

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision on an application made under Section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/19/1194

**Flat 10, 3 Sandbank Drive, Glasgow G20 0DA
("the Property")**

The Parties:-

**Miss Gabriela Farasheva, 1/1, 25 Eriboll Street, Glasgow G22 6NZ and Miss Shivani Shirbhate, 1/2 74 Highburgh Road, Glasgow, G12 9EN
("the Applicants")**

**Tay Letting Limited, 8 Eagle Street, Craighall Business Park, Glasgow G4 9XA
("the Respondents")**

**Tribunal Members:
Graham Harding (Legal Member)
Mike Links (Ordinary Member)
Mary Lyden (Ordinary Member)**

DECISION

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 the application determined that the Respondents had breached Section 2 paragraphs 17 and 18 of the Letting Agent Code of Practice and further determined to make a Letting Agent Enforcement Order.

The decision is unanimous

Introduction

In this decision the Housing (Scotland) Act 2014 is referred to as "the 2014 Act"; the Letting Agent Code of Practice is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

The Respondents' duty under section 48(1) of the 2014 Act to comply with the Code arises from the date it came into force namely 31 January 2018.

1. By Application dated 8 April 2019 the Applicants complained to the Tribunal that the Respondents had breached Section 2, paragraphs 17, 18, 19 and 27, Section 3, paragraph 29(a) and Section 4, paragraphs 38 and 49 of the Code.
2. The Applicants provided the Tribunal with copies of the tenancy agreement, their electricity bills for their period of occupancy of the property, the Energy Performance Certificate for the property, an electrical contractors bill and correspondence with the Respondents together with their written submissions.
3. By Notice of Acceptance dated 16 May 2019 a Convenor with delegated powers referred the Application to a Tribunal.
4. The Respondents submitted written representations to the Tribunal by email dated 24 June 2019 in advance of the oral hearing which was held at Glasgow Tribunals Centre on 12 July 2019.

Hearing

5. The hearing was attended by the Applicant, Miss Farasheva. The Respondents did not attend nor were they represented. The Tribunal was satisfied that the Respondents were aware of the date and time of the hearing and determined in terms of Rule 29 of the rules to proceed with the hearing in their absence.

Summary of Submissions

6. The Tribunal asked Miss Farasheva to explain why the Applicants believed the Respondents were in breach of the various sections of the Code mentioned in the application.

Section 2 Paragraph 17

Miss Farasheva explained that she thought the Respondents were in breach of this paragraph firstly because they had advertised the property as having an Energy Performance Certificate with an energy efficiency rating of category C and secondly because they had imposed charges unfairly. Miss Farasheva went on to say that the Applicants had incurred electricity charges of over £1000.00 in seven months due to the electric heaters in the property being old and inefficient. She said that she had stayed in numerous flats in the past and never had bills as high as that before. She said that after she had complained about the cost of the electricity to the Respondents, they had arranged for an electrician to check the heaters and he had advised that they should be replaced as they were old and used a lot of electricity. The electrician had also discovered that the hot water system was capable of running off the off-peak tariff but was not connected. Miss Farasheva confirmed that following the electrician's visit the hot water was connected to the off-peak meter but this had little impact on the electricity bills. Miss Farasheva confirmed that the Energy Performance Certificate submitted with the application did have a

Category C efficiency rating and had been prepared by an independent assessor. She also confirmed that the electrician had confirmed that the electric meter in the property was working correctly. Miss Farasheva also pointed out that she had taken statements from her neighbours in the block and their electricity bills were all substantially less than the Applicants. Miss Farasheva went on to say that the Respondents were also in breach of this section of the Code as the Applicants had been made to pay for a call out charge from Domestic Electrics after they had reported what was believed to be a fault with their washing machine. She said there was nothing in the Tenancy Agreement that made the applicants liable for this charge. The Respondents were therefore not being honest, open transparent and fair.

Paragraph 18

Miss Farasheva said that the Respondents should have provided more information prior to the commencement of the lease about the types of heaters in the property and the likely energy costs and other charges. As an example, she spoke of having a late payment charge of £30.00 added when the Applicants were one week late in paying their rent. The Tribunal queried how the Respondents would know what the likely electricity charges would be unless they were provided with this information from previous tenants. The Tribunal also suggested that the amount of electricity used might vary from tenant to tenant depending on how they used the property.

Paragraph 19

Miss Farasheva said that she did not know whether the information provided was deliberately or negligently misleading but felt it was misleading. As an example, she cited the fact that the Applicants were not told what kind of heaters were in each room. They were not told that the living room heater was both a storage heater and a panel heater. They were not told how the storage heaters worked. They were not provided with any operating instructions for the heaters or any other items in the property

Section 3

Paragraph 29

Miss Farasheva accepted after further considering this section that it applied to landlords and not tenants and confirmed that the Applicants no longer insisted on this part of their complaint.

Section 4

Paragraph 38

Miss Farasheva explained that by advertising the property as having an EPC with an energy efficiency of Category C the Respondents had influenced the Applicants to take up the tenancy of the property. She felt that the Respondents ought to have provided more information with regards to the heating in the property and the likely costs as that would have impacted on their decision to rent. She also felt that the Respondents should have

provided more information at the commencement of the tenancy on how the heaters worked.

Paragraph 49

Miss Farasheva explained that the Applicants had been concerned that the washing machine in the property had not been working properly and had reported this to the Respondents. The Respondents had arranged for Domestic Electrics to attend. They had found that the machine was in working order. Because there had been no fault the Respondents had demanded that the Applicants pay the call-out charge of £51.00. When the Applicants refused to pay the Respondents threatened to add a late payment charge and the Applicants then paid. Miss Farasheva referred the Tribunal to page 17 of the Tenancy Agreement and the clause headed PAYMENT FOR REPAIRS. She said that the tenant was only responsible for the cost of repairs attributable to the fault or negligence of the tenant. She said that was not the case here.

7. Miss Farasheva submitted that as a result of the breaches of the Code the Applicants had incurred heating bills much higher than they would otherwise have had. As a result, the Applicants had been unable to pay the bills and this had an impact on Miss Farasheva's credit rating. The Applicants proposed that from the total final electricity bill from Solarplicity of £1064.81 the Applicants should pay £490.00 and the Respondents be ordered to pay the balance of £574.81 and that in addition the Applicants should be refunded the £51.00 paid in respect of the Domestic Electrics bill.

The Tribunal make the following findings in fact:

8. The Applicants were the tenants of the property from 10 September 2018 until 22 April 2019.
9. The Respondents were the letting agents of the property.
10. The property has an Energy Performance Certificate with an Energy Efficiency Rating of category C.
11. The Energy Performance Certificate was prepared by an assessor independent of the Respondents.
12. The property is heated by a combination of off-peak storage heaters and panel heaters.
13. The Applicants were provided with an inventory detailing the types of heaters in the property at the commencement of the tenancy.
14. The Applicants were not provided with any instructions on how to operate the heaters at the commencement of the tenancy.

15. The Applicants complained about the cost of electricity to the Respondents on or about 21 February 2019.
16. The Applicants incurred electricity charges of £1064.81 for the period they occupied the property.
17. The Applicants believed the washing machine at the property was not operating properly.
18. The Applicants paid the Respondents £51.00 in respect of domestic Electrics call out charge for testing the washing machine at the property.

Reasons for Decision

19. Although the Tribunal accepted that the Applicants' electricity costs were high it did note that the period covered the winter months and therefore it would be likely that the annual cost would be substantially lower. The Tribunal also accepted the point made in the written submission from the Respondents that the average cost for electricity stated in the Energy Performance Certificate was a UK average and would therefore be subject to regional variations. The Tribunal also felt that usage would vary according to the individual users' lifestyle. It was therefore difficult to place much weight on the written statements of the neighbours provided by the Applicants. The Tribunal did not think that the Respondents had been in breach of paragraph 17 of the Code when relying on the terms of the Energy Performance Certificate and its Energy Efficiency Rating as it had been prepared by an independent assessor. The Tribunal did however feel that when it came to charging the Applicants for Domestic Electrics call-out fee the Respondent had not treated the Applicants fairly. It could not be said that the Applicants were in breach of the repairs clause in the Tenancy Agreement and they had a genuine concern that the washing machine was not working properly. It should be noted that no operating instructions for any of the equipment in the property was provided to the Applicants at the commencement of the tenancy.
20. The Tribunal felt that unless the Respondents had previous complaints from tenants regarding the cost of electricity it would be unlikely that they would have any real knowledge of the likely cost. The Tribunal did however find that the Respondents did not make it clear to the Applicants that they would be charged for the Domestic Electrics call-out fee if it transpired there was no fault with the washing machine and to that extent the Respondents were in breach of the Code.
21. The Tribunal was of the view that whilst it would have been preferable if the Respondents had provided the Applicants with operating instructions for the heaters and washing machine and any other items at the commencement of the tenancy it was significant that the Applicants apparently made no attempt to contact the Respondents to ask for assistance with operating the heaters if they were unsure about their operation. The Tribunal also took note of the fact

that despite receiving a significantly high electricity bill in November 2018 which ought to have alerted them to a potential issue with regards to their electricity usage, the Applicants waited until 21 February to raise the matter with the Respondents.

22. Although the Applicants felt that by being made to pay Domestic Electrics bill for the washing machine the Respondents were in breach of paragraphs 48 and 49 of the Code the Tribunal was of the view that neither of these paragraphs actually applied to the situation here. For the reasons given above however the Tribunal did find that the Respondents ought not to have charged the Applicants for Domestic Electrics call-out charge. The Tribunal were of the view that if the Respondents intended to apply such a charge then it would have to have been made clear in advance that in the event of there being nothing wrong with the washing machine a charge would be applied. There was nothing in the submissions to suggest this was the case.
 23. The Tribunal was therefore of the view that the Respondents ought to refund the applicants the £51.00 paid by them in respect of Domestic Electrics bill.
 24. Whilst the Tribunal had some sympathy for the Applicants as their electricity usage was high and they may well have been influenced in choosing to rent the property as a result of the Energy Performance Certificate having an energy Efficiency Rating of Category C the Tribunal was unable to conclude that the Respondents were at fault. They were entitled to rely on the terms of the certificate prepared by an independent assessor. They arranged for the electrical system to be checked as soon as a complaint was made and they obtained the Landlords consent for repairs to the hot water system to be carried out shortly thereafter. The Tribunal therefore do not consider that the Respondents should be liable to make any payment towards the applicants' electricity costs.
 25. The Tribunal's decision was unanimous.
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Decision

26. The Tribunal having carefully considered the evidence presented to it at the hearing and the written submissions of the parties finds that the Respondents are in breach of Section 2 paragraphs 17 and 18 of the Letting Agents Code of Practice and therefore will make a Letting Agent Enforcement Order (LAEO) obliging the Respondents :-

To make payment to each of the Applicants the sum of £25.50 within 14 days of the date of service of the LAEO.

Appeals

A homeowner or property factor aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

G Harding

Legal Member and Chair

22 July 2019

Date

