

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland on an Application made under Section 48 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/22/3604**

**Re: Property at Robert Owen House, 87 Bath Street, Glasgow, G2 2EE ("the Property")**

#### **The Parties:**

**Mary Azubuike-Ndukwe, 88 Rissells Ride, Cheshunt, Hertfordshire, EN8 8TZ ("the Applicant")**

**Xenia Lettings, Bank House, Old Market Place, Altrincham, WA14 4PA ("the Respondent")**

#### **Tribunal Members:**

**Fiona Watson (Legal Member)**

**Elizabeth Williams (Ordinary Member)**

#### **Decision**

**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 the application, determined that the Respondents had failed to comply with Paragraphs 21, 26, 85, 90, 91, 93 and 108 of the Letting Agent Code of Practice.**

#### **Background**

1. The Applicant applied to the First-tier Tribunal for Scotland, Housing and Property Chamber ("the Tribunal") under Section 48 of the Housing (Scotland) Act 2014 ("the Act") for a determination that the Respondents had failed to comply with the Letting Agent Code of Practice ("the Code") as set out in the Letting Agent Code of Practice (Scotland) Regulations 2016, as amended.

2. The application stated that the Applicant considered that the Respondent had failed to comply with their duties under Paragraphs 17, 18, 19, 20, 21, 23, 26, 27, 73, 75, 85, 90, 91, 93, 99, 108 and 109 of the Code of Practice.
3. Paragraph 17 of the Code states *“you must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).”*
4. Paragraph 18 of the Code states *“you must provide information in a clear and easily accessible way.”*
5. Paragraph 19 of the Code states *“you must not provide information that is deliberately or negligently misleading or false.”*
6. Paragraph 20 of the Code states *“you must apply your policies and procedures consistently and reasonably.”*
7. Paragraph 21 of the Code states *“you must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.”*
8. Paragraph 23 of the Code states *“you must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property.”*
9. Paragraph 26 of the Code states *“you must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.”*
10. Paragraph 27 of the Code states *“you must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.”*
11. Paragraph 73 of the Code states *“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.”*

12. Paragraph 75 of the Code states *“breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.”*
13. Paragraph 85 of the Code states *“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.”*
14. Paragraph 90 of the Code states *“repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.”*
15. Paragraph 91 of the Code states *“you must inform the tenant of the action you intend to take on the repair and its likely timescale.”*
16. Paragraph 93 of the Code states *“if there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible.”*
17. Paragraph 99 of the Code states *“you must apply your policy and procedures consistently and reasonably.”*
18. Paragraph 108 of the Code states *“you must respond to enquiries and complaints within reasonable timescales. 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.”*
19. Paragraph 109 of the Code states *“you must provide landlords and tenants with your contact details including a current telephone number.”*
20. A Case Management Discussion took place on 30 January 2023 by way of

conference call. The Applicant was personally present and represented herself. The Respondent was represented by Anne Corrigan, employee of Xenia Lettings. Paul Street (employee of the Respondent) was also in attendance.

21. The Applicant submitted that the Respondent had failed to adhere to sections 17-21, 23, 26, 27, 73, 75, 85, 90-91, 93, 99, 108 and 109 of the Letting Agent Code of Practice. The Respondent denied that the stated parts of the Code had been breached. A Hearing was fixed for evidence to be led from parties as to the alleged breaches of the Code and the extent to which the Property was rendered uninhabitable due to the repairing issues. The Hearing will take place on a date to be hereinafter assigned.

22. A Hearing took place by conference call on 12 June 2023. The Applicant was personally present and represented himself. The Respondent was represented by Ms Corrigan, an employee. The Applicant and Ms Corrigan gave evidence personally. There were no additional witnesses called by either party.

- **Applicant's evidence**

23. The Applicant's evidence is summarised as follows:

24. The applicant had rented the property since September 2021 and initially made a complaint on 17 April 2022 regarding the heating not working. The applicant had been told that her complaint would be handled within two days. The housing maintenance person came to the Property and advised that he required to order new parts. Nothing was done and she made another report of the fault on 4 May and then again on 12 June. The applicant sent further emails about the heating not working which were ignored. The applicant submitted that she felt that it was very cold in Glasgow, as she was used to the weather in London where she grew up and therefore she found the Property to be uninhabitable. Due to the Respondent's failure to resolve the heating issues, she "rejected rent".

25. The applicant submitted that the heating was fixed in August 2022, which

was not a reasonable timescale and which breached the respondent's own internal policy which stated that heating should be fixed within three working days. The applicant submitted that the respondent had said that there had been an issue with their reporting software which had caused the delays, however the applicant rejected this as an excuse. She submitted that she had also called the respondent's head office and had meetings with the maintenance officer, and they had simply ignored her.

26. The applicant submitted that an additional issue was the faulty shower. The applicant submitted that she first complained about the shower not working on her second day in the property. She did so in writing. Nothing was done and on 30 June 2022 the issue worsened and she made a further repair request. She stated that the shower head was attached to the shower tubing and it had come off and would squirt water everywhere when used. The applicant submitted that you could not hold it in your hand as it came apart and it rendered the shower entirely unusable. After her initial complaint, the maintenance officer (referred to as "Bert") had fixed the issue. It broke again and when she complained again on 30 June it was not fixed, as Bert had indicated that he required in new part. The applicant submitted that the property did not have a bath and therefore she had no reasonable washing facilities and it rendered her room uninhabitable. The applicant submitted that the shower had worked between September 2021 and June 2022.

27. The applicant submitted that there had also been issues with safety which had breached the letting agent's duty to keep the tenants safe within the building. The applicant submitted that the main security door was broken between 3 November 2021 and 10 January 2022. There was no 24-hour security or 24-hour reception cover. The applicant submitted that you would normally have to tap a card to open the front security door but during the period when it was broken, it just opened freely and anybody could walk in. The applicant submitted that she had made several calls to the letting agent to have this fixed. The applicant submitted that the front door gave access to the reception area, common lounge, gym and study rooms. Each individual room had its own lockable door within the building. The applicant submitted that it was "terrifying" that people could simply enter the main front door and

access the common areas. The applicant referred to delivery drivers being able to take access to the building and being able to knock on the individual room doors to make their deliveries. The applicant referred to an occasion where a tenant within the building returned to the building having lost her key whilst under the influence of alcohol. The applicant described the drunk tenant getting involved in an argument with people outside the building and that the applicant and other tenants had to handle the situation to avoid those outside being able to gain access to the building.

28. The applicant submitted that she made a complaint on 14 July to the letting agent. She emailed Mr Knott, accommodation manager, and he advised her that there was no real procedure for making a complaint. The applicant submitted that after that she found that there was indeed a formal complaint process, which is not followed by letting agent in her case. The applicant submitted that following lodging her complaint on 14 July she contacted head office on four occasions before receiving a formal response from them on the 16 September. The applicant submitted that their own policy required the letting agent to respond within 10 working days but they did not do so. The applicant submitted that her complaint was made on 14 July, and not 5 September as the letting agents had suggested.
29. The applicant submitted that the letting agent should have provided her with a copy of their complaints procedure, but did not do so. The applicant submitted that when the letting agent's response arrived on 16 September that she rejected it and replied saying that it was "full of lies and half-truths". The applicant referred to the letting agent's complaints procedure requiring them to respond with a stage four response but this was not done.
30. The applicant submitted that after she had vacated the property, she found that the letting agents had taken her deposit to offset against rent arrears they claimed were due. The applicant submitted that the letting agents then offered her £300 in compensation, which she refused. The applicant submitted that she did not receive any correspondence from the tenancy deposit scheme giving her any opportunity to respond or make representations to any claim by the letting agent for recovery of her deposit.

31. The applicant wanted the return of her deposit, which was in the sum of £250. Thereafter the applicant wanted repayment of all rent paid by her between 30 March and 12 June, in the sum of £2320. The applicant submitted that this should be returned to her as during that period the property was not habitable, as there was no heating or washing facilities, and the letting agents had breached the code of practice during that time. In addition, the applicant submitted that she was claiming compensation for the stress caused to her and the time taken by her to try and resolve matters with them, but that she had been ignored multiple times.

32. The applicant submitted that when her heating had stopped working she spoke to Bert the maintenance officer, who found another heater for her in another empty property. However on the day that this was installed it blew up and she concluded that she should just wait for the radiator to be repaired rather than cause any further fire risks within the property.

33. The applicant submitted that the shower had not been usable during those periods when it was broken and she had required to use friends' showers. The applicant submitted that she got very cold in the property as she was not used to the cold in Glasgow and found that she could not stay there as she had final courses to be completed online and she was freezing. The applicants admitted that she would often stay at friends' houses because the situation in the property was unacceptable.

- Respondent's evidence

34. The evidence of Ms Corrigan is summarised as follows:

35. Ms Corrigan stated that she was not employed by the respondents at the time of the complaints. The staff members referred to by the applicant, (namely Mr Knott, Debbie and Tasha) all have since left the organisation therefore Ms Corrigan can only rely on the notes that have been taken on their system.

36. Ms Corrigan submitted that the respondents are a student accommodation provider. They rent out rooms within a building which are generally either

individual ensuite studios or apartments which have ensuite bathrooms and kitchen facilities, with access to common areas. They have an office within the building which is manned during business hours, Monday to Friday 9am to 5pm. They act as a letting agent and have not advertised nor claimed to provide 24 hour availability

37. Ms Corrigan stated that separately there is a block management company, Xenia Estates, who are responsible for the upkeep of the building and the common parts such as the front door and the lift.

38. Ms Corrigan submitted that she understood that the applicant had reported the fault with the heater on 17 April 2022, which was a Sunday. On the Monday 18 April they were aware of the complaint having been made through their "Fix-Flo" repair reporting system, and they instructed their maintenance officer ("Bert") to attend on Tuesday 19 April. The maintenance officer diagnosed that the heater required a new thermostat and he carried out a temporary fix so that heating could be used meantime, pending a new part arriving to carry out a permanent fix. It was submitted that on 20 April a further report was received from the applicant that the heater had stopped working again and the maintenance officer concluded that a new part was required. This new part was ordered on 21 April but when the part arrived it was incorrect. Thereafter as multiple reports were being made by the applicant through their Fix-Flo system there appeared to be a technical error within the system which effectively closed down these complaints as being duplicates and so nothing further was done in relation to the final repair.

39. Ms Corrigan submitted that on 14 July they received communications from the applicant that she was withholding her rent and thereafter on 2 August 2022 a new heater and thermostat were installed and the issue was closed off as being complete.

40. Ms Corrigan acknowledged that the time taken to effect the repair to the heating went beyond their service standards. However, Ms Corrigan submitted that this happened over the spring and summer months when there was an amenable outside temperature.

41. Ms Corrigan submitted that no formal complaint had been made regarding



the shower, but a repair request was submitted through the Fix-Flo system. Ms Corrigan submitted that the shower was operational and the issue was where the shower head screwed in, as excess water would come out of the gap. Ms Corrigan submitted that the shower did not require to be replaced and it was usable during the entire time. Ms Corrigan submitted that the current tenant in the property has not reported any issues with the shower and simply that the shower head needs to be screwed back into the shower holes when it becomes loose. Ms Corrigan stated that the shower could be used at all times and that the applicant was not without washing facilities at any point.

42. Ms Corrigan submitted that in relation to the issues with the front door, the respondents do not manage the building or the block. The front door is not their responsibility and the block management company are responsible for that, being Xenia Estates. They are a completely separate company. Ms Corrigan stated that no formal complaint was made by the applicant in relation to the front door issue. Ms Corrigan submitted that the respondents offer all tenants a 24-hour off site concierge service with an emergency number which is signposted throughout the building. The emergency concierge has a master key which can be used in the event that any tenants are unable to access their rooms. Ms Corrigan stated that all of the front doors to each individual apartment are lockable and secure and that if any tenant is concerned about security or safety within the wider building that they should call the concierge or the police. Ms Corrigan stated that the respondents do not offer 24-hour security and never have done.

43. Ms Corrigan submitted that the applicant had accrued rent arrears throughout her tenancy in the sum of £1698.57. Ms Corrigan stated that she did not have up-to-date details of what had happened regarding recovery of the deposit, however it was common practice that it would be applied for through the tenancy deposit scheme to be returned to the landlord, where a tenant has accrued rent arrears.

44. Miss Corrigan stated that Mr Knott was based within the office in the building and that she understood that he had had communications with the applicant via WhatsApp regarding the issue of her rent arrears. This was not the first

time that the applicant had been in arrears, and she had fallen into rent arrears in the summer of 2022.

45. Ms Corrigan stated that from the street entrance, you would go up one or two steps to reach two sets of double glass doors which required you to tap a card to gain access. There was also a disabled access via a ramp which again comprised of a double glass door and which was accessed via a card. Ms Corrigan submitted that whilst the respondents are not responsible for repairs to the door of the building, if any such issues were reported to them they would pass on to Xenia Estates to carry out any necessary repairs. Ms Corrigan was unable to provide any detail as to whether any reports had been made in this occasion.
46. Ms Corrigan submitted that she had not heard of any other similar complaints from other tenants within the building.
47. Ms Corrigan submitted that she did not consider that the applicant had any grounds for withholding rent and that she would actively discourage tenants from withholding rent.
48. When asked why their formal complaints procedure had not been followed, Ms Corrigan submitted that this was because she was aware that the applicant had been in direct communications with Mr Knott and she understood that Mr Knott considered that he was dealing with the complaint directly with the applicant via these WhatsApp messages. Ms Corrigan stated that all complaints should have been followed up in writing but in this case it didn't happen, apparently due to Mr Knott's involvement directly with the applicant.
49. Ms Corrigan submitted that the current process for recovery of rent arrears involves formal letters being issued to the tenants. However previously, and during the time of the applicant's occupation of the property, this was the responsibility of the individual accommodation manager, namely Mr Knott. It had been felt at that stage that the individual accommodation manager was best placed to liaise with tenants in a more informal manner.
50. When asked why compensation had been offered to the applicant, Ms

Corrigan submitted that this was not an offer of compensation but rather a goodwill gesture. It was an acknowledgement that the applicant had been unhappy and an attempt to make the applicant feel better about the situation. However, Ms Corrigan submitted that it did not negate the need for rent to be paid. Ms Corrigan submitted that whilst the formal complaint response to the applicant did not mention any rent arrears, this was because it was an entirely separate issue and would be pursued separately. The complaint response focused on the issues raised in the applicant's complaint, and it would not be appropriate to include reference to the rent arrears which is an entirely separate matter. Ms Corrigan stated that the rent included gas, electricity, water, Wi-Fi and gym access.

## **Findings of fact**

51. The Tribunal makes the following findings of fact:

- (i) The Respondents are letting agents who were appointed to manage the letting of the Property. Accordingly, their work falls within the definition of letting agency work in Section 61(1) of the Act and they are subject to the requirement to comply with the Letting Agent Code of Practice which came into force on 31 January 2018.
- (ii) On 30 September 2022 the Applicant notified the Respondents of her belief that they had failed to comply with the Code of Practice, as required by Section 48(4) of the Act.
- (iii) The Respondents were in breach of sections 21, 26, 85, 90, 91, 93 and 108 of the Letting Agent Code of Practice.

## **Reasons for the decision**

52. Paragraph 21 of the Code states *“you must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.”* Paragraph 85 of the Code states *“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."* Paragraph 90 of the Code states *"repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures."* Paragraph 91 of the Code states *"you must inform the tenant of the action you intend to take on the repair and its likely timescale."* Paragraph 93 of the Code states *"if there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible."*

53. The tribunal was satisfied that all paragraphs of the code as set out in paragraph 52 of this decision have been breached by the respondents, by virtue of their failure to deal with the heating repair within the Property in a satisfactory and timely manner. The tribunal noted that in her own evidence, Ms Corrigan agreed that a fault had been reported with the heater on 17 April 2022 and that repair was not fully effected until 2 August 2022. Whilst the tribunal notes that Ms Corrigan was not employed with the respondents during that period and was relying on information contained within notes on their management system to explain what had happened, it was noted that the explanation put forward by Ms Corrigan for the delay was there being an issue with their repair reporting software, Fix-Flo. Whether or not there was such an issue with the software, the tribunal was satisfied that the repair had not been dealt with timeously, nor had the applicant been provided with reasonable timescales for the repair to be effected. Ms Corrigan stated in her evidence that the time taken to effect the repair did indeed go beyond the respondent's service standards. The tribunal noted that Ms Corrigan stated in her evidence that the matter had happened over the spring and summer months and accordingly did not render the property uninhabitable due to the warmer weather. Whether or not a tenant wishes to use heating within a property is entirely subjective to them and to their relative susceptibility to the outside temperature. The tribunal considered that whilst the temperature would have been higher during those months and the effect on the tenant less severe than it would have been had the heating broken

down during the middle of winter, the tenant was still entitled to have a working heating system at all times during the course of her tenancy to allow her to choose when she would utilise the heating based on her own personal need. The respondents themselves had an obligation under Clause 18 of the tenancy agreement between the parties *“to keep in repair and proper working order the installations in the Let Property for the supply of water, gas, electricity, sanitation, space heating and water heating.”* The tribunal was satisfied that the respondents had failed to comply with said clause.

54. The tribunal was not satisfied based on the evidence before it, that the shower within the property was not in a working order during the period of the applicant's occupation.

55. The tribunal was satisfied with the respondent's evidence as regards not having any responsibility or control over repairs required to the building itself, including the front door. The tribunal did find the applicant's evidence somewhat exaggerated in this regard and whilst the tribunal does accept the applicants evidence in so far as there having been issues with the front door during her period of occupation of the Property, the tribunal was satisfied that this did not present serious security issues to the applicant given she had a secure front door to her individual property.

56. Paragraph 26 of the Code states *“you must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.”* Paragraph 108 of the Code states *“you must respond to enquiries and complaints within reasonable timescales. 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 tribunal was satisfied on the basis of the evidence before it that the respondents had not responded to the applicant's complaints regarding the repairing issues within a reasonable timescale, nor to her formal complaint in line with their own complaints procedure. The tribunal was accordingly satisfied that paragraphs 26 and 108 of the Code had been breached.

57. The Tribunal upheld the Applicant's complaint under Paragraphs 21, 26, 85,

90, 91, 93 and 108 of the Code of Practice.

58. The Tribunal was not satisfied that there was sufficient evidence before it to find a breach of paragraphs 17-20, 23, 27, 73, 75, 99 and 109 of the Code of Practice.

59. The Tribunal determined that a Letting Agent Enforcement Order would be issued ordering the Respondent to pay to the Applicant the sum of £1,115, representing one half of the total rent due between the period 17 April and 2 August 2022 when the heating was not working in the Property.

60. The decision of the tribunal was unanimous.

### **Right of Appeal**

**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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**