

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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 Ref: FTS/HPC/LA/19/2547

The Parties:-

Mr Gursaran Bhumbra and Mrs Amarjeet Bhunbra, Flat 13, 85 Hopetoun Street, Edinburgh EH7 4NJ ("Applicant")

DJ Alexander Lettings Ltd, 1 Wemyss Place, Edinburgh EH3 6DH ("the Respondent")

Tribunal Members:

Mark Thorley – Legal Member

Elizabeth Currie – Ordinary Member

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as it saw fit for the purposes of determining whether the letting agent has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 ('the 2014 Act'), determines unanimously that, in relation to the present application, the letting agent has complied with the Code of Practice and determined to dismiss the application.

Background

The Applicant lodged an application with the Tribunal by application dated 10 August 2019.

The Applicant sought to enforce the Letting Agent Code of Practice against the respondent DJ Alexander Lettings Ltd, 1 Wemyss Place, Edinburgh EH3 6DH.

A significant amount of documentation was also provided by the Applicant in respect of the application. The Respondent had also provided documents.

The Applicant complains under reference to paragraphs 26, 90, 91 and 108.

The Hearing

The hearing took place on 9 December 2019.

Both Applicants gave evidence.

The Respondent was represented by Mr Steve Robbins.

Findings in Fact

- (i) The Applicants rented the property at 54B/5 Annandale Street, Edinburgh EH7 4AZ under a Private Residential Tenancy Agreement dated 11 December 2018.
- (ii) DJ Alexander Lettings Ltd, 1-3 Wemyss Place, Edinburgh EH3 6DH were the letting agents.
- (iii) The landlord is Mr Sanzhar Zhamalov, care of DJ Alexander Lettings Ltd, 1-3 Wemyss Place, Edinburgh EH3 6DH.
- (iv) The commencement of the lease was on 12 December 2018 and the rent payable was £6,930 per six months payable in advance.
- (v) The Applicants vacated the premises on 12 April 2019 and the lease expired on 11 June 2019.

Paragraph 26

The Respondents acknowledge they are subject to the Letting Agent Code of Practice. It was determined that the Respondents had responded to complaints.

The Tribunal finds the Respondents have complied with paragraph 26 of Section 2 of the Code.

Paragraphs 90 and 91

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 tenancy suffered from a significant problem with its boiler. The Respondents did instruct a variety of repairers and attempt to deal with the issue of the boiler. They were in significant communication with the appellants.

The Tribunal finds that the Respondents have complied with paragraphs 90 and 91 of the Code.

SECTION 7

Paragraph 108

You must respond to enquiries and complaints within a reasonable timescale. 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 Respondents acknowledge that they did not comply with their own time limit of 15 working days since the complaint was made. The original complaint was made on 21 June 2019. That complaint was acknowledged on the same date. A full response was received on 16 July 2019. Fifteen working days from 21 June 2019 could be interpreted as being 15 July 2019. On that date it was indicated that a response would be received by 16 July which did take place.

The Tribunal finds that the Respondents have not failed to comply with paragraph 108 of the Code.

Reasons for Decision

The Applicants both gave evidence. Mr Steve Robbins of the Respondents gave evidence.

Along with the application the Applicants had lodged 114 pages of other documents. The Respondents had also lodged their own response amounting to 14 documents.

Applicants' case

The applicants allege that in terms of the Letting Agent Code there had been a breach of Sections 2, 5 and 7 of the Code and in particular paragraphs 26, 90, 91 and 108.

It appeared that there was a potential crossover in terms of the evidence given insofar as paragraph 26 and paragraph 108 was concerned.

Part of this related to the issue of a failure to respond to a written complaint. The written complaint made by the applicants was made on Friday 21 June. In terms of the Respondents' own procedures they then have a period of 15 working days to respond to that complaint. If the date of 21 June is discounted as being the date of the complaint 15 working days would have meant that the date for a response was due to be provided on Monday 15 July. The Respondents again questioned why no answer to the complaint had been received. On 15 July it was intimated that a response would be provided that day. That was then amended to the following date. A written response was provided on the 16 July.

The Respondents in evidence actually acknowledged that the response may have been regarded as being "late". However on the basis of the arithmetic of working days it appears any response was due on 15 July. In the event that further time was needed then intimation could be given of a request for further time. That was done. The full response was received

on 16 July. Accordingly it is not considered that there has been a breach of the Letting Agent Code insofar as the issue of responding to the written complaint is concerned.

The significant issue regarding the property related to the boiler within the property. Both parties provided their own written timelines of events surrounding the boiler. The Respondents acknowledged that this was a "difficult" repair. However they had attempted throughout to engage with a variety of repairers. It is to be remembered that in terms of the Letting Code what the Respondents were required to do was to deal with the repairs promptly and appropriately having regard to the nature and urgency and in line with procedures and to keep the tenant informed. The maintenance timeline throughout March and April 2019 discloses significant involvement by the Respondents with the attempted repair. The Applicants were of the view that the property became uninhabitable as a result of the leak from the boiler. They indicated that mould had grown in the property. The Respondents differed in that position. They had maintained that the property was not uninhabitable and indeed works could be done within the property whilst the Applicants were within it. Indeed that is what would happen.

If the property was uninhabitable then this is a matter that would have been the responsibility of the landlord.

The Applicants had raised other issues surrounding repairs or otherwise in particular in relation to two key fobs for the car park in the basement of the property. The initial response from the Respondents was to the effect that they would contact the landlord regarding this. It became clear that this was a matter being dealt with by the factors of the property Trinity Factoring. Requests were then made for the registration numbers of the motor vehicles. That was passed on. The Respondents indicated that the factors would email on the car park fobs. There did not appear to be anything contained within the information that suggested that the Respondents had failed to deal timeously with matters.

For whatever reason it appeared that a car parking ticket handling charge had been made. This was made by the finance company by one of the motor vehicles of the Applicants. They had passed on a handling charge although it did not appear that any ticket actually had been issued. The handling charge appeared to be in the sum of £15.00. These matters were outwith the control of the Respondents.

Having regard to the documents that had been placed before the Tribunal and the evidence given by both the Applicants and Respondents at the Tribunal hearing the hearing determined that the Respondents had complied with the Letting Agent Code of Practice and dismissed the application.

Signed.....
 Legal Member

Dated.....
 19th March 2019