



**Decision with Statement of Reasons of the First-tier for Scotland (Housing and Property Chamber) under Section 48(6) of the Housing (Scotland) Act 2014 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26**

**Case Reference number: FTS/HPC/LA/18/1167**

**Parties:**

**Mrs Sanah Afzaal, residing at 200 Netherton Road, Glasgow, G13 1BJ (“the Applicant”)**

**Core Property House, 4 Claremont Place, Glasgow, G3 7YR (“the Respondents”)**

**Tribunal Members: Colin Dunipace (Chairing Member), Elizabeth Dickson (Ordinary Member)**

**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 paragraph 125 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 Sixteen Pounds and Forty Six pence (£16.46) Sterling.**

**Background**

The Tribunal received an Application from the Applicant dated 15 May 2018, 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”). The Applicant alleged failure of the part of the Letting Agent to comply with paragraphs 125 of the Code of Practice in respect that the Letting Agents had not ensured that the Applicant’s money was available to her on request and is given to them without unnecessary delay or penalties unless agreed otherwise in writing; and that the Letting Agent did not pay or repay client money to the Applicant as soon as there was no longer any need to retain that money.

In the Application before the Tribunal the Applicant stated that she has suffered the loss of two days rent, in the sum of £33.33, being the rent paid for two days on which she was not in the property. The Applicant stated that she paid rent for the period until 15 April



2018 and that the Letting Agent required her to leave on 13 April 2018 when she had to return the keys to the property.

The Respondents responded to the Application by submitting written representations which were received by the Tribunal on 4 September 2018. In the course of these submissions the Respondents stated that the Applicant voluntarily left the property on 13 April 2018. The Respondents also stated that the Applicant emailed on 9 March 2018 giving notice that she intended to vacate the property on 15 April 2018, and that the Applicant subsequently contacted the Letting Agents advising that she had to leave earlier than planned because of short notice from the Inventory Clerk, Colin who was a contractor of the Letting Agents. The Respondents also made reference to a note of a telephone conversation on 12 April 2018 in which the Applicant demanded an earlier inspection, and that she was advised that this could not be done due to insufficient notice. The Respondents advised that the Applicant was informed that it was not company policy to carry out an initial check before they were due to move out. The Respondents stated that the Applicant was given an option to have the check-out carried out on 16 April 2018 or to leave the keys at the property if they couldn't attend. The Respondents indicated that they had fulfilled their duties.

On 25 July 2018 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 2 October 2018. The Applicant attended in person at this Hearing. The Respondents were not presented nor represented at this Hearing. During this Hearing the Applicant stated that she had been a joint tenant at the subjects from 15 March 2017 (her husband being as tenant before that date) and that the monthly rental payment due was in the sum of £500 per month payable monthly in advance. The Applicant stated that she given notice of her intention to vacate the property as above stated and that notice was given to facilitate an inspection at the end of the tenancy. The Applicant stated that she wished the inspection to be done as soon as possible, and that she had emailed on 9 March 2018 requesting an early inspection.

The Applicant stated that she had intended to vacate the property on 15 April 2018, but that the Inventory Clerk, Colin had arrived on 13 April 2018 indicating that he was to carry out the requisite checks on this date and that the keys must be returned to him at that time. The Applicant was adamant that she was advised by Colin that she required to leave the property on that date, was not permitted to stay in the property beyond the inspection and that she was given no choice in this matter. The Applicant advised that she required assistance from family members which enabled her to leave the property. The Applicant advised that she had not intended to leave the property on that date.



The Applicant also stated that she had paid her rent of £500 per month in advance, and that she had paid her rent on 15 March 2018 which she stated meant that she had paid her rent until 15 April 2018, which was the date upon which she had intended to vacate the property. The Applicant stated that as she had been forced to vacate the property earlier than she had intended to on 13 April 2018, and given that she had paid her rent until 15 April 2018, she sought the return of the rental payment for 14 and 15 April 2018.

The Applicant stated that she had contacted the Letting Agents on a number of occasions in relation to the return of the sum due for these two dates, but had been advised that this sum would not be returned to her.

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

### **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 Landlord Mr Gian Celino to rent the property at 0/2, 571 Alexandra Parade, Glasgow, G31 3DB from 15 March 2017. The monthly rental in respect of this property was £500 per month and this rental was payable in advance due on the 15<sup>th</sup> of each month..
2. The Letting Agent is the letting agent which was responsible for the management of the Applicant's tenancy on behalf of the landlord. The Letting Agency carries out letting agency work in Scotland.
3. The Applicant made her last payment of rent on 15 March 2018, and vacated the property on 13 April 2018.
4. Since that date the Applicant has requested the return of sums due to her in relation to rent paid until 14 April 2018. To date the Respondents have refused or at least delayed to do so.

### **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 at 0/2, 571 Alexandra Parade, Glasgow, G31 3DB from 15 March 2017. The



rental payable in respect of this lease was in the sum of £500 per month payable in advance on the 15 of each month. The Applicant gave notice that she intended to leave the property on 15 April 2018, and made her final payment of rent on 15 March 2018.

The Applicant contacted the respondents requesting that the final inspection of the property be carried out as soon as possible, but for reasons of resourcing this was not able to be carried out until 13 April 2018. This final inspection was carried out by an individual, whom the Applicant knew only as Colin, and who carried out the inspection on that date. The Tribunal were satisfied that the Applicant was advised on that date that she would require to vacate the property on that date. The Tribunal were also satisfied that the Applicant had not intended to leave on that date.

The Tribunal were also satisfied that the Applicant had contacted the Letting Agent on a number of occasions to have the rental already paid by her, and which she believed covered her until 15 April 2018, returned to her. The Applicant was seeking the return of two days rent which she calculated to be in the sum of £33.33.

Having considered matters the Tribunal unanimously determined that the Applicant was entitled to the return of rental which had been paid for her, and which had not been returned to her despite her requests. In this regard however the Tribunal disagreed with the assessment of the Applicant that she was entitled to return of rental for two days. The Tribunal noted that rental payments made by the Applicant were made on the 15th of each month, and accordingly concluded that this payment would cover the period from the 15<sup>th</sup> until the 14<sup>th</sup> of the following month. Accordingly the Tribunal concluded that the Applicant had paid a rental sum from 15 March 2018 until 14 April 2018 and not until 15 April 2018. The Tribunal concluded that the rental payment which fell to have been returned to the Applicant, and which had not in fact been returned to her was for the period of one day. Having noted that the Applicant had paid rental for thirteen months in the sum of £500 per month the Tribunal calculated that the amount due in relation to rental for one day was in the sum of £16.46, and determined that an LAEO should be made in this amount.

## **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.

Housing and Property Chamber  
First-tier Tribunal for Scotland

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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 from the First-tier Tribunal, and that party must seek this permission to appeal within 30 days of the date on which the decision was sent to them.

In terms of section 51(1) of the Act, a Letting Agent who without reasonable excuse, fails to comply with this Order commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale

C Dunipace

Colin Dunipace

Date 23 October 2018

Legal Chair