not correct in terms of its application by the Respondents.

The Tribunal finds that the Respondent failed to comply with Paragraph 19 of Section 2 of the Code.

Paragraph 20

You must apply your policies and procedures consistently and reasonably.

Reference is made to the Applicant again going back to the issue of the early landlord termination.

For the reasons as given above under Paragraph 17 the Respondent did not fail to comply with Paragraph 20 of Section 2 of the Code.

Paragraph 21

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

Much evidence was given by the Applicant and his wife regarding the “mistakes” that were made by the Respondents. These appeared as follows –

- (a) That the Applicant was looking to get an increase in rental for 12 Broughton Street to the sum of £2,600. As far as the Applicant was concerned that was the figure that was being referred to and indicated by email to the Respondents. As matters subsequently transpired the figure ultimately negotiated by the Respondents was

£2,550. It may have been that this rental figure was in fact an entirely appropriate figure for rent but the landlord should have been advised of this.

- (b) By email of 9 April 2018 the Applicant wanted a financial year end summary for each property. The Respondents acknowledged by way of email dated 10 April 2018 that they would “send you over a statement of your invoices since you have been on with us”. That did not appear to happen.
- (c) By email dated 11 May 2018 the Applicant (having visited 12 Broughton Street at Easter 2018) emailed the Respondent regarding various issues with the properties. No response was received to that and the result of which was that the Applicant had to complain to Mr Boisseau on 19 June 2018.
- (d) One of the issues highlighted was that on the Respondent’s own website there were issues with the advertisement of 209 Dalkeith Road. In particular no area was described as to where the property was
- (e) In respect of 12 Broughton Street there was due to be an accounting. It appeared that there may be money due to the Applicant. It was entirely unclear. By email dated 3 August 2018 the Respondents indicated that there should have been payments for Broughton Street received from 3 August but none were received and on 16 August it was still to be paid over. The evidence clarified that in fact rent was deducted from the deposit on the property but the Applicant was unaware of this.
- (f) By email dated 19 September 2018 the Applicant had asked the Respondent to confirm the position regarding the transfer of tenants’ deposits. No effective response had been received to this.

The Tribunal finds that the Respondent failed to comply with Paragraph 21 of Section 2 of the Code.

Paragraph 25

You must handle all private information sensitively and in line with legal requirement.

It was accepted that sensitive personal information had been passed on to the new agent and in particular emails of 5 September 2018.

The Tribunal finds that the Respondent did not fail to comply with this paragraph of Section 2 the Code.

Paragraph 26

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

The Respondents acknowledge that they are subject to the Letting Agent Code of Practice. Although not specifically set out one of the issues here was with regard to the response to the initial complaint of 28 September 2018. It was confirmed that this would be responded to within the next fourteen working days. The complaint did not appear to be dealt with. In addition and as previously referred to, enquiries were not being dealt with within a reasonable timescale.

The Tribunal finds the Respondent failed to comply with Paragraph 26 of Section 2 of the Code.

Paragraph 28

You must not communicate with landlords and tenants in any way that is abusive, intimidating or threatening.

The Applicant gave evidence to the extent that there was a conversation between the Applicant and Mr Boisseau in May 2018 in which the following was said “For Christ sake calm down”. Thereafter “For fuck sake do you expect me to spend the weekend clutching my brow and worrying about this stuff” and “Maybe letting wasn’t for me and that I should go elsewhere”. This was followed up in an email by the Respondents to the Applicant on 5 September 2018 “at the termination of the lease” indicating “In the meantime, there will, today, be dancing outside out offices in Dublin Street – in celebration may be wish you peace and prosperity for the future”. The Respondent did not deny that he had suggested that “maybe letting is not for me”. The Tribunal accepted the evidence of the Applicant in this matter. The email of 5 September 2018 is in itself “abusive”.

The Tribunal finds that the Respondent failed to comply with Paragraph 28 of Section 2 of the Code.

SECTION 3

Paragraph 32

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

Core services

a) the services you will provide to that landlord and the property they relate to. For example, tenant introduction, lettings service and full management service;

Duration

b) the duration of the agreement and the date it commences;

Authority to act

- c) a statement about the basis of your authority to act on the landlord's behalf;*
- d) where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing repairs to the property and the purchase of replacement goods;*
- e) situations in which you may act without checking with the landlord first, for example urgent repairs;*

Fees, charges and financial arrangements

- f) your management fees and charges (including taxes) for your services, and your processes for reviewing and increasing or decreasing this fee;*
- g) how you will collect payment including timescales and methods and any charges for late payment;*
- h) that where applicable, a statement setting out details of any financial interest in providing third-party services (for example, commission for using certain companies, products or services) is available from you on request;*

Tenancy deposits

- i) if a tenancy deposit is to be taken, who will lodge the deposit with one of the approved schemes;*

Communication and complaints

- j) that you are subject to this Code and give your clients a copy on request. This may be provided electronically;*
- k) how you will communicate (including the use of electronic communication(3) with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;*
- l) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond;*
- m) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure;*

Conflict of interest

- n) a declaration of any conflict or potential conflict of interest;*

Professional indemnity insurance

o) confirmation that you hold professional indemnity insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

Handling client money

p) if you hold client money, how you handle clients' money; confirmation that you hold client money protection insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

How to change or end the terms of business

q) clear information on how to change or end the agreement and any fees or charges (inclusive of taxes) that may apply and in what circumstances. Termination charges and related terms must not be unreasonable or excessive.

The Applicant's position is that he had not received a copy of the Agreement signed by him that includes the correct commission amount for each property. The Applicant had provided copies of three terms of business dated 25 July 2017, 6 February 2018 and 13 April 2018. At no stage did any of the terms of business as provided by the Applicantreferences were contained to commissions being at 12.5%. The Respondent advised that the initial terms of business was effectively a "bartering" position. The Respondents indicated that there were signed Agreements but none had been provided to the Tribunal. In addition the Applicant pointed out that the procedures for the Respondent to handle complaints under Code 32(l) did not make reference to the timescales in which any responses could be reasonably expected. Although the Respondents in email correspondence made reference to fourteen days that did not appear within any of the terms of business.

The Tribunal considered that the Respondent had failed to comply with these parts of the Code.

The Applicant also made reference to Code 32(q) being "how to change or end the terms of business." "Termination charges and related terms must not be unreasonable or excessive". This has been dealt with previously. The terms of business did relate to the ending of the relationship in terms of tenants found and the charges that would be applied thereafter.

The Tribunal considered that the Respondent has complied with this part of the Code.

Paragraph 33

You and the landlord must both sign and date your agreed terms of business and you must give the landlord a copy for your records. If you and the landlord agree this can be done using electronic communication including electronic signature.

It is not clear that this has been undertaken. No copy signed leases were provided by the Respondent.

The Tribunal finds that the Respondent failed to comply with Paragraph 33 of Section 3 of the Code.

SECTION 4

Paragraph 34

In line with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, in most cases you must give landlords 14 calendar days in which to cancel if the agreement is signed away from your premises.

The Applicant's position is that the signing of the new Lease for 12 Broughton Street took place on 3 September and there was a change of agents on 5 September. This however relates to the agreement between the Applicant and the Respondent as opposed to the lease between the applicant and the tenants.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 34 of Section 4 of the Code.

Paragraph 38

Your advertising and marketing must be clear, accurate and not knowingly or negligently misleading.

Reference is made to the previous advertisement on the Respondent's website namely that there was no reference to the rental amount, the type of lease or in fact the area of lease. For the Respondents it was indicated that this only appeared on their own website and that it was advertised on other websites correctly. However it is clear that there was inaccurate or unclear advertising here.

The Tribunal finds that the Respondent failed to comply with Paragraph 38 of Section 4 of the Code.

Paragraph 40

You must take all reasonable steps to ensure your letting agent registration number is included in all property advertisements or communications.

It is suggested by the Applicant that the Respondent's Letting Agent registration number is not included on their Complaints Procedure documentation or on their recent emails.

Not all documentation does provide the Letting Agent registration number. Although it is unclear as to when registration took place certainly by 12 October this was being displayed. However no evidence was led or obtained as to when registration did take place and accordingly on that basis this section cannot be upheld.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 40 of Section 4 of the Code.

Paragraph 41

You must comply with relevant legislation on the marketing and advertising of properties for rent. For example, you must include a landlord's registration number (or clearly state 'landlord registration pending') and the energy performance indicator from the property's energy performance certificate (EPC) in your property advertisements and remove lettings boards within 14 days of the property being let.

The Applicant simply posed a question in relation to this section namely “We would be grateful to know when this was provided with regard to the advertising of our property at 209 Dalkeith Road”. No other information is provided regarding this.

The Tribunal cannot find that the Respondent failed to comply with Paragraph 41 of Section 4 of the Code.

Paragraph 43

You must give prospective tenants all relevant information about renting the property – for example, the type of tenancy; the rent; the deposit; other financial obligations such as council tax; any guarantor requirements and what pre-tenancy checks will be required at the outset.

Nothing further was said in relation to this aspect of the complaint.

The Tribunal accordingly finds that the Respondent did not fail to comply with Paragraph 43 of Section 4 of the Code.

Paragraph 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.

Nothing was said in the hearing by the Applicant in relation to this section. No written information was provided to suggest any failure to comply with this section.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 46 of Section 4 of the Code.

Paragraph 62

If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the

landlord; type; length of tenancy where it is a short assured tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on taking care of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number.

Reference was made by the Applicant in writing to “multiple problems with regard to the signing of the leases for 12 Broughton Street, and the aborted lease for 209 Dalkeith Road.” The Applicant’s complaint in relation to 12 Broughton Street is essentially that there was an incorrect rental amount set out. A variety of “incorrect” rental amounts were suggested starting at £2,500, then an un-agreed rental amount of £2,550, an incorrect deposit amount of £2,250, whereas it was suggested that the rental should in fact have been £2,600. However the section is not about the accuracy of the tenancy agreement i.e. the correct amount but simply that it provides a legal requirement for identifying an amount of rent and deposit. Although it is accepted that there were various attempts at getting the “right” amounts of rental income stipulated this section of the Code is complied with.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 62 of Section 4 of the Code.

Paragraph 63

If you arrange for the tenancy agreement to be signed, you must give prospective tenants enough time to familiarise themselves with the agreement; give them the opportunity to raise any questions about their rights and obligations under the agreement; give them the opportunity and time to seek independent advice; and give them

The Applicant’s position here is that the Tenancy Agreement was sent to the Applicant for signing shortly prior to close of business on Friday 24 August being a bank holiday weekend. The lease was due to commence on 27 August. The section is clearly aimed at a protection for tenants. There is no reference within the section to that of landlords. There is no complaint by a tenant here. The complaint is made by the landlord.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 63 of Section 4 of the Code.

Paragraphs 68 – 71

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.

69. If the tenant is not present for the making of the inventory, you should ask them to check it and to raise, in writing, any changes or additions within a specific reasonable timescale. Once agreed, the inventory should be signed and returned.

70. You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant does not, you must inform them, in writing, that you will nevertheless regard it as correct.

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

The Applicant's position is that he did not know with regard to the check-in for the new lease at 12 Broughton Street and wants the position clarified. The new lease began on 3 September 2018 and on 5 September 2018 the Respondents were advised that agents were being changed.

This section is aimed at the "tenant". Nothing else was said in the hearing in relation to matters. All documentation was passed over to the new agents by the Respondents.

The Tribunal finds that the Respondent did not fail to comply with Paragraphs 68-71 of Section 4 of the Code.

SECTION 5

Paragraph 73

If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

The Applicant indicated that contained within the terms of business was a reference to "Three property inspections a year are included in the long term management package." The Applicant emailed the Respondent on 19 September 2018 requesting copies of the property inspection reports for each of the properties listed. This was of course after the conclusion of the agency agreement between the Applicant and the Respondent.

However contained within the terms of business is simply that namely that three property inspections a year are to take place. It was not suggested that these were not being done but simply that the reports were not being passed on. Of course by 19 September there was no longer an agency agreement between the parties. The Respondents indicated that the property inspections had taken place.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 73 of Section 5 of the Code.

Paragraph 74

If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).

The issue identified here by the Applicant was that the long term tenant at 2 Cochran Terrace visited Broughton Property Management after they commenced acting on behalf of the Applicant and advised that he had previously reported a number of problems about roof leaks and water damage and that these had never been addressed. The Respondents denied having ever been advised of any leak. As a result it was entirely disputed that there was a record that had to be brought to the landlord's attention.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 74 of Section 5 of the Code.

Paragraph 78

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

One of the issues here that had previously been identified related to 12 Broughton Street and the way that outstanding rent payments were ultimately met namely through the deposit. The Applicant was even at the time of the hearing still unclear as to what if any monies remained due to him. Indeed there seemed to be an acceptance that there may have been a payment of rent which had not been passed on.

The Tribunal finds that the Respondents did fail to comply with Paragraph 78 of Section 5 of the Code.

SECTION 6

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.

No specific reference was made to this by the Applicant.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 98 of Section 6 of the Code.

Paragraph 99

You must apply your policy and procedures consistently and reasonably.

As referred to (above) nothing was specifically set out by the Applicant regarding this particular heading.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 99 of Section 6 of the Code.

Paragraph 102

If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began.

With regard to Dalkeith Road it was clearly indicated that two of the mattresses were soiled and needed to be disposed of. There was an issue then as to whether these were in fact mattresses that had been purchased during the course of the tenancy or otherwise. It became less than clear. The matter wasn't clarified and indeed it clearly is being suggested that these were soiled mattresses that had been in the property prior to the commencement of the tenancy. However it was unclear. What was clear is that in relation to the tenancy deposits effectively the tenants have recovered these. However the applicant was entirely unaware of this situation. It took until the Tribunal hearing itself for information to be passed on.

The Tribunal finds that the Respondent did fail to comply with Paragraph 102 of Section 6 of the Code.

Paragraph 104

You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared.

This section is clearly aimed at the tenant. The Applicant's position simply was that "check-out arrangements for both properties at 12 Broughton Street and 209 Dalkeith Road" were shambolic. The reference however in this section is to the tenant being provided with clear written information as opposed to the landlord.

On the basis that there is no complaint made by the tenant here the Tribunal finds that the Respondent did not fail to comply with Paragraph 104 of Section 6 of the Code.

Paragraph 106

In the event of a dispute, the agent and tenant will be required to follow the relevant scheme's rules for disputes.

Clearly it was the case that there has been a dispute and the matter went to the Tenancy Deposit Scheme for resolution. It became clear that the Applicant was unaware of this or indeed unaware of the outcome of the dispute. There is no complaint from the tenant here.

The complaint follows from the Applicant. There is no evidence to suggest that the agent did not follow the relevant scheme's rules for disputes.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 106 of Section 6 of the Code.

SECTION 7

Paragraph 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.

This has been dealt with previously.

The Tribunal finds that the Respondent did not fail to comply with Paragraph 107 of Section 7 of the Code.

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.

The Applicant was clearly pressing for information on a variety of issues none of which appeared to be resolved to his satisfaction. However clearly the Applicant had wished to make a formal complaint on 28 September 2018. This was acknowledged on 12 October but never appeared to be responded to fully.

The Tribunal finds that the Respondent failed to comply with Paragraph 108 of Section 7 of the Code.

Paragraph 111

You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.

Again this has been referred to earlier. The admitted telephone conversation in May 2018 and subsequent email by the Respondent of 5 September 2018 is a breach of this Code. The Respondent did not appear to dispute what was being said but said there was a different slant that could be put upon it.

The Tribunal finds the Respondent did fail to comply with Paragraph 111 of Section 7 of the Code.

Paragraph 112

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

This has been referred to previously. The Complaints Procedure is not clear at all and contains a variety of errors.

SECTION 8

Paragraph 124

You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).

At the hearing it was clearly accepted and acknowledged that there appeared to be a payment in relation to 12 Broughton Street which had not been passed on to the Applicant. Indeed part of the issue is that no "accounting" had been undertaken.

The Tribunal finds the Respondent failed to comply with Paragraph 124 of Section 8 of the Code.

Paragraph 125

You must pay or repay client money as soon as there is no longer any need to retain that money. Unless agreed otherwise in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.

This section can be read along with Section 124. There still appears to be client money due to the Applicant for which no accounting has been undertaken. This was conceded by the Respondent.

The Tribunal finds the Respondent has failed to comply with Paragraph 125 of Section 8 of the Code.

Paragraph 127

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

The issue here arose with Broughton Street and in relation to guarantors that were available. The Respondent accepted that there were guarantors in place for 12 Broughton Street. However it had been conceded that the way to deal with matters was to take the money that

was due in terms of rent from the deposit. The terms of business provided by the Respondent lists that "For a copy of our written procedure regarding debt collection please ask for details". Without having seen the written procedures the Tribunal are unable to be satisfied regarding compliance with the Code. There is clearly a reference to a procedure.

The Tribunal cannot determine that the Respondent has failed to comply with Paragraph 127 of Section 8 of the Code.

Decision

The Tribunal found that the respondent had breached paragraphs 18, 19, 21, 25, 26, 28, 33, 38, 78, 102, 108, 111, 112, 124, 125 and 127.

Clearly there are a significant amount of breaches in this case. In the circumstances the Tribunal orders the following:-

1. The Respondent should prepare for the Applicant a detailed accounting of all income and expenditure for each of the three properties from the period from the commencement of the agency agreement until conclusion.
2. The commission sought to be charged by the Respondent for 12 Broughton Street in the invoice dated 12 October 2018 should be cancelled.
3. The Respondent should repay to the Applicant all commissions paid on the three properties from 11 May 2018 until the conclusion of the contract.
4. That the Respondents should repay to the Applicant the cost of the replacement of the soiled mattresses which figures are to be established by the Respondent to the Applicant.
5. The said order and payments must be carried out and completed within a period of 28 days from the date of service of this order.

M Thorley

Signed.

.....
Legal Member

Dated..... 1 Apr 2019