

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Housing (Scotland) Act 2014 Section 48 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26

Chamber Ref: FTS/HPC/LA/18/1579

The Parties:-

**Mr Edward McGoldrick, 6 Colston Terrace, Airdrie, ML6 7BH
("the Applicant")**

Letting Hamilton Limited trading as Location Estate Agents, incorporated in Scotland under the Companies Act (registered number SC507543), 83-87 Cadzow Street, Hamilton, ML3 6DY ("the Letting Agent and Respondent")

Tribunal Members:-

Patricia Anne Pryce	-	Chairing and Legal Member
Elizabeth Dickson	-	Ordinary Member (Housing)

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 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").

The tribunal makes the following findings in fact:

- The Applicant is the owner and Landlord of the property 31 Dalmore Drive, Airdrie.
- The property was let by the Respondent, on behalf of the Applicant, who acted in its capacity as a Letting Agent.
- £525 per calendar month was due by way of rent for the property.

- The Tenant paid to the Respondent £525 by way of a deposit in respect of the property at Dalmore Drive.
- The deposit was not lodged with one of the three approved schemes in Scotland.

The tribunal makes the following finding in law:

- The Respondent is a relevant letting agent to whom the Code applies from 31 January 2018.

Following on from the Applicant's application to the First-tier Tribunal (Housing and Property Chamber), which comprised documents received on 29 June 2018, the Legal Member with delegated powers of the Chamber President referred the application to a tribunal on 2 July 2018.

Introduction

The tribunal had available to it and gave consideration to: the Application by the Applicant as referred to above and oral submissions made by the Applicant at the hearing. The Respondent did not lodge any representations with the tribunal.

Although the present application had been conjoined with the application by another Applicant under Reference number FTS/HPC/LA/18/1389, the tribunal decided to hear both applications separately and issue separate decisions in respect of the applications as the applications proceeded on different grounds.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 66, 78 and 108 of the Code which are referred to for their terms.

Hearing

A hearing took place in the Glasgow Tribunal Centre, 20 York Street, Glasgow on 1 October 2018.

The Applicant attended on his own behalf along with his wife, Mrs Agnes McGoldrick.

The Respondent did not attend nor was it represented.

Preliminary Issues:-

The tribunal decided that the terms of Rule 29 had been complied with and that the hearing could continue in the absence of the Respondent. The tribunal was content that the Respondent had been given sufficient time and notice of the proceedings and hearing.

Section 66

The Applicant submitted that the Respondent had failed to lodge the deposit of £525 with one of the approved schemes. The Tenant had paid the deposit to the Respondent. The Respondent, through its main owner and the apparent boss of the business, Mr Kenneth Stenhouse, had advised the Applicant that the deposit had been lodged with My Deposit Scotland. However, when the Tenant checked with that scheme, the Tenant was advised that no monies had been lodged by the Respondent.

Given this, the tribunal finds that the Respondent failed to comply with Section 66 of the Code.

Section 78

The Applicant referred to his application and submitted that the Respondent had failed to pay to the Applicant the amount of £525 in respect of rent for the property for the month of January 2018 which the Tenant had paid to the Respondent. This should have been paid by the Respondent to the Applicant no later than the end of the first week in February 2018. The Tenant remains in the property and has never paid the rent late. In addition, the Applicant advised that he had never received written terms and conditions from the Respondent. Initially, there had been no problems. The Respondent had taken over the management of the property for the Applicant in 2012. While the paying over of rent could be late, it was normally only a week or so late, and would be paid after a phone call from the Applicant. However, this had worsened in the past year to the point where the monies due for January's rent were never paid over to the Applicant by the Respondent despite repeated requests by the Applicant which formed part of the present application. The Applicant then instructed his Tenant to pay the rent directly to him from mid-February 2018 onwards.

Although the tribunal notes that the Respondent has failed to account to the Applicant for the rent due for January 2018, , Section 78 refers to the late payment of rent by the Tenant, rather than by a Letting Agent. By the Applicant's own admission, the Tenant always paid the rent on time. The situation envisaged by this Section of the Code is one where the Letting Agent fails to advise the Landlord of late payment of the rent by the Tenant. The Tribunal can only consider breaches of the Code specifically included within the application.

Given the foregoing, the tribunal finds that the Respondent did not fail to comply with Section 78 of the Code.

Section 108

The Applicant referred to the terms of his application and further submitted that the Respondent breached this part of the Code by having written to the Respondent to complain but having never received a reply from the Respondent. These letters had been sent recorded delivery by the Applicant and, despite being delivered successfully, these remained unanswered.

Given this, the tribunal finds that the Respondent failed to comply with Section 108 of the Code.

Compensation

The tribunal invited parties to address it on the issue of compensation which the Applicant sought.

The Applicant submitted that he had never received return of the deposit nor of the rent for January 2018 and was therefore £1,050 out of pocket.

The tribunal considered these submissions in respect of compensation and in light of Section 48 of the 2014 Act. The tribunal noted that these sums remained outstanding and due to the Applicant by the Respondent. The tribunal decided that the full sums should be due without deduction of an amount for the management fee charged by the Respondent as the Respondent had breached the Code in respect of these matters and had deliberately withheld these monies due to the Applicant.

In addition, the tribunal noted that the Applicant had advised that there are a number of landlords in a similar position who are owed monies due by the Respondent, in particular, through their intromissions with Mr Kenneth Stenhouse. This is of grave concern to the tribunal as it appears to the tribunal that there may have been a course of conduct which could be fraudulent in nature, a matter which no doubt Police Scotland and prosecuting authorities may wish to consider in greater depth.

In light of the foregoing, the tribunal finds that the sum of £1,050 is an appropriate sum by way of compensation.

In light of its findings, the tribunal requires the Letting Agent to:-

Within 28 days of the date of communication to the Respondent of the letting agent enforcement order, the Respondent must:-

1. Pay to the Applicant the sum of £1,050.
2. Provide documentary evidence to the tribunal of the Respondent's compliance with the above Letting Agent Enforcement Order by sending such evidence to the office of the First-tier Tribunal (Housing and Property Chamber) by recorded delivery post.

The Respondent should note that failure to comply with an LAEO may constitute a criminal offence.

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.

P Pryce

Legal Member and Chair

1 October 2018

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Date