



**First-tier Tribunal for Scotland (Housing and Property Chamber)
Decision and statement of reasons under Section 48 of the Housing (Scotland)
Act 2014.**

Reference number: FTS/HPC/LA/0211

Re: Property at Newmiln North Cottage, Guildtown Perth PH2 6AE (“the Property”)

Parties:

Mr Keith Legg, Mrs Kerry Legg (“the Applicants”)

Belvoir Perth (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Robert Buchan (Ordinary Member)

1.Outcome

The tribunal decided that the Respondent has breached paragraphs 26,73,85,102 and 108 of the Letting Agent Code of Practice and the tribunal issued a Letting Agent Enforcement Order which should be read with this decision.

2.This was a hearing in connection with an application in terms of rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017, ‘the rules’ and s48 of the Housing (Scotland) Act 2014, ‘the Act’. The first named Applicant Mr Keith Legg attended the hearing. Mr Legg was appearing on behalf of both himself and his wife Mrs Kerry Legg. Mr Legg will be referred to as ‘the Applicant’ for ease of reference. The Respondent was represented by Ms Aimi Lewis, Branch Manager of Belvoir Perth. A case management discussion (‘CMD’) took place on 11 May 2023. The Respondent did not attend the CMD and was not represented. The tribunal made the following directions:

The Applicant is required to provide:

- (1) A copy of the tenancy agreement between him and the outgoing tenant of the property.**
- (2) A copy of any documentation relating to the increase in the monthly rent from £750 to £825.**
- (3) A calculation in connection with the management fees he is seeking to recover from the respondent.**
- (4) A calculation in connection with the rent claimed from 15 September 2022 to 31 December 2022.**
- (5) Vouchers for any losses claimed in relation to the property for repairs, cleaning, gardening.**
- (6) Details of the deposit for the property and any vouchers that were submitted in connection with the claim to recover the deposit.**
- (7) A table with all of the sums the Applicant is seeking for each head of claim.**
- (8) Any other documents he has to substantiate his position.**
- (9) A list of witnesses who will be giving evidence at the hearing.**

The Respondent is required to provide:

- (1) A copy of the check in report for the property from 2015.**
- (2) A copy of the check out report for the property from 2022.**
- (3) A copy of the interim inspection report from November 2021.**
- (4) A copy of their current terms of business and complaints procedure.**

The said documentation should be lodged with the Chamber no later than close of business on 5 June 2023.

Preliminary matters

3. The Applicant had complied with the directions. He had lodged a copy of the tenancy agreement and his calculations regarding loss of tenancy income and the position of the management fee he was claiming. The Applicant explained that he was unable to produce vouching for all of the items he was claiming for as due to extensive damage to the property caused by a burst pipe on January 2023, some of the planned works had not gone ahead.

4. The Applicant explained that he is making an insurance claim for the damage to the property. That claim was hindered by the failure of the Respondent to confirm the date of the tenant's departure from the property however that had now been established with the assistance of the council tax records. Mr Legg was hopeful that the insurance claim would proceed and he was not including matters relating to the burst pipe with this claim.

5. Ms Lewis confirmed that the directions from the tribunal had not been complied with. She did not provide an explanation for this failure, beyond stating that she had attempted to send a copy of the check out report on 24 August 2023 but this was a

zipped file and had been rejected by the tribunal chamber. Ms Lewis stated that the check out report had been prepared on 16 September 2022. Ms Lewis eventually sent the Applicant a copy of the report during the course of the hearing.

6. The tribunal considered how best to proceed in the absence of the documents requested in the direction. Mr Legg did not seek an adjournment and wanted to proceed in the available evidence. In accordance with the overriding objective the tribunal proceeded with the hearing.

7. The tribunal noted that the Applicant had lodged documentation confirming the deposit of £1200 had been returned in December 2022. The tribunal wanted to check that there was no 'double accounting' in relation to the deposit. There was no adjudication regarding the deposit and according to Ms Lewis it was returned to the Applicant with no argument from the tenant. The Applicant's position was that the cleaning and re-decoration of the property was around £1200 and he was prepared to withdraw those two heads of claim on the basis that they were covered by his deposit.

8. The Tribunal had before it the documents lodged before the CMD namely:

- Application dated 24 January 2023.
- Notification letter dated 24 January 2023.
- Terms of Business between Belvoir and the Applicants.
- First Inventory of Productions for the Applicants.
- List of emails.

9. In addition the tribunal had the Applicant's letters of 17 July 2023 and 26 July 2023 together with

- Tenancy agreement
- Table of damages
- Email re rent increase dated 10 February 2022
- Letter re council tax surcharge dated 18 July 2023
- Management fee calculation
- Rent calculation
- Landlord statement (repayment of deposit) 23 December 2022.

Heads of claim

10. The Applicant was seeking the following:

£1300.94 refund of management fees
£2842.96 loss of rent
£1464.77 to replace tables and beds
£65 to sweep chimney
£77.58 council tax surcharge
£140 to clean cooker
£310 to cover additional items including labour.

The Applicant's position:

11. The Applicant lives in Malaysia and he moved there from China in August 2022. The Applicant was therefore unable to manage the property and left matters in the hands of the Respondent with the help of his elderly parents. The Applicant was happy with the service provided by the Respondent until around April 2022. Things began to go wrong around July 2022 when the Applicant was told that the tenant intended to leave the property. The Applicant wished to have a new tenant in the property as quickly as possible to ensure that rent was being paid. He was aware that some redecoration would be required. It took several weeks for a painter to be organised and the Respondent did not respond to multiple emails sent both before and after the tenants left the property on 15 September 2022. It later transpired that the interim inspection due around April / May 2022 did not take place and the gas safety inspection due around April 2022 did not take place. The Applicant was not provided with a check out report despite repeated requests to obtain a copy. When the Applicant's parents visited the property on 25 October 2022 the full extent of the condition became clear. The property was dirty, there was a lot of rubbish and furniture belonging to the tenant left in the property and once these items were removed it was clear that carpets required to be replaced. The Respondent did not take any steps to remarket the property and vital time and rental income was lost. The Applicant made reference to a catalogue of unanswered emails which he had lodged with his application between 8 July 2022 and culminating in his pre-action letter of 8 January 2023 and subsequent application to the tribunal.

12. The Applicant received a surcharge for the council tax for the property. He has spoken to the council, and they told him that several letters addressed to him and his wife were sent care of the Respondent. As no response was received the matter was passed to sheriff officers who made a surcharge of £77.58.

13. The Applicant's view is that if an interim inspection had taken place in April or May 2022 the damaged garden furniture could have been replaced and the internal damage could have been identified.

14. The Applicant is also of the view that the tenancy agreement should have been re-executed in Ms Hampton's name as the tenant Mr Smith had moved out of the property some time before.

15. The Applicant feels let down by the Respondent. Due to their failure to market and expedite matters after the tenant moved out, he has lost rental income and had inconvenience and upset. Unfortunately, the property had a burst pipe in January 2023 and this has resulted in a protracted insurance claim. If the Respondent had acted properly and in accordance with the code this would not have happened.

The Respondent's position:

16. Ms Lewis acknowledged that there had been failings on the part of the Respondent. She accepted that staff may not have had the expertise to respond to the emails from the Applicant and as a result there was a failure of service. She accepted

that the check out report had not been sent to the Applicant and that this was also a failure. Ms Lewis was unable to account for why a staff member would not send a check out report to the landlord as a matter of practice. This led to a discussion of the code more generally and the training staff are given on the code. Ms Lewis stated that she is the branch manager for Perth, Kirkcaldy and Dundee. She is 'Safe agent Qualified' and has undergone training. Ms Lewis stated that new members of staff are given a copy of the code and are asked to read it. She was unable to provide any examples or details of any training that staff receive on the code other than her assertion that staff are aware of processes.

17. Ms Lewis pointed out that her email of 22 July 2023 (item 6 of the Applicant's email bundle) made it clear that it was too early to start marketing the property given the tenant was not due to move out until 16 September 2022. Ms Lewis's position was that according to her records, a gas safety inspection was requested in April 2022. She did not have the certificate on file and was unable to confirm if an inspection had taken place, a fee had been charged or if a certificate had been issued. It was her position that the electrical safety certificate was up to date and valid until 2026.

18. Regarding the change of tenant, it was Ms Lewis position that Mr Barry Smith was the tenant and Ms Deborah Hampton and her family were permitted occupiers. She did not consider it was necessary to have a new tenancy agreement executed given Mr Smith was still alive and may return to the property.

19. Ms Lewis accepted that when the hearing commenced the Applicant has still not seen a copy of the check out report (she emailed the report during the hearing but was unable to submit it in a format which the tribunal chamber could accept). It was her position that the main areas identified in the report were that some internal doors (which were modified with the consent of the Applicant) had not been reinstated as agreed. Some mobility aids had been installed in the property and not removed and there was some painting required. Given the condition of the property the tenant did not dispute that the deposit would be retained. The deposit was returned to the Applicants in December 2022.

20. Ms Lewis stated that an inspection had been carried out in September/ October 2021 and this was sent to the Applicant on 21 October 2021. The next inspection to take place was the check out inspection in September 2022.

21. Ms Lewis accepted that a portion of the management fees from April to September 2022 should be refunded but it was her position that a management services was provided over this period. Ms Lewis disputed that any loss of rental income was payable by the Respondents a property rented out for 7 years would need work before being re-let and this could take at least one month.

22. Regarding the Applicant's remaining heads of claim it was Ms Lewis's position that the sums sought were excessive or not applicable. She did not consider it was reasonable for the Applicant to claim for a garden table and indoor table and chairs that had been used for 7 years. Regarding the council tax payment, she did not appear to have any knowledge of correspondence being received but given the Applicant was no longer a client from September 2022, it was her view that any correspondence

would have been returned to sender. She did not think the claim for the chimney sweep was relevant and the cleaning fee for the cooker was excessive.

Sections of the code at issue

23. Section 26: You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.

The Applicant made reference to repeated instances where the Respondent failed to respond to a request for information and progress in connection with their management of the property from 8 July 2022 onwards. The Respondent presented no explanation for this. She stated that her email of 22 July 2022 made it clear it was too early to market the property. The emails lodged by the Applicant show that her reply of 22 July was only generated after the Applicant's emails of 8, 12, 18 and 22 July 2022. In his reply of 23 July 2022 Mr Legg acknowledged that they are renting out their former family home and are keen to get a rental for it without delay. He also raised the issue of repainting needing done and asked for a skype meeting. He received no reply and sent reminders on 19 and 24 August 2023. No further correspondence was received from the Respondent until 25 August 2022, over one month later. This was only one example of significant delay and the tribunal found this to be a clear breach of the code.

24. Section 62: If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the landlord; type; length of tenancy where it is a short assured tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on taking care of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number.

This was finely balanced. On the one hand the tenant had moved out of the property, and it was unclear if he would ever return. On the other hand, those residing in the property were permitted under the tenancy agreement and the Applicant was aware of this. On balance the tribunal decided this was not clear cut and was not satisfied that this was a clear breach of the code.

25. If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

The failure to carry out the interim inspection in April / May 2023 was a clear breach of the code as the terms of business made it clear that an inspection would take place every 6 months.

26. Section 5 paragraph 85: If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing: annual gas safety inspections: Legionella risk assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.

It was not clear to the tribunal whether the gas safety inspection had been carried out in April 2022. The Respondent was unable to confirm if the inspection had been done. What was clear was that the Respondents had failed to maintain adequate records in connection with the inspection. This was a clear breach of the code.

27. Section 6 paragraph 102: If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/ schedule of condition where one has been prepared before the tenancy began.

It was only as a result of the tribunal process that the Applicant became aware that a check out inspection had taken place for the property. The Applicant only received a copy of the report in the course of the hearing. This was a clear breach as there is little point in carrying out a check out report if this is not passed to the client.

28. Section 6 paragraph 108: You must respond to enquiries and complaints within reasonable time scales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

The Applicant provided multiple instances where the Respondent failed to respond to inquiries within a reasonable time period. There was no challenge from Ms Lewis who acknowledged that staff were not equipped to respond to the Applicant's numerous emails. This was a clear breach of the code.

29. Findings in fact

- The Applicants are the owners of the property.
- The Respondent has acted as the letting agent for the property since 2015.
- The Respondents were engaged on a full management service and the monthly fee was £104.94 increasing to £108.24 in May 2022.
- The Respondent undertook to inspect the property once every 6 months but no inspections were carried out between October 2021 and September 2022.
- The Respondent undertook to arrange an annual gas inspection. It is unlikely that the inspection took place in 2022 as the respondent have no record of the inspection and no safety certificate from 2022.
- The tenant's partner and her family left the property on 15 September 2022.
- The property was left with dirty carpets and the cooker was very dirty.
- The kitchen table and chairs were damaged.

- The garden table was damaged beyond repair.
- Some of the doors in the property had been modified and they had not been reinstated.
- There were mobility aids in the property which would require to be removed.
- Some redecoration was required to the property.
- The outgoing tenant had left some belongings on the floor and in the cupboards.
- The Respondents failed to confirm that they had carried out an inspection of the property when the tenant's partner and family moved out in September 2022.
- The Respondent failed to provide the Applicants with a copy of the check out report of 16 September 2022 prior to the hearing despite repeated requests to do so.
- The respondent failed to comply with the tribunal direction of 11 May 2023.
- The Respondent failed to respond to email requests for updates from the Applicant on numerous occasions between 8 July 2022 and 30 October 2022.
- This resulted in a delay in the property being prepared for reletting.
- This caused the Applicants inconvenience and a loss of rental income.
- The contractual agreement came to an end on 30 October 2022 when the Applicant terminated the agreement.
- The Applicants did not pay a management fee for October 2022 as there was no longer a tenant in the property.

Reasons

30. The tribunal was satisfied that there had been clear breaches of the letting agent code. Some of the breaches were conceded by the Respondent's representative Ms Lewis at the hearing, and others were determined by the tribunal having heard the available oral and written evidence. The tribunal also noted that the Respondent failed to respond to the tribunal's direction of 11 May 2023 without any reason for the failure. The Applicant was only furnished with the check out report on the day of the hearing despite numerous requests including the direction of the tribunal.

31. The Applicant was seeking a refund for the full 12 months from October 2021 to September 2022 however it was only in April 2022 that the Respondent failed to provide a proper service. They failed to carry out a six monthly inspection in accordance with the written terms of engagement and they failed to obtain a gas safety certificate. Ms Lewis argued that some work was being done and a reduction should be given rather than a full refund. It is reasonable to suggest that if the April/ May 2022 inspection had been carried out the condition of the property may have been brought to the attention of the Applicant earlier. The tribunal decided that it was reasonable for the Applicants to be reimbursed their full management fee for 6 months from April 2022 until September 2022. The tribunal decided this was a serious breach that merited a full refund of the management fee for 6 months. This amounts to 6 months at £108.24 with a total refund of £649.44.

32. The Applicant had endeavoured to get redecoration work set up in advance of the tenancy coming to an end so that there was the minimum amount of time where the property was unoccupied. The Applicant had stressed on numerous occasions in the emails lodged the importance of avoiding loss of rental income. Ms Lewis argued that after a let of 7 years it has to be accepted that it will take time to get a property ready to go back on the rental market. The Applicant did not dispute this but simply wanted to act quickly. It is clear from the emails lodged that there was a delay in the redecoration work being done and it is difficult to see how the Applicant could have had a clear picture of what was involved without the check out report. The Applicant was seeking loss of rental income from 16 September 2022 until 31 December 2022 of £2842.96. The tribunal was satisfied that there was a delay of around 4 to 6 weeks due to the Respondent's failure to respond to emails and supply a check out report. The Applicant's parents visited the property on 25 October 2022 and took photos, alerting him to the condition of the property. The Applicant thereafter terminated the contract and dealt with the painter directly. The tribunal decided that £1000 was a reasonable amount to award for loss of rental income.

33. The tribunal considered the remaining heads of claim in relation to the damaged furniture, the cleaning of the cooker and the chimney sweep costs. The Applicant was successful in recovering the full deposit, but this only covered the redecoration and furniture and there was nothing left over to cover any other damages. The tribunal considered that the Applicant's remedy is to pursue the tenant for these matters in terms of the tenancy agreement. It was not clear that the Respondent's actions (or inactions) had caused these losses. If the Respondent had not breached the code, it was not clear how this would have prevented these other losses. In relation to the sheriff officer's surcharge, it was not clear how the Respondent had caused this loss. Ms Lewis stated that the normal practice would be to return any mail received for former clients. The tribunal did not therefore award any sums for these items.

34. The tribunal was however satisfied that the Applicants had been inconvenienced as a result of the breaches identified by the tribunal. The Applicant has been obliged to involve his elderly parents in visiting the property and the Applicant has had the stressful experience of issuing reminder after reminder to the Respondents in an effort to progress matters with his property. The tribunal decided a further sum of £250 in respect of inconvenience to be fair proportionate and just in all of the circumstances. The total monetary penalty is therefore £1899.44.

35. The tribunal decided to make a further order in relation to training on the code. Ms Lewis was unable to offer any information about what training she or the staff under her have had on the code. Training on the code is a legal requirement of letting agent registration in terms of section 32 of the Housing (Scotland) Act 2014 which provides:

32 Decision on application

(1) The Scottish Ministers must determine an application under section 30 in accordance with this section.

(2)The Scottish Ministers must enter the applicant in the register or renew an existing entry if they are satisfied that—

- (a)the applicant is a fit and proper person to carry out letting agency work,
- (b)any other person who is required to be identified in an application by virtue of section 30 is a fit and proper person in relation to letting agency work, and
- (c)the applicant meets such training requirements as the Scottish Ministers may by regulations prescribe.

(3)Regulations under subsection (2)(c) may, in particular, prescribe—

- (a)the matters on which training must have been undertaken,
- (b)the persons who must have undertaken training,
- (c)qualifications which must be held by the applicant or other persons,
- (d)the period within which training must have taken place.

(4)An applicant who is entered in the register, or whose entry is renewed, is to be known as a “registered letting agent”.

(5)The Scottish Ministers must refuse to enter the applicant in the register or to renew an existing entry if they are not satisfied in accordance with subsection (2).

(6)Before refusing to enter the applicant in the register or to renew an existing entry, the Scottish Ministers must give to the applicant a notice stating that—

- (a)they are considering refusing the application and their reasons for doing so, and
- (b)the applicant has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(7)In making their decision under this section the Scottish Ministers must consider the application and any representations made in accordance with subsection (6)(b).

(8)The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the applicant of—

- (a)their decision,
- (b)in the case of a decision to enter the applicant in the register, the date of entry in the register,
- (c)in the case of a decision to renew an existing entry, the date of renewal, and
- (d)in the case of a refusal to enter the applicant in the register or to renew an existing entry, their reasons for the refusal and the date of that refusal.

(9)If the Scottish Ministers refuse to renew an existing entry they must remove the registered letting agent from the register on the date of final refusal.

(10) For the purposes of subsection (9) the date of final refusal is the date on which—

- (a) the period mentioned in section 41(2) expires without an appeal being made,
- (b) where such an appeal is made, the appeal is finally determined or abandoned.

Regulation 6 of the Letting Agent Registration (Scotland) Regulations 2016 provides:

1. Training requirements

5.—(1) The requirements in relation to training which are prescribed for the purposes of section 32(2)(c) of the Act are that—

- (a) each specified person must have a relevant qualification; and
- (b) where the relevant qualification was attained by a specified person more than 3 years prior to the date of the application then that person must have undertaken the training specified in paragraph (2) within the period specified in paragraph (3).

(2) The training specified is 20 hours of training which must —

- (i) be related to carrying out letting agency work; and
- (ii) include at least 15 hours of verifiable formal training.

(3) The period specified is the 3 year period ending with the date the application for registration was made.

36. The ‘fit and proper person’ test therefore requires that a specified person seeking to carry out letting agency work and be placed on the register of letting agents must have undergone training on the code. Further, section 116 of the code states that “You must comply with any tribunal request to provide information about an application made to it form a landlord or tenant”. The respondent failed to comply with the tribunal direction of 11 June 2023 with no reasonable excuse. Accordingly, the tribunal requires to be satisfied that training on the code will be arranged with a training provider within 6 months of this date. The Respondent is required to exhibit evidence to the tribunal to satisfy the tribunal that the training has been arranged for all staff employed by the Respondent carrying out letting agent services. The training should be arranged to take place no later than the end of February 2024.

37. Letting Agent Enforcement Order.

1. The tribunal consider that it is reasonable in all of the circumstances to issue a letting agent enforcement order.

2. The tribunal accordingly makes an order for payment of the sum of £1899.44.
3. The tribunal also requires the Respondent to arrange for a training provider to carry out training to all staff employed by the Respondent to carry out letting agent services. The training should be scheduled to take place no later than February 2024 and the Respondent should provide evidence that this has been arranged.
4. The Letting Agent Enforcement Order accompanies this decision and should be read in conjunction with it.

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.

In terms of section 51(1) of the Housing (Scotland) Act 2014, a letting agent who, without reasonable excuse, fails to comply with a Letting Agent Enforcement Order commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Lesley A Ward
Legal Member**

**28 August 2023
Date**