Decision with Statement of Reasons of the First-tier Tribunal for Scotland Housing and Property Chamber under Section 48(6) of the Housing (Scotland) Act 2014 and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No 328)) ("the Procedure Rules") Rule 95

Chamber File Reference number: FTS/HPC/LA/19/0777

Parties:

Mr Alan Henderson, 1 Hamilton Terrace, Edinburgh, EH15 1 NB (Applicant)

Mr Ross Young, Belvoir Edinburgh, 28-28A Dundas Street, Edinburgh, EH3 6JN (Respondent)

Tribunal Members: Alison Kelly (Legal Member) and Linda Reid (Ordinary Member)

Background

On 11th March 2019 the Applicant lodged an application with the Tribunal seeking to enforce the Letting Agent Code of Practice against Mr Ross Young, Belvoir Edinburgh, 28-28A Dundas Street, Edinburgh, EH3 6JN.

In his application the Applicant alleged breaches of paragraphs 17, 21, 24, 68, 69, 70, 71, 74, 90 and 91 of the Code of Practice.

He alleged that he had suffered loss in the amount of £3,887.24, being the cost of redecoration, recarpeting, cleaning and repairs and one month's rental on the property while it was being cleaned, decorated and repaired.

He sought payment to them of this sum.

The Applicant had served a Letting Agent Code of Practice Notification letter on the Respondent on 4th March 2019 by email. The Respondents acknowledged receipt on 6th March 2019.

Lodged with the Application were:

1. Inventory purported to relate to when the tenants moved in to the property
2. Routine inspection report by Belvoir dated 1st October 2018

3. Email string regarding recarpeting including quote
4. Email string regarding redecoration including quote
5. Safe Deposits Scotland report of adjudication reference DAN391023
6. Email string ending 20th February 2019 with Rebecca McKellar, Belvoir
7. Email string ending 27th February 2019 with Ross Young, Belvoir

The Respondents lodged a Response Form on 3rd May 2019 seeking proof from the Applicant "of being advised of inspections that we said were carried out when he states that they were not". It also made reference to the condition of the property at the start of the tenancy, taken from the Inventory lodged by the Applicant as Production 1.

Hearing

The Applicant appeared personally at the hearing. The Respondent was represented by Lorraine Doig, who held the position of Maintenance and Compliance Manager. She explained that the respondents were a branch of a franchised business. The franchised holder was Andrew Jack. Ross Young was the General Manager.

The Chairperson introduced herself and the ordinary Member, and explained that although the Hearing was less formal than a Court Hearing, it was still a judicial process. She asked that the parties did not speak over each other, and that all questions and comments were addressed through the Chair. She asked that if there was anything either party did not understand then they should feel able to ask for clarification. She also reminded the parties that the Tribunal only had jurisdiction to deal with any breaches of the Code which were alleged to have occurred after 31st January 2018.

The Chairperson explained that there were some questions that the Tribunal members wished to ask at the outset in order to clarify some factual matters.

It was thereafter clarified and accepted by both parties that the Applicant had owned the property since around 2004/2005; that at the time the tenants took the lease of the property, in or around 2013, the Letting Agents were Ryden; that Ryden's business transferred to Belvoir around three years ago and that the management of the Applicant's property portfolio moved to Belvoir; that the deposit was £800; that a property inspection was carried out by the Respondents' employee, Deirdre Henderson, on 1st October 2018; that Deirdre Henderson was the Applicant's wife and was employed as Property Manager at Belvoir until 17th October 2018 when she moved to work at D & J Alexander; and that the tenants vacated the property on 16th October 2018.

The Applicant was then asked to present his application to the Tribunal. He said that when Ryden's business transferred to Belvoir that was on the same terms and conditions and fees. He did not have a copy of Ryden's terms and conditions. He did not receive any new terms and conditions or management agreement from Belvoir. His understanding was that inspections of let properties were carried out 3 or 4 times a year. His wife was a Sales Manager at Ryden, and transferred her employment to Belvoir. He said that when the tenants vacated the property the report said that it

was in a horrendous state. His wife was about to take a new position at D & J Alexander, who are also letting agents in Edinburgh, and she went to look at his properties to see what state they were in. The property portfolio was transferring to D & J Alexander with her. Mr Henderson accepted that the report dated 1st October 2018 had been prepared by his wife in her capacity as an employee of the Respondents.

The Respondents made a claim to Safe Deposit Scotland, who were the holders of the deposit in relation to making a deduction from the tenants' deposit to cover damages. This was subsequently rejected as no check out report had been submitted and the Scheme Adjudicator could not compare the state of the property at the commencement of the tenancy with the state of the property at the end. He made a complaint to Belvoir as he held them responsible for this. His understanding was that a member of Belvoir's staff should have been in attendance to check the tenants out, note damage and produce a report. This had always happened in the past with Belvoir, and was an accepted industry practice as far as he was concerned.

The Chairperson proposed, and it was accepted by the parties, that the best way to proceed with the Hearing was to ask the Applicant to address each paragraph of the Code he alleged had been breached in turn, and the Respondent could respond to each point in turn.

Section 2 - Overarching standards of practice

17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).

The Applicant said that he did not think that the Respondents had been honest in their dealings with him. He referred to his Production 6, which contained an email of 20th February 2019. In that email Rebecca McKellar had stated that

"I can confirm from the notes on our system that an inspection was carried out on 17.04.18 by Andrew Jack and I've attached photos of the reported maintenance taken at the time of the inspection. Any inspections carried out prior to this would have been recorded as a hand written document which we no longer have a record of."

The Applicant said that he'd met Andrew Jack recently, and Mr Jack said to him that he'd never been in any of the Applicant's properties. He also said that he had not received the photographs mentioned in the email, which could be evidenced by the fact that the email did not show that photos were attached.

The Applicant also referred to the email of 8th April 2019, which he had sent to the Respondents, and which he had timeously lodged with the tribunal. The email listed all the faults he'd found with the Respondents' reporting system in relation to his other properties. He said that he'd submitted it as it suggested that there was a trend at the Respondents' office.

Miss Doig responded by saying that if there is an email trail the fact that attachments are on an email is not shown. Mr Henderson never said at the time that photos were not attached, and therefore it could be assumed that they had been. She said that if photos from a report had been attached then there must have been a report.

21. **You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.**

The Applicant said that, having looked again at his application, and accepting that the Tribunal only had jurisdiction from 31st January 2018, said that he was only directing this paragraph to the lack of inspections and reports carried out by the Respondents since that date. He said that his agreement with Ryden was that they would carry out 3 to 4 inspections per annum. He had not been notified of any change to that, so assumed that Belvoir would continue in the same way.

Miss Doig said that the Respondents' procedure was to carry out an inspection 3 months after a tenant took entry and yearly thereafter. This would be stated in the terms of business. She was not sure why no one had been able to produce a copy of it. However she then went on to say, when asked, that she was unsure of what a new landlord coming to Belvoir could expect. She did not know what the current terms of business were, but thought inspections might be quarterly. She said that she had spoken to Mr Young before she attended the Hearing, and he said that inspections had been carried out in January 2018 and April 2018. She produced an email dated 1st October 2018, which she said had been sent to the tenants regarding check out. She said that the email said that Deirdre would be in touch with the tenants regarding check out. She was asked by the Chairperson to explain why the email had not been produced before the Hearing, but she could not answer. Miss Doig seemed ill prepared for the Hearing, and it appeared to the tribunal that she was not the appropriate member of staff to be representing the Respondents.

The Applicant was shown the email and said that it appeared to be a standard email sent to tenants prior to check out.

24. **You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code's requirements.**

The Applicant said that he was addressing his complaint under this paragraph to the fact that records had not been kept as the inspections had not actually been carried out. He referred again to the email of 20th February 2019 in which Rebecca McKellar had said a report had been completed, but had not produced a copy. He accepted that the preparation of the initial inventory was not relevant as it predated the date when the Tribunal gained jurisdiction.

Miss Doig responded by saying that inspections had been carried out on 9th January, 17th April and 1st October 2018, but she did accept that there only seemed to be a written report for the inspection on 1st October 2018.

Section 4 – Lettings

68. If you are responsible for managing the check-in process, you must produce an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example marks on walls, carpets other fixtures) unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct.
69. If the tenant is not present for the making of the inventory, you should ask them to check it and to raise, in writing, any changes or additions within a specific reasonable timescale. Once agreed, the inventory should be signed and returned.
70. You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant does not, you must inform them, in writing, that you will nevertheless regard it as correct.
71. You must provide the tenant with a signed copy of the inventory for their records.

The Applicant said that he would withdraw his complaints in relation to these paragraphs as all the actings predated the Tribunal gaining jurisdiction.

Section 5 – Management and Maintenance

74. If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).

The Applicant highlighted the lack of inspections. His point was that if the inspections had taken place they would have highlighted repair issues, and these could have been dealt with at the time, thereby preventing the issues from becoming bigger issues taking more time and money to repair.

Miss Doig responded by saying that the issues that the Applicant was complaining about and claiming for were all apparent as the beginning of the tenancy, as evidenced by the Inventory lodged by the Applicant. She said that they were also the result of wear and tear. Miss Doig said that the tenants had made comments on the Inventory at the outset of the tenancy and she claimed that there were noted on the Inventory. However, after a thorough search of the Inventory by both Miss Doig and the Tribunal members, no such comments could be located.

The Applicant looked at the colour photographs which had been produced at the Hearing by Miss Doig and made reference to how some parts of the property were now in a much worse condition. He reiterated that if regular inspections had been carried out it would have saved on repair costs.

90. **Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.**

91. **You must inform the tenant of the action you intend to take on the repair and its likely timescale.**

The Applicant addressed these paragraphs together. He said that it followed on from his previous comments that if inspections had been carried out repairs would have been identified and dealt with timeously.

Miss Doig said that routine maintenance issues had been raised by the tenants and had been dealt with. She produced what she said was a repair log. There was then some discussion about when a landlord required to be notified about a repair and when the Agent could proceed without prior authority.

The Chairperson decided to adjourn for a short time to discuss the repair log with the Ordinary Member. After the Adjournment the Chairperson told the parties that the Tribunal considered the repair log to be irrelevant as the Applicant was not complaining that the Respondents did not respond to repairs reported by the tenants timeously, but was complaining on the basis that the Respondents could not carry out repairs as, due to lack of inspection, they did not know of any.

The Applicant was asked if he had anything further which he wished to put forward. He said that Miss Doig had raised a point earlier that access to the property could be an issue. He felt it was part of the management agreement that the Letting Agents hold keys for the property, and if they give the tenant prior notice they can enter.

Miss Doig responded by saying that it is not as simple as that; the tenants have the right to be present and there are proper procedures to be followed. She also said that in relation to the Applicants' claim for a month's rent, work needed done to the property and it was unrealistic to think that this could be done quickly. She added that given the length of the tenancy, wear and tear and the condition of the property at the start of the tenancy, the carpets and paintwork would normally be replaced/redecorated and it was unrealistic to expect the property to be let on the day vacated; there has to be a 3 day period for the outgoing tenant to repond regarding the deposit and then works can be instructed, normally 10-14 days. She said that Belvoir accepted that some repairs should have been dealt with and they were willing to pay for replacing duplicate keys, repairs to the toilet seat and shower door and repairs to the curtain rail ands freezer door, and to the washing machine. The Chairperson clarified that this amounted to £249.64.

The Applicant said that he should be able to turn a property around within a few days. He said that whatever needed to be done at the end of the tenancy depended on how the tenant had treated the property, how it had been maintained and market conditions.

Findings In Fact

The Letting Agent Code of Practice came in to force on 31st January 2018. All of the behaviour complained of by the Applicants occurred after that date and therefore falls within the Code. The following facts were found:

1. The Applicant had owned the property since around 2004/2005;
2. That at the time the tenants took the lease of the property, in or around 2013, the Letting Agents were Ryden;
3. That Ryden completed an Inventory of the condition of the property when the tenants took entry;
4. That Ryden's business transferred to Belvoir around three years ago and that the management of the Applicant's property portfolio moved to Belvoir;
5. That the deposit was £800;
6. That a property inspection was carried out by the Respondents' employee, Deirdre Henderson, on 1st October 2018;
7. That the tenants vacated the property on 16th October 2018.
8. That it was reasonable to expect a fair degree of wear and tear in a property after a tenancy of approximately 5 years' duration.

The Tribunal found as follows:

17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).

There was no breach of this paragraph. The Tribunal accepted that the Applicant was credible when he spoke of his conversation with Mr Jack, but there was not enough evidence to show that an inspection was not carried out on 17th April 2018. The tribunal did not feel that the Respondents had been deliberately dishonest or misleading. Their behaviour was not particularly professional, but it was not sufficient to establish that this paragraph of the Code was breached.

21. **You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.**

There was no breach of this paragraph. Again, while the Respondents have not been particularly professional the behaviour complained about does not fall within this paragraph.

24. **You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code's requirements.**

There is a breach of this paragraph. The Respondents appear to have a rather haphazard approach to record keeping, bourne out by the late submission of documents and the general unpreparedness of their submission to, and conduct of,

the hearing. There is an obligation on them to demonstrate how they have met the Code's requirements, and they have been unable to do so. They have been unable to produce documentation to confirm that inspections were carried out.

74. If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).

There is a breach of this paragraph. No records have been produced, apart from the report dated 1st October 2018, although it appears that inspections took place.

90. **Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.**

There has been no breach of this paragraph. There is no allegation that the tenants reported repairs issues that were not dealt with appropriately.

91. **You must inform the tenant of the action you intend to take on the repair and its likely timescale.**

There has been no breach of this paragraph. There is no allegation that the tenants reported repairs issues that were not dealt with appropriately.

Decision

The Tribunal found that the Respondent had breached paragraphs 24 and 74 of the Letting Agent Code of Practice.

The Respondents accepted that they should pay the Applicant the sum of £249.64. The Tribunal considered that, if Safe Deposits Scotland had been able to consider the claim it is unlikely that they would have returned the entire deposit to the Applicant given that it is reasonable to expect a fair degree of wear and tear in a tenancy of that duration. The deposit amounted to £800, but the Applicant was seeking well in excess of that in relation to redecoration, recarpeting and cleaning. He would never have been able to recover this sum from the deposit scheme. The tenancy agreement has not been lodged so it is impossible to see what the tenants' obligation was in relation to repair and redecoration. The Tribunal are prepared to award £200 in addition to the sum of £249.64 for the losses sustained by the Applicant. The Tribunal do not accept that the Applicant sustained loss of rent as a result of the failings of the Respondents.

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.

A Kelly

Legal Member of the Tribunal
Dated: 19th May 2019