

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/19/4067**

**75e Rosemount Place, Aberdeen, AB25 2XL (“the Property”)**

**The Parties:-**

**Mr Gordon Campbell, 9 Richmond Terrace, Aberdeen, AB25 2RP (“the Applicant”) (now deceased)**

**Contempo Property, 127 Rosemount Place, Aberdeen, AB25 2YH (“the Letting Agent”)**

### **Tribunal Members**

Ms Helen Forbes (Legal Member)

Mrs Melanie Booth (Ordinary Member)

### **Decision**

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has not complied with paragraph 110 of the Code of Practice for Letting Agents (“the Code”) as required by the Housing (Scotland) Act 2014 (“the Act”) and issues a Letting Agent Enforcement Order (“LAEO”).

The decision is unanimous.

### **Background**

1. By application dated 17<sup>th</sup> December 2019, the Applicant applied to the Tribunal for a determination on whether the Letting Agent had failed to comply with sections 43, 46 and 110 of the Code. The Applicant also stated that there was ‘*Non-compliance with Lease Agreement*’, although no particular paragraph of the Code was referred to in this regard. The Applicant included notice to the Letting Agent dated 19<sup>th</sup> November 2019, and an undated letter setting out his complaint.

2. By decision dated 6<sup>th</sup> January 2020, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.
3. On 28<sup>th</sup> January 2020, the Applicant lodged written representations and productions, including copy tenancy agreement and copies of correspondence between himself and his MSP.
4. By email dated 30<sup>th</sup> January 2020, the Respondents lodged written representations and productions, including copy correspondence with the Applicant's MSP, correspondence from JOR Property, tenant notes, the tenancy agreement and written communication to the tenant re important information.
5. A hearing took place on 28<sup>th</sup> February 2020. The Letting Agent was in attendance. The Applicant was not in attendance. It was decided to continue to a further hearing set down for 22<sup>nd</sup> April 2020.
6. By letter dated 12<sup>th</sup> March 2020, the Executors of the Applicant's estate informed the Housing and Property Chamber that the Applicant had passed away on 24<sup>th</sup> February 2020.
7. The Tribunal considered matters in terms of Rule 31(3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017, as amended ("the Rules") and determined to continue to consider the application despite the death of the Applicant.
8. In terms of Rule 31, the Executors of the Applicant's estate were informed by email dated 16<sup>th</sup> March 2020 that they could apply to become a party to the application.
9. The hearing set down for 22<sup>nd</sup> April 2020 was postponed as part of the measures to manage the COVID-19 outbreak. A further hearing was set down for 25<sup>th</sup> September 2020.
10. By email dated 18<sup>th</sup> September 2020, the Executors of the Applicant's estate informed the Housing and Property Chamber that they did not wish to apply to become a party to the application.

## **Hearing**

11. A hearing took place by teleconference on 25<sup>th</sup> September 2020. Ms Judith Ritchie and Mr Douglas McBain were in attendance on behalf of the Letting Agent.

## **Preliminary Matters**

12. The Tribunal clarified that they would not be considering the alleged breach of paragraph 46 of the Code. The Applicant had referred to not being informed of

the nature of call-outs as his reason for considering that this paragraph had been breached. The Letting Agent had stated that this paragraph was not relevant as no call-out fees had been charged. This paragraph refers to the omission of information or evasion of questions from prospective tenants, and it did not appear to be the correct paragraph to use in relation to call-out fees imposed after the Applicant became a tenant. Furthermore, the brevity of the information provided by the Applicant in the application was not sufficient to explain his allegation of a breach of this paragraph.

13. The Tribunal clarified that it would not be considering the allegation of non-compliance with the lease agreement, as no notification had been given of the relevant paragraph of the Code allegedly breached, and no evidence or representations had been lodged to support the allegation.

### **Paragraph 43**

14. Paragraph 43 states: *You must give prospective tenants all relevant information about renting the property – for example, the type of tenancy; the rent; the deposit; other financial obligations such as council tax; any guarantor requirements and what pre-tenancy checks will be required at the outset.*

### **Applicant's Representations**

15. It was the position of the Applicant, as set out in the application and written representations, that the private residential tenancy commenced on 10<sup>th</sup> July 2017, and, prior to the commencement of the tenancy, he was told by the Letting Agent that a minor repair was required to a window, and that this would be sorted before he moved in. At the time of entry to the Property, he was told that the work was not yet complete. It was his position that he was not informed of the extent of the work required. The work took place from 19<sup>th</sup> August to 13<sup>th</sup> September 2019, causing him significant disruption. He stated that the Property had not been fit for purpose for a considerable period and he was seeking compensation for failure to provide appropriate accommodation during the stated period.

### **Letting Agent's Representations**

16. Ms Ritchie said that the Applicant had been told on a number of occasions before the tenancy commenced that all the windows were to be replaced in the Property. No timescale was given to the Applicant for the work to be carried out. At the time of commencement of the tenancy agreement, the Applicant was informed that the work had not been carried out and he said this was absolutely fine. He signed the tenancy agreement in advance of moving into the Property and could have pulled out at any time, but he did not. There was nothing on the Letting Agent's system to indicate that the Applicant had been told it was a minor repair. The Applicant then delayed matters by refusing access and threatening to call the police. The work ought to have been carried out in five days but it was prolonged due to the actions of the Applicant. Eventually, the landlord agreed to offer £75 in compensation, which would cover the rent for the five days. This offer was not taken up by the

Applicant. The work was complete on 30<sup>th</sup> August 2020, and 13<sup>th</sup> September 2020 was a snagging visit.

17. Responding to questions from the Tribunal, Ms Ritchie said the Applicant would arrive at the office of the Letting Agent without warning and there was no means to record every visit and what had been discussed. The Applicant had spoken to everyone in the office at some point. He would ask the same questions again, as if he had forgotten that matters had previously been discussed. Asked if the Applicant calling into the office had been viewed as inappropriate, Ms Ritchie said it had not. It was just difficult to pinpoint when, specifically, the Applicant was given information.
18. Mr McBain said that the Applicant viewed the Property in advance and he was well aware that the windows were to be replaced. Responding to questions from the Tribunal, Mr McBain conceded that he could not personally verify matters, as he had not been there on the day that the Applicant viewed the Property. However, he claimed that the Applicant would have been told about the replacement of the windows.

#### **Paragraph 110**

19. Paragraph 110 states: *You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.*

#### **Applicant's Representations**

20. The Applicant claimed he had not been informed of the full extent of different ways of seeking adjudication.

#### **Letting Agent's Representations**

21. Ms Ritchie said that, at no point, did the Applicant ask for a copy of the Code. If he had done so, it would have been provided to him. The Applicant took matters to his MSP and the MSP told him he could go to the Property Ombudsman. The Applicant did not make a complaint directly to the Letting Agent. Instead, he went through his MSP. He would have been given all the appropriate information if he had made a complaint to the Letting Agent.
22. Ms Ritchie said she believed the tenancy agreement mentioned the Code, thus bringing it to the attention of the Applicant. A short adjournment was granted to allow her to access the tenancy agreement and direct the Tribunal to where the Code was mentioned. Ms Ritchie was unable to direct the Tribunal to any mention of the Code within the tenancy agreement. Ms Ritchie pointed out that the easy read notes provided to the tenant, which had been lodged by the Letting Agent (production 5) mentions that the First-tier Tribunal for Scotland Housing and Property Chamber deals with disputes about tenancies.
23. Responding to questions from the Tribunal as to how tenants are made aware of the Code, as required by paragraph 110, Mr McBain said that tenancy

notes go out to tenants and he thought they referred to the Code as part of the complaints procedure. The Code would only be given on request.

24. Ms Ritchie pointed out that the Applicant was aware of the Code, citing that he made reference to specific paragraphs of the Code in his application.

25. Responding to questions from the Tribunal about the email of 14<sup>th</sup> September 2019 from the Letting Agent to the MSP (Letting Agent's production 1), whereby the Letting Agent's Rae McBain stated 'If you are unhappy with the decision you can go to the Property Ombudsman', providing a link to do so, Mr McBain said it was a typo and ought to refer Mr Campbell to the Property Ombudsman rather than referring the MSP to the Property Ombudsman.

### **Findings in Fact**

26.

- (i) The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 10<sup>th</sup> July 2019 and ended on 13<sup>th</sup> November 2019.
- (ii) Prior to the commencement of the tenancy, the Applicant was told that work was required to one or more windows in the Property and it would be completed before he took up residence.
- (iii) At the time of taking up residence, the Applicant was told that the work required had not yet been carried out.
- (iv) The windows in the Property were replaced, with the work commencing on 19<sup>th</sup> August 2019.
- (v) The work was passed as complete on 13<sup>th</sup> September 2019.
- (vi) The Applicant complained to his MSP by undated letter that he had been significantly disrupted by the work and that the Property had not been fit for purpose for a considerable period.
- (vii) The Applicant wrote further letters to the MSP on 14<sup>th</sup> and 25<sup>th</sup> September 2019.
- (viii) The MSP contacted the Letting Agent at some time prior to 14<sup>th</sup> September 2019.
- (ix) By email dated 14<sup>th</sup> September 2019, the Letting Agent informed the MSP that matters could be taken to the Property Ombudsman.
- (x) There was further correspondence between the MSP and the Letting Agent by emails dated 19<sup>th</sup> September and 21<sup>st</sup> October 2019.
- (xi) The Letting Agent did not make the Applicant aware of the Code.

### **Determination and Reasons for Decision**

27. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

### **Failure to comply with paragraph 43 of the Code**

28. In the absence of further evidence from the Applicant, and any records of conversations from the Letting Agent, the Tribunal was unable to ascertain exactly what was said to the Applicant regarding the work to be carried out.

Consequently, the Tribunal did not make a finding that this paragraph had been breached.

### **Failure to comply with paragraph 110 of the Code**

29. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code, by failing to make the Applicant aware of the existence of the Code. Whether or not a tenant requests a copy of the Code, the paragraph is clear that landlords and tenants must be made aware of the Code.

### **Observations**

30. The Tribunal made an observation that it would have been appropriate for the Letting Agent to have kept records of conversations with the Applicant, particularly given that he visited the office often and spoke to several different members of staff. Furthermore, it was noted that he appeared to have forgotten previous conversations, so a record of these conversations would have been helpful.
31. The Tribunal observed an unfortunate degree of defensiveness in the attitude of the representatives of the Letting Agent towards the Tribunal, and a failure to appreciate the importance of the Code and the necessity to make it available to tenants.

### **Proposed Letting Agent Enforcement Order (“LAEO”)**

32. Having determined that the Letting Agent has failed to comply with the Code, the Tribunal must make a LAEO. The Tribunal is required by section 48(7) of the Act to require the Letting Agent to take such steps as it considers necessary to rectify the failure. Section 48(8) provides that payment of compensation may be made by the letting agent to the Applicant as the Tribunal considers appropriate for any loss suffered by the Applicant as a result of the failure to comply with the Code.
33. The Tribunal determined to make an LAEO as follows:
- “The Letting Agent must change their procedures to ensure that all tenants are made aware of the Code prior to, or at the time of, commencement of a tenancy. The Letting Agent must confirm the change in procedure to the Tribunal by providing documentary evidence within 21 days of the issue of this Order.”
34. The Tribunal did not have enough evidence before it to determine whether the Applicant suffered any loss as result of the failure to comply with the Code, therefore, no order for payment of compensation was made.

## **Right of Appeal**

35. 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.

25<sup>th</sup> September 2020