

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/18/3059

The Parties:-

**Miss Victoria Miller, 18 Shaws Terrace, Edinburgh, EH7 4PJ
("the Applicant")**

Fidra Lettings Limited, 6 High Street, Gifford, East Lothian, EH41 4QU ("the Letting Agent and Respondent")

Tribunal Members:-

Patricia Anne Pryce	-	Chairing and Legal Member
Ann Moore	-	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 was the Landlord of the property at 18 Shaws Terrace, Edinburgh (hereinafter referred to as "the property").
- The property was let by the Respondent, on behalf of the Applicant, who acted in its capacity as a Letting Agent.
- £675 per calendar month was due by way of rent for the property.

- The Applicant had chosen to rent her home while she lived and worked in South America for three years.
- The management fee was received by the Respondent from the Applicant which was 9% of the rent per calendar month of £675.
- The Respondent, by admission, was two months late in obtaining a Gas Safe Certificate in respect of the property.
- The Respondent advised the Applicant by email dated 13 September 2018 that she required to replace the boiler in the property.
- The Applicant, on receipt of the above email, instructed replacement of the boiler at a cost of £2,500, having chosen the cheapest quote she had obtained.
- The Respondent did not complete inspection sheets in respect of the property.
- The Respondent did not undertake a photographic inventory of the property before it was rented out nor after it was rented out.
- The Applicant discovered various repairs issues with the property when she moved back into it late in 2018 which are listed within her application.
- The Respondent paid to the Applicant the cost of repair of a cracked window within the property.
- The former tenant of the property did not advise the Respondent of the broken window.

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/between 14 November 2018 and 21 January 2019, the Legal Member with delegated powers of the Chamber President referred the application to a tribunal on 4 February 2019.

Introduction

The tribunal had available to it and gave consideration to: the Application by the Applicant as referred to above, further representations received from the Applicant, representations by the Respondent and oral submissions made by the both parties at the hearing.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 16, 17, 18, 19, 20, 21, 24, 27, 73, 74, 85, 86, 89, 90, 93, 94, 101, 107, 108 and 109 of the Code which are referred to for their terms.

Hearing

A hearing took place in the George House, George Street, Edinburgh on 29 March 2019.

The Applicant attended on her own behalf.

The Respondent was represented by Mr Michael Hoppe who is the owner and Director of the Respondent.

Section 16

The Applicant submitted that the Respondent did not comply with legislation insofar as the Respondent had failed to obtain timeously a Gas Safe Certificate for the property. The Respondent accepted this failure and accepted that, for a period of two months, the property did not meet the Repairing Standard as contained within the Housing (Scotland) Act 2006.

Given this, the tribunal finds that the Respondent failed to comply with Section 16 of the Code.

Section 17

The Applicant referred to her application and submitted that she had found it very difficult to get a clear picture of what was going on with the property. She could not get a clear answer from the Respondent to her queries. The answers were often contradictory.

The Applicant made specific reference to the issue of the boiler she had been told required to be replaced by the Respondent. This was by email dated 13 September 2018 which was produced. The Applicant obtained quotes to replace the boiler and did so at a cost of £2,500, having chosen the cheapest quote. She did so as a direct result of the email she received from the Respondent. However, the Respondent later advised her that the boiler could have been repaired at a cost of £212. She submitted that Mr Hoppe had told her that the boiler had been causing the tenant problems and that there was no point in repairing it.

Mr Hoppe did not accept having advised the Applicant to replace the boiler. However, he agreed that the Respondent had breached this part of the Code. He submitted that he had employed a property manager, Fraser, whom he subsequently discovered was not doing his job properly. Mr Hoppe accepted that he had not supervised Fraser properly. Mr Hoppe explained that after Fraser left his employ, Mr Hoppe discovered that Fraser had not done inspection sheets in respect of the property. Inspections were due to be carried out every three months. There should have been inspection sheets in respect of these but there were none. Mr Hoppe

submitted that his company's procedures have completely change as a result of this matter.

In addition, the Applicant submitted that she had previously had a contract for 12 years with Contract Heating which she paid monthly for servicing and maintaining the boiler.

Mr Hoppe agreed that he had paid this on behalf of the Applicant but did not advise her of the renewal date for this contract nor did he arrange to continue the cover. The cover lapsed.

The Applicant submitted that the cost of replacing the boiler would have been covered by Contract heating.

Mr Hoppe admitted that the Respondent's dealings with the Applicant had lacked transparency and that the Respondent had breached this part of the Code.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 17 of the Code.

Section 18

Mr Hoppe accepted that the Respondent had failed to provide information to the Applicant in a clear way as described in relation to Section 17 above.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 18 of the Code.

Section 19

Mr Hoppe admitted that the Respondent had negligently provided information which was misleading to the Applicant as outlined above. He accepted that the Applicant had been provided with conflicting information.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 19 of the Code.

Section 20

The Applicant submitted that the Respondent had failed to apply its policies and procedures in relation to the checking and maintaining of the property. The gas check was missed. There were a number of things which were wrong with the property which proper inspections would have revealed. She only discovered these issues when she got the keys back and moved back into the property.

Mr Hoppe agreed that the Respondent's procedures had not been implemented in a way which was up to standard. He accepted that the property checks were not as good as they should have been. He opined that the checks had been done but not reported properly back to the Applicant. He accepted that the tenant had not reported the broken window but that this should have been picked up by an

inspection. In short, Mr Hoppe submitted that the Respondent had let down the Applicant.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 20 of the Code.

Section 21

Mr Hoppe accepted that, in light of the evidence heard thus far together with the application and representations, the Respondent had failed to carry out its services with reasonable care and skill.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 21 of the Code.

Section 24

Mr Hoppe conceded that there was a complete absence of inspection records in respect of the property and therefore the Respondent had breached Section 24.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 24 of the Code.

Section 27

The Applicant submitted that she was not informed of any of the repairs issues with the property and only discovered these when she got the keys back and moved back into the property.

Mr Hoppe agreed with the Applicant's position and accepted that the Respondent had breached Section 27 by not advising the Applicant of the repairs.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 27 of the Code.

Section 73

Mr Hoppe submitted that the property had been properly managed from 2015 until 2017. However, he conceded that thereafter, after Fraser had taken over as property manager, the property was not managed in line with legal obligations, for example, failing to obtain the Gas Safe Certificate timeously resulted in the property not meeting the Repairing Standard at that time. He conceded that the Respondent had breached Section 73 of the Code.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 73 of the Code.

Section 74

Mr Hoppe fully accepted that there was a breach of this Section as there were no records made of the periodic inspections of the property.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 74 of the Code.

Section 85

Mr Hoppe fully accepted that the Respondent did not have the appropriate systems and controls in place. The Respondent missed the Gas Safe Certificate. He explained that the business had grown too quickly and had gone out of control. However, this has now been resolved and all of these procedures are now in place. He apologised once again to the Applicant. He accepted that this Section of the Code had been breached.

Given this, the tribunal finds that the Respondent failed to comply with Section 85 of the Code.

Section 86

Once again, Mr Hoppe conceded that there had been a breach of the Code. The procedures and processes were not in place at that time but were now.

Given this, the tribunal finds that the Respondent failed to comply with Section 86 of the Code.

Section 89

The Applicant confirmed that she was not insisting on this alleged breach.

Given this, the tribunal finds that the Respondent did not fail to comply with Section 89 of the Code.

Section 90

Mr Hoppe conceded that the repairs had not been dealt with promptly. He accepted that there were repairs' issues when the Applicant took back possession of the property. He confirmed that he had not taken photographic evidence of the condition of the property either before or after it had been let. He accepted this breach of the Code.

Given this, the tribunal finds that the Respondent failed to comply with Section 90 of the Code.

Section 93

As with Section 90, Mr Hoppe accepted that there had been a breach of Section 93 for the same reasons as those rehearsed under Section 90 above.

Given this, the tribunal finds that the Respondent failed to comply with Section 93 of the Code.

Section 94

The Applicant submitted that the repair which the Respondent had instructed on her behalf in relation to the shower unit was defective. There were wires left hanging and loose nails along with a concern about leaking water. She had to instruct her own contractor at her own cost.

Mr Hoppe accepted this and accepted that there had been a breach of Section 94. The Respondent had not followed this up with the contractor who had carried out this repair.

Given this, the tribunal finds that the Respondent failed to comply with Section 94 of the Code.

Sections 101, 107 and 108

The Applicant confirmed that she was not insisting on these alleged breaches of the Code.

Given this, the tribunal finds that the Respondent did not fail to comply with Sections 101, 107 and 108 of the Code.

Section 109

The Applicant submitted that the Respondent's email address stopped working and that the Respondent's telephone number also stopped working at the same time which she found frustrating as this was at the point where she had just discovered all of the problems with the property.

Mr Hoppe submitted that the email stopped working for around 24 hours but this was soon resolved. He was unaware of any issue with the phones and submitted that no other client had encountered this difficulty.

The tribunal noted that the Respondent had provided the Applicant with contact details.

Given this, the tribunal finds that the Respondent did not fail to comply with Section 109 of the Code.

Compensation

The tribunal considered all of the submissions in respect of compensation and in light of Section 48 of the 2014 Act. The tribunal noted that the Applicant had required to carry out several repairs to the property which should have been

instructed by the Respondent. In addition, the Applicant replaced the boiler as a result of the communication she had received from the Respondent. The tribunal also noted that both parties gave their evidence in a straightforward way without attempting to embellish matters. In addition, the tribunal noted that the Respondent had attempted to resolve matters prior to the present application.

The Applicant sought various sums as outlined within her application. The Respondent accepted most of these as being due by the Respondent. The main issue which remained between the parties was the cost of the boiler. The Applicant was clear that she would have happily had this repaired but placed her trust in the Respondent who advised her in no uncertain terms that the boiler required to be replaced.

The tribunal considered that the Respondent should therefore reimburse the Applicant the full cost of the boiler.

In addition, the tribunal considered that the Respondent should reimburse the Applicant in respect of the restricted sum of £300 in relation to Mr Kettle's invoice, restricting it as the Applicant herself accepted that the balance of this invoice was not something she could properly seek from the Respondent.

Mr Hoppe accepted that the Respondent should pay £26.87 for the cost of the broken glass in the fireplace.

Mr Hoppe accepted that the Respondent had not properly checked the fridge. However, the Applicant did not produce any documentation to show why the fridge could not be repaired rather than replaced. Given that, the tribunal considered that the Respondent should reimburse the Applicant in the restricted sum of £225.

The tribunal did not consider that the Respondent should be ordered to pay for any other sums sought by the Applicant as these issues related to normal wear and tear of the property and in light of the age of the property.

In light of the foregoing, the tribunal finds that the sum of £3,051.87 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 £3,051.87.
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

29 March 2019

.....

Date