Housing and Property Chamber
First-tier Tribunal for Scotland

Statement of Decision in an application for Review under Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule Part 1 of the Chamber Procedure Regulations 2017 (SSI No 328), as amended) ("the Procedure Rules)

In connection with

Chamber File Reference number: FTS/HPC/ LA/19/2173

Parties:

Mrs Lynne Smith 39 Findhorn Erskine, PA8 6DX "the Applicant")

Belvoir 8 Silk Street Paisley PA1 1HG (the letting agent and "the Respondent")

Tribunal Members:

Jan Todd (Legal Member) and Melanie Booth (Ordinary Member)

1. DECISION

The Tribunal grants the application for Review in terms of Rule 39 of the Procedure Rules.

2. BACKGROUND

1. This was an application by the Applicants for compensation for alleged breaches of the Letting Agent Code of Practice, all in terms of Section 48 of the Housing Scotland Act 2014.
2. The Applicant complained of alleged breaches by the Respondent of the following paragraphs of the Code of Practice namely paragraphs 17, 21, 73, 74, 90, 102 and 104. The Applicants were seeking compensation in the sum of £2,500 being the sum paid to the Respondents for managing the Property over the period of the lease in the sum of £71.28 per month, as well as an apology

and a full review of their management procedures and obligations to the Landlord.

3. A hearing in the above application took place on 8th November 2019 at 10am in the Glasgow Tribunal Centre. The Respondent attended in person but the Applicant had advised she was not able to attend in person and requested the hearing proceed in her absence with the Tribunal considering all the written evidence the Applicant had presented.
4. The Tribunal made a determination on the day of the Hearing advising that it did not uphold any breach of paragraphs 21,73,74,90,102 and 104 for the reasons set out in the decision. The Tribunal however did uphold that there was a breach of Section 2 Rule 17 of the Code of Conduct in that the Tribunal accepted that comments by the Respondent during the check-out process in relation to the missing items from the dinner set did constitute a breach of Section rule 17 of the Code in that this comment was not in keeping with being fair to the Landlord and caused the Landlord distress. This was based on the Respondent saying in response to a claim by the Applicant that she noticed a missing dinner set "you don't want to claim for that, do you? You can buy a dinner set from home bargains for £12.99"."
5. On November the Tribunal issued its statement of decision with reasons. In relation to the claim regarding the missing dinner plates the Tribunal found

"that comments in relation to the missing items from the dinner set do constitute a breach of Section rule 17 of the Code in that this comment is not in keeping with being fair to the Landlord and caused the Landlord distress."

The Tribunal then decided that the Respondent should provide a written apology to the Applicant for her comments .The Tribunal considered this appropriate to rectify the failure and that no monetary compensation or review of procedures is required.

6. By e-mail dated 11th November 2019, the Respondent applied to the Tribunal for review of the decision.

The Respondents has asked for a review on the following ground:-

7. The Respondent in her e-mail of 11th November states "I thought I had apologised for an insensitive comment I made to the landlord regarding the dinner plates I thought I had apologised but at the time I could not locate the apology in the mass of documents relating to this case. The Legal Member informed me that the Tribunal would therefore be issuing an enforcement notice directing me to apologise to the Landlord for this comment. However I have now had another look at the documents as I was fairly sure I had apologised and note that on page 6 of my letter to Mrs Smith dated 21st August I have indeed apologised for my insensitive comment" the

Respondent goes on to enclose a copy of the relevant page and asked that this be brought to the Tribunal for their attention.

8. The letter of 21st August from the Respondent to the Applicant contains the following on page 6 *"Regarding the dinner plate comment I apologise if this upset you however I was taken aback at the level of your surprise and anger at 4 or 5 ikea plates being missing especially as you had rented the property out for more than five years to a family of four for the last three years."*
9. Rule 39 states that

(1) The First Tier Tribunal may either at its own instance or at the request of a party review a decision, made by it .where it is in the interests of justice to do so.
(2) An application for review under Section 43 (2) (b) of the Tribunal's Act must
a) be made in writing and copied to the other parties
b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties and
c) set out why a review of the decision is necessary

(3) If the First Tier Tribunal considers the application is wholly without merit the First Tier Tribunal must refuse the application and inform the parties of the reason for the refusal.
(4) Except where paragraph 3 applies the First Tier tribunal must notify the parties in writing –
a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and
b) may at the discretion of the First Tier Tribunal set out the First Tier Tribunal's provisional views on the application.
(5) In accordance with rule 18 the decision may be reviewed without a hearing
(6) where practicable the review must be undertaken by one or more members of the First Tier Tribunal who made the decision to which the review relates.

The request for a review having been made on 11th November is timeous and therefore competent and the Tribunal has considered it in terms of Rule 39.

The Tribunal wrote to the parties on 26th November intimating their provisional decision after the hearing on 8th November and also acknowledging that a request for a review had been received in writing by the Respondent on 11th November asking the Tribunal to review their decision about the requirement of an apology because the Respondent advised she had made a written apology to the Applicant in her letter of 21st August.

The Tribunal sought in terms of Rule 39 both parties views on the request for a review within 14 days and if the parties were content that the Tribunal review the decision without a hearing.

Neither party has asked for hearing to consider the review and so the Tribunal has considered the review on the basis of the written representations**.**

The Applicant responded to the Tribunal's request for comments by advising that she is not happy with the apology made in the letter of 21st August. She advised that she felt the response to the Tribunal was equally insensitive and the original apology in the Respondents letter of 21st August "not so much an apology more an accusation of being mean and unreasonable. The Applicant wishes a written apology and feels this is the least Ms Rhodes can do." In further correspondence the Applicant makes it clear she does not regard the Respondents response as adequate or a proper apology.

The Applicant goes on to mention that she did not realise the sum of £42 was for compensation and not for rent but as this does not relate to the matter being reviewed and appears to be a comment, the Tribunal has not considered this part of the Applicant's response.

REASONS FOR DECISION

1. The Tribunal is satisfied that the Respondent has made an apology for her remarks to the Applicant in her letter of 21st August and that as this was the remedy that the Tribunal had agreed was appropriate, it is appropriate for the Tribunal to consider whether the apology is sufficient.. The Tribunal has carefully considered both the Respondent's and the Applicant's submissions and unanimously agreed that if this apology had been drawn to the Tribunal's attention on the day of the hearing, the Tribunal would have been satisfied that a sufficient apology had been made.

2. The Code states the letting agent needs to be fair to both landlord and tenant. The Respondent advised at the hearing that she was advising the Applicant, as landlord, of her view of the potential claim, she has agreed it was made in a way that was not entirely appropriate and has apologised for any distress this has afforded the Applicant. The Applicant submits this is not sufficient and wishes a more fulsome apology but the Tribunal feels taking the whole context into account, that the Respondent was raising an issue she felt was appropriate and was trying to be fair to both landlord and tenant in raising this with the Landlord. She has apologised for any distress caused and so the Tribunal agrees that any breach has therefore been remedied.

3. Given an apology has been made to the Applicant then it is appropriate and in the interests of justice that the Tribunal reviews its decision and confirm that the decision should be revised to confirm that there is no breach of the Code

and no requirement for a letting agent order in the form of an additional apology.

Jan Todd

Chairing Legal Member of the Tribunal
Dated: 17 December 2019