



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/19/0158

Re: Property at 16 Cormorant Avenue, Houston PA6 7LW (“the House”)

Parties:

Mrs Helen Richardson, 51 Cormorant Avenue, Houston PA6 7LG (“the Applicant”)

Lind Letting, 1 Kirkinner Place, Main Street, Bridge of Weir PA11 3AA (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has failed to comply with paragraphs 26, 112 and 113 of the Letting Agent Code of Practice under Section 46 of the Housing (Scotland) Act 2014

Background

This is an application dated 15th January 2 for a determination that the Respondent has failed to comply with paragraphs 17, 18, 19, 26, 79, 112, 113, and 127 of the Letting Agent Code of Practice brought in terms of Rule 95 (Application to enforce letting agent code of practice) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with her application copies of her notification to the Respondent of the failure to comply, evidence of service of the notification, and various correspondence and e-mails including a copy of the lease agreement in relation to the House.

The Tribunal issued a written Direction to the Parties dated 14th March 2019 to provide, in so far as they had them in their possession, a copy of the Respondents' complaints procedure, a copy of the Respondents' terms of engagement or contract with the applicant, a copy of the Respondents' written policy and procedure for debt recovery, and a copy of the Respondents' post inspection reports in respect of the House.

Both parties provided a copy of the Respondent's terms of business, and the Respondent provided a copy of its in-house complaints procedure and its debt recovery process.

The Respondent indicated in advance of the Hearing that it would not attend, but that it wished to send written representations, copies of which it provided.

The Hearing

A hearing was held on 27th March 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was not represented. The Respondent did not appear, nor was it represented, but had provided written representations in advance.

The Applicant explained that the Respondent had acted as her letting agent in respect of the House for a number of years, before the tenant gave notice and left it in December 2017.

There was a certain amount of damage to the House, and the tenant also gave only two weeks' notice before quitting the House instead of the two months' notice period provided for in the lease agreement.

Thereafter, there was some communication between the Applicant and Respondent by both e-mail and post concerning repairs which required to be made to the House, recovery of the balance of six weeks rental due by the tenant in terms of the lease agreement which remained unpaid, and repayment of the deposit to the Applicant in consequence of the various sums outstanding and owed to her by the tenant in terms of the lease agreement.

The Respondent wrote four letters to the tenant requesting that they pay the outstanding rental dated 22nd December 2017, 4th and 29th January, and 15th February 2018, but the Applicant stated that she was not given copies of these until many months later.

The Applicant directed the Tribunal's attention to the e-mail correspondence between herself and the Respondent, where she on a number of occasions requested an update on efforts to collect the unpaid outstanding rental.

In response, the Respondent's member of staff indicated that she would "need to send this onto debt collection", and that she would "need to get the correct legal information before I proceed" and would need to get information "on the 2 weeks rent you are requesting from the tenants".

The Applicant felt these comments were misleading. She took them to mean that the Respondent was dealing with recovery of the sum due by some form of judicial process on her behalf.

The Respondent's position in its written submission was that it had kept the Applicant up-to-date with its efforts to contact the former tenant about the outstanding rental due, and was not in breach of the Letting Agent Code of Practice.

The Respondent's written policy and procedure for debt recovery sets out the steps it will take to seek to recover debts from tenants. It makes clear that if its attempts ultimately fail, then the Landlord should seek payment through the small claims court or First-tier Tribunal.

Albeit that the Applicant had not previous to this application been provided with a copy of the written policy and procedure for debt recovery, she accepted that the Respondent when she engaged it as her letting agent did not indicate or agree that it would act on her behalf in raising judicial proceedings for recovery of debts from tenants.

The Applicant also directed the Tribunal's attention to her letter to the Respondent dated 12th December 2018, and which she sent to it by recorded delivery post. She produced the recorded delivery postal slip.

This letter referred to her e-mail to the Respondent dated 4th December 2018 requesting that the Respondent provide her with a copy of its written policy and procedure for debt recovery and its written complaints procedure, to which the Respondent had not responded.

In the letter she also complained concerning the Respondent's handling of the unpaid rent owed, claimed £1,275 in compensation being the six weeks' unpaid rental, and advised that she considered the Respondent to be in breach of paragraphs 16-28, 79, 112, 113, and 127 of the Letting Agent Code of Practice.

The Applicant advised that she has never received any response to this letter from the Respondent, and the Respondent has not indicated that it did respond in its written representations.

Statement of Reasons

It is clear that the Respondent was still acting in its capacity as the Applicant's letting agent in the period after the end of the tenancy agreement in December 2017. It was still writing to the tenant in February 2018, and corresponding with the Applicant regarding progress and the recovery of the deposit until at least April 2018.

That being so, the Letting Agent Code of Practice applies to the Respondent in this matter, as it came into force with effect from 31st January 2018.

The Tribunal considers that the Respondent is in breach of paragraphs 26, 112 and 113 of the Letting Agent Code of Practice in the following respects.

With regard to paragraph 26, it failed to respond to the Applicant's letter of complaint dated 12th December 2018 within reasonable timescales. Indeed, it has not responded at all.

With regard to paragraph 112, the Respondent must make available its written complaints procedure on request. It failed to do so in response to the Applicant's request of 12th December 2018.

In terms of the Respondent's written complaints procedure which it provided to the Tribunal in response to the Tribunal's written Direction, a client of the Respondent who has a complaint should put it in writing, as the Applicant did in her letter of 12th December 2018.

The written complaints procedure states that the Respondent will send a letter acknowledging receipt of the complaint within three working days of receiving it, enclosing a copy of the procedure, and will then investigate the complaint and send a formal written outcome of its investigation within fifteen working days of sending the acknowledgement letter.

The Respondent has failed to follow its own written complaints procedure, and failed to respond to the complaint in any way at all.

With regard to paragraph 113, the written complaints procedure must also set out how the Respondent will handle complaints against contractors and third parties. Albeit that this issue did not arise in relation to this matter, the written complaints procedure does not provide for this situation as it should.

The Tribunal was not persuaded that the Respondent is in breach of paragraphs 17, 18, 19, 79, and 127 of the Letting Agent Code of Practice.

Though there appears to have been a misunderstanding by the Applicant regarding what (if any) steps the Respondent would take on her behalf in respect of recovering the outstanding amounts due from the tenant by some form of judicial process, the Tribunal did not consider that the correspondence showed a failure by the Respondent to be honest, open, transparent and fair in its dealings with the Applicant in respect of paragraph 17.

The Tribunal did not consider with respect to paragraph 18 that the Respondent had failed to provide information in a clear and easily accessible way.

Similarly, the Tribunal did not consider with respect to paragraph 19 that the Respondent had provided information that was deliberately or negligently misleading or false.

With regard to paragraph 79, the Tribunal considered from the correspondence produced that the Respondent was able to demonstrate that it had taken all reasonable steps to recover any unpaid rent owed to the Landlord. It had made

attempts to contact the tenant to obtain repayment of the outstanding rental amounts due, and had obtained payment of the deposit to the Applicant.

Finally, with regard to paragraph 127, the Respondent produced to the Tribunal a clear written policy and procedure for debt recovery that lists a series of steps it will follow in compliance with this paragraph.

Finally, the Tribunal has power to order that the letting agent pay to the Applicant such compensation as it considers appropriate for any loss suffered by the Applicant as a result of the failure to comply.

The Tribunal does not consider that the Applicant has suffered any such loss as a result of the Respondent's failure to comply. Indeed, the Applicant accepted that this was the case at the Hearing. Her remedy for recovery of the sums due from the tenant is to raise proceedings against the tenant for payment. These losses do not arise as a result of the Respondent's failure to comply.

Decision

The Tribunal determined that the Letting Agent has failed to comply with paragraphs 26, 112 and 113 of the Letting Agent Code of Practice, and will make a letting agent enforcement order requiring the Respondent to:

- 1) Send a letter to the Applicant acknowledging receipt of her written complaint within three working days from the date of service of the letting agent enforcement order;
- 2) Investigate the Applicant's complaint and send a formal written outcome of its investigation within fifteen working days of sending the acknowledgement letter;
- 3) Comply with paragraph 113 of the Letting Agent Code of Practice by setting out in its written complaints procedure how it will handle complaints against contractors and third parties.

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.

N Kinnear

Legal Member/Chair

28/03/19 Date