



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

Chamber Ref: FTS/HPC/LA/2350

**Re: 5D Northburn Avenue, Airdrie, ML6 6PY
("the First House")
1/2, 170 Duror Street, Glasgow, G32 1NA
("the Second House")
2/1, 6 Ratho Drive, Glasgow, G32 1NA
("the Third House")
1/2, 14 Memel Street, Glasgow, G21 1LL
("the Fourth House")
(collectively "the Houses")**

Parties:

**Fiona Mairi Taylor, 57F Drumbathie Mansions, Drumbathie Road, Airdrie, ML6
6EW
("the Applicant")**

**CPM Glasgow Ltd, 180 Drumoyne Road, Glasgow, G51 4DX
("the Letting Agent")**

Tribunal Members:

**Joel Conn (Legal Member)
Leslie Forrest (Ordinary Member)**

Decision (further to written submissions)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

Background

1. This is an application by the Applicant to enforce the Letting Agent Code of Practice ("the Code") in terms of rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"). The application was in regard to paragraphs of

Sections 5, 7 and 8 of the Code referred to in previous Decisions. The Applicant employed the Letting Agent in regard to the Houses.

2. The application was dated 25 July 2019 and lodged with the Tribunal on 26 July 2019. The application was accompanied with various emails as well as a Notification Letter dated 25 July 2019 to the Letting Agent setting out the paragraphs of the Code relied upon. In short, the Applicant complained that no rent had not been received for some time in regard to the Second, Third and Fourth Houses and that there was a small shortfall in rent received as well as issues with the deposit, access, and management of the First House.
3. The procedural history of the application up to the third Hearing of 22 September 2020 can be found in our Decision dated 23 September 2020. Since that time, we have attended to matters solely by written submissions. This Decision relates to the final issues of whether an award of compensation should be made in terms of section 48(8)(b) of the 2014 Act (and, if so, in what amount) and whether we hold the Letting Agent to have failed to comply with the second Letting Agent Enforcement Order dated on 23 September 2020 (the “second LAEO”) and, if so, notify the Scottish Ministers.
4. The matters within the second LAEO were that the Letting Agent was to

in respect of the failure to comply with paragraph 118:

- a. Provide evidence that it complies, and its client accounts comply, with the requirements of paragraphs 121, 122 and 126 of the Letting Agent Code of Practice, which, without prejudice to the foregoing generality, shall include:
 - i. correspondence from its bank confirming the adequacy of the client account(s) held by the Letting Agent in the above regard;
 - ii. correspondence or bank statements from such a bank giving the bank account numbers of such account(s);
 - iii. evidence that funds collected on behalf of the Applicant is held in such account(s); and
 - iv. evidence of any client money protection insurance policy held by you covering the periods from December 2018 until February 2020;

in respect of the failure to comply with paragraph 125:

- b. Provide an accounting to the Applicant in regard to any rental payment received in regard to the Third House for December 2018, and remits to the Applicant any balance due; and
- c. Provide an accounting to the Applicant in regard to any rental payment received in regard to the Third House for February 2020, and remits to the Applicant any balance due;

The further written submissions

5. The Applicant provided an email with vouching and submissions on her claim for compensation on 14 October 2020. These comprised invoices totalling £1,923.90 for the works she carried out to the First House (such work being further, she held, to the Letting Agent failing to undertake the work that it had undertaken to do at the second Hearing in this application); and evidence on two missing rental payments, each of £500, that she believed had been remitted by landlords to the Letting Agent and not passed on to her. The Applicant made no further submissions on the level of compensation, asking for the Tribunal to make its own decision on the matter.
6. On 13 November 2020, the Applicant provided a signed form confirming that she held the actions required by the second LAEO had not been complied with.
7. There have been no submissions or contact from the Letting Agent since the second Hearing. All investigations by the Applicant suggested that the Letting Agent had ceased to trade by Spring 2020. Recent correspondence by the Tribunal to the registered office and all contact addresses and email addresses has either 'bounced back' or not been responded to. The Tribunal Member's own checks of the Companies House website shows that the Letting Agent was dissolved as a company on 6 October 2020, shortly after it would have received service of the second LAEO (but before the period for compliance would have expired).
8. The Tribunal has re-reviewed all papers remotely and its members have consulted between them in a similar remote fashion before issuing this Decision without a further Hearing. The Tribunal issues this Decision further to Procedure Rule 18 and in consideration of the overriding objective in Procedure Rule 2. The Tribunal has determined that, in consideration of the procedural history of the case, the public health situation and the limitations it places, and the evidence not actively disputed, that it is able to make sufficient findings to determine the case, and to do so will not be contrary to the interests of the parties.
9. No motion has yet been made by any party for an order in respect of expenses.

Findings in Fact

10. The Tribunal adopts the Findings in Fact made in the Decisions of 9 November 2019 and 23 September 2020 unchanged.
11. The Letting Agent was letting agent for the Applicant in regard to the Second House between December 2018 and March 2020.
12. A rent payment by the tenant of the Second House of £500 was due to be paid to the Letting Agent in or around December 2018 and no such payment was thereafter remitted onto the Applicant.

13. A rent payment by the tenant of the Second House of £500 was made to the Letting Agent in or around March 2020 and not remitted onto the Applicant.
14. The Letting Agent failed to communicate properly with the Applicant in regard to the said rent payments of December 2018 and March 2020.
15. The Letting Agent failed to account to the Applicant in regard to the said rent payments of December 2018 and March 2020.
16. The Letting Agent undertook to the Applicant to conduct repairs and decoration works at the First House at the Tribunal's Hearing of 9 December 2019 (referred to as "The Works" in the Note of that Hearing).
17. The Letting Agent failed to carry out The Works in full.
18. The Applicant has instructed contractors to undertake the remaining items of The Works herself. In doing so, she has incurred costs of: £1,586.34 to a contractor ("A Man About the House") and £337.56 in materials from various suppliers.
19. The Letting Agent has failed to comply with the terms of the Second LAEO.

Reasons for Decision

20. In regard to the referral to the Scottish Ministers regarding the Second LAEO, we are satisfied that there has been no compliance. We are not surprised by this, as we do not think the Letting Agent has been trading for any part of the compliance period and was dissolved by the end of it. Nonetheless, the terms of the 2014 Act are mandatory and, for what it is worth, we instruct the Tribunal's Clerk to notify the Scottish Ministers of the failure of the Letting Agent to comply with the Second LAEO, providing the Scottish Ministers with a copy of the Second LAEO and, to place it in context, our Decision of 23 September 2020 and a copy of this Decision.
21. We would wish to add that such a referral in these circumstances seems nugatory. We do not believe that the Letting Agent was ever registered (as registration, if ever applied for, may still have been pending when it ceased to trade). Further, the Letting Agent is a corporate entity. It succeeds or fails on the back of its employees, and particularly its managers and directors, but it is far from clear to the Tribunal Members whether the failure to comply with an LAEO is noted against such individuals in the event that they seek to be involved with another letting agency in future. Nonetheless we note that the sole director during the period of this application was Carol-Ann Marie Doyle but even she resigned on 30 January 2020, leaving the Letting Agent without a director (yet still, apparently, trading and at least receiving in rent payments for a few further months). The two previous Decisions detail the involvement of Colin Watt, who was a director of a previous company of similar name to the Letting Agent and who described himself as a "consultant" for the Letting Agent. It is not relevant to us (or possible for us) to consider at detail whether his

actions ever amounted to those of a shadow director of the Letting Agent. Nonetheless, insofar as the Scottish Ministers' consideration of this referral goes beyond simply considering the now-dissolved company, we bring to the Scottish Ministers attention that we think the conduct of Ms Doyle and Mr Watt merits further investigation.

22. In regard to compensation, the Applicant sought recompense on the missing rent payments for the Second House and the work she carried out to the First House:
 - a) On rent, due to Serco not providing a clear response to the Applicant, we were presented with a difficulty in determining that the payment of December 2018 was made by Serco to the Letting Agent for rent for the Second House. The Applicant did have clear evidence of a payment by Mears to the Letting Agent for the March 2020. In any case, the level of communication and accounting by the Letting Agent was woeful in general (as detailed in our previous Decisions and the Note for the second Hearing). It took significant work by the Applicant, with some belated input from Ms Doyle at an early stage of the application, to eventually narrow missing payments down to only these two. We think it appropriate that an award of compensation of £1,000 is appropriate against the Letting Agent in regard to the missing payments. This is a compensation payment, so our calculation of this sum is to take the missing rent payments gross (that is not net of any contractual deductions for the Letting Agent's services) and regardless of whether or not the December 2018 payment was actually received by the Letting Agent.
 - b) The Works were tangentially related to breaches of the Code. The Applicant held that there had been a lack of inspections at the First House resulting in it being left in a state that required a moderate amount of dilapidations works. The Letting Agent, as a proposed resolution, positively agreed to The Works at the second Hearing. We held off referral of the failure to comply with the First LAEO awaiting, amongst other things, the completion of The Works. We were satisfied by the Applicant's evidence that The Works were not completed but this raised the issue, once more, of their relevance to our considerations. We do not make a formal determination that the need for The Works arose due to breaches of the Code. We do, however, determine that there have been many breaches of the Code, failure to comply with two LAEOs, and an undertaking to the Applicant, made before the Tribunal, to do The Works and this undertaking was then broken. The Applicant has suffered significant inconvenience and has provided a clear quantification of the costs of her completing The Works that totals £1,923.90. She clearly wishes a payment to be ordered in that amount and we think it reasonable to award that amount as a further compensatory payment for the breaches in general.
23. In the circumstances, we will issue an order against the Letting Agent to make payment of compensation of £2,923.90.

24. We regret that, due to the delays in reaching the conclusion to this application - caused by the current public health situation and the procedure that the 2014 Act requires us to advance through, but principally the failures of the Letting Agent - this order for compensation will likely never be enforced, let alone recovered, by the Applicant. The Code and the 2014 Act provide a customer of a letting agency meaningful remedies before this Tribunal but any award of compensation comes at the end of the process. A landlord may have other contractual remedies against their letting agent that can proceed in court simultaneously or alternatively. These may progress more swiftly to an enforceable judgment and we suspect that would have been the case here. This is not to say denigrate the usefulness of remedies before this Tribunal or its procedure but to point out that other remedies may be as or more suitable in certain cases and this may be one such case.

Decision

25. The Tribunal refers to the Scottish Ministers the Letting Agent's failure to comply with the terms of the Second LAEO.
26. The Tribunal orders the Letting Agent to make payment of compensation in the amount of £2,923.90 to the Applicant.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

1 December 2020

Legal Member/Chair

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Date