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/22/4390

Re: Property at 24/9 Moncrieff Terrace, Edinburgh, EH9 1LZ ("the Property")

Parties:

Richard Thompkins, 4 Connemara Way, Woodcroft 5162, South Australia ("the Applicant")

The Flat Company Limited, 61A Queen Street, Edinburgh, EH2 4NA ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member)
Frances Wood (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 not failed to comply with the Letting Agent Code of Practice and the Application is accordingly refused.

Background

1. By application dated 12 December 2022, 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 16-19, 21, 23, 30, 32-35, 73-78, 85, 87, 90-93, 98-99 and 127 of the Code of Practice.

3. Paragraph 16 of the Code states *"you must conduct your business in a way that complies with all relevant legislation."*

4. 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)"*

5. Paragraph 18 of the Code states *"You must provide information in a clear and easily accessible way."*

6. Paragraph 19 of the Code states "*You must not provide information that is deliberately or negligently misleading or false"*

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 30 of the Code states "*You must agree with the landlord what services you will provide and any other specific terms of engagement. This should include the minimum service standards they can expect and the target times for taking action in response to requests from them and their tenant"*

10. Paragraph 32 of the Code states "*Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out:*

(a) <u>Core services</u>

the services you will provide to that landlord and the Property they relate to. For example, tenant introduction, lettings service and full management service;

(b) <u>Duration</u>

the duration of the agreement and the date it commences;

(c) Authority to act

a statement about the basis of your authority to act on the landlord's behalf;

where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing repairs to the Property and the purchase of replacement goods;

situations in which you may act without checking with the landlord first, for example urgent repairs;

(f) Fees, charges and financial arrangements

your management fees and charges (including taxes) for your services, and your processes for reviewing and increasing or decreasing this fee;

how you will collect payment including timescales and methods and any charges for late payment;

that where applicable, a statement setting out details of any financial interest in providing third-party services (for example, commission for using certain companies, products or services) is available from you on request;

(i) Tenancy deposits

if a tenancy deposit is to be taken, who will lodge the deposit with one of the approved schemes;

(j) Communication and complaints

that you are subject to this Code and give your clients a copy on request. This may be provided electronically;

*how you will communicate (including the use of electronic communication(**3**) with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;*

your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond;

how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure;

(n) Conflict of interest

a declaration of any conflict or potential conflict of interest;

(o) Professional indemnity insurance

confirmation that you hold professional indemnity insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

(p) Handling client money

how you handle clients' money; confirmation that you hold client money protection insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

(q) How to change or end the terms of business

clear information on how to change or end the agreement and any fees or charges (inclusive of taxes) that may apply and in what circumstances. Termination charges and related terms must not be unreasonable or excessive.

10. Paragraph 33 of the Code states *"You and the landlord must both sign and date your agreed terms of business and you must give the landlord a copy for their records. If you and the landlord agree, this can be done using electronic communication including an electronic signature"*

11. Paragraph 34 of the Code states *"In line with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013(5), in most cases you must give landlords 14 calendar days in which to cancel if the agreement is signed away from your premises"*

12. Paragraph 35 of the Code states *"Any subsequent changes to your terms of business should be agreed by both parties and confirmed in line with your agreement (see paragraph 32 (q))"*

13. 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"*

14. Paragraph 74 of the Code states *"If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on Property access and visits, and paragraphs 85 to 94 on repairs and maintenance)"*

15. 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"

16. Paragraph 76 of the Code states *"You must have appropriate written procedures and processes in place for collecting and handling rent on the landlord's behalf. These must set out how the late payment of rent will be handled and the legal requirements on tax deductions from rent received on behalf of non-resident or overseas landlords and the subsequent payment and reporting requirements. This should outline the steps you will follow and be clearly, consistently and reasonably applied"*

17. Paragraph 77 of the Code states "*If you collect rent on the landlord's behalf, you must, as a minimum, give the tenant a statement of their rent account on request. Where a tenant pays in cash they must be provided with a receipt."*

18. Paragraph 78 of the Code states "*You should inform the landlord in writing of the late payment of rent, in line with your written procedures or agreement with the landlord"*

19. 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."*

20. Paragraph 87 of the Code states "*If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents, if that is part of the service) and for giving contractors access to properties for emergency repairs."*

21. 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."

22. 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"*

23. Paragraph 98 of the Code states "*You must have clear written procedures in place for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information."*

24. Paragraph 99 of the Code states *"You must apply your policy and procedures consistently and reasonably"*

25. Paragraph 127 of the Code states "*You must have a clear written policy and procedure for debt recovery that lists a series of steps you will follow unless there is good reason not to. This should include setting out at what point you will contact any guarantor. The procedure must be clearly, proportionately and reasonably applied. It must set out how you will deal with disputed debts"*

26. A Case Management Discussion took place on 15 March 2023 by tele-conference at which the matter was adjourned to a Hearing, with parties in agreement that the matter should reconvene with use of video-conferencing. A Hearing took place by Webex video conference on 31 August 2023. The Applicant was personally present and represented himself. The Respondent was represented by Mr Wilcken, an employee of the Respondent.

27. A number of written statements and bundles of documents were lodged by the Applicant on the following dates: 7 April, 10 April, 12 April, 21 April, 29 April, 24 May, 22 June, 29 June, 3 August and 21 August 2023. The Respondent submitted a bundle of documents on 17 August 2023. All of said documents were considered by the Tribunal in reaching its decision.

- **Applicant's evidence**

28. The Applicant's evidence at the Hearing is summarised as follows:

29. The Applicant stated that he had considerable sympathy with the Respondents. He stated that the Council's behaviour had been deplorable and reference was made to the Mental Health Act which, it was stated, places specific duties on the Council. The Applicant stated that the Respondent shouldn't have had to deal with the Council in this regard as the Council knew that the tenant had serious psychological problems. The Applicant stated that a lot of what happened shouldn't have, but that both the Applicant and Respondent should have acted differently.

30. The Applicant alleged communication difficulties, delays and unnecessary costs in addressing the state of repair of the property and referred to a timeline of maintenance issues including inspection reports which he had lodged and noted that it was May 2011 when the problems with the communications with the Respondent started. The Applicant highlighted a number of inconsistencies between the inspection reports lodged by the Respondent and further a number of inspection reports which the Applicant stated he had not received at the time. The Applicant highlighted a quote received in May 2011 to redecorate the Property which the Applicant stated he had authorised the next day but these works were never carried out. In particular the Applicant stated that he had not received inspection reports of May 2013, November 2013, May 2014, November 2014, April 2015, March 2015, December 2015, March 2016, November 2016 or June 2017. The Applicant stated that a number of these inspection reports referred to the Property as being in a poor condition but that he had had not had sight of that or notification of that at the time.

31. The Applicant referred to an email of 30 September 2015 in which the Respondents advised him that his tenant was in arrears of rent and further that they had received rent payment directly from Edinburgh Council. It went on to state that given the condition of the Property they could not increase the rent "too much" but recommended that they would increase rent by 10% commencing December 2015. The Applicant stated that he contacted the

Respondents in response to that email to seek further information regarding the condition of the Property and had been told that it was “basically OK”. The Applicant stated that the tenant had previously had a business which had failed when she became unwell. The council previously paid the rent directly to the tenant but it was thereafter paid directly to the Respondent.

32. The Applicant stated that he received the inspection report of November 2017 two days after the tenant had died. The Applicant stated that there were several issues which should have been fixed without reference to him as the costs were under £200 and the Respondents could carry out such works under the management agreement without prior authorisation. The Applicant stated that he would have increased the threshold to £300 or £400 if the Respondent had needed this in order to get works done.

33. The Applicant stated that following the death of the tenant, the Property was inspected by the Respondents. Reference was made to an email to him from the Respondents dated 23 March 2018 and which set out a number of matters which the Respondents considered required to be repaired or replaced or upgraded, to a total cost of £18,026. The Applicant stated that a number of the items had been outstanding for some time and were under £200 and therefore should have been dealt with by the Respondents without reference to him under the management agreement in place. The Applicant stated that the replastering and repainting could have been done for half the price at the time it was approved by him.

34. The Applicant stated that when the Respondent took over management of the Property, it would often take over a week for a letter to arrive in Australia from Edinburgh. The Applicant stated that he was always contactable electronically. When the tenant died, he had three messages left with the secretary. The Applicant stated that the Respondents could always get hold of him by post, by fax or thereafter by e-mail. The Applicant stated that since 1999 he has worked in large medical facilities and had secretaries who would take messages for him. When something came in from the Respondents it was put on his desk and his secretaries knew that he would want to deal with these matters promptly.

35. The Applicant stated that he was claiming the sum of £4,661 for rent arrears due by the tenant at the time of their death. The Applicant stated that the repairs to the Property cost a lot more when they were carried out, than they would have if they were done at the point in time that they fell due to be carried out. The costs incurred by the Respondent in carrying out the repairs was £18,189 and the Applicant stated that he considered the Respondent to be liable for 50% of the cost of those repairs. The Applicant stated that the repairs should have been done progressively when needed. The Respondent should not have waited for the tenant to leave the Property first. The figures quoted to him in 2011 were cheaper. The Applicant stated that it was his best estimate that it would have cost half what it did eventually cost, if the works had been done at the time.

36. The Applicant stated that he had he was claiming £10,000 for losses he might have suffered had he sold the Property in terms of the offer put forward by one of the Respondent's staff members on behalf of a potential client in April 2018. The offer suggested was around half the market value. The Applicant clarified that he did not pursue this offer, the Property had not been sold and no costs were incurred in this regard. The Applicant stated that he had lost a lot of confidence in the Respondents when they tried to "con him" out of half of the value of the Property.

37. The Applicant stated that he was claiming loss of rent over a period of 26 months at £700 per month, being a total of £26,600. Deducted from this should be a reasonable time for carrying out the repairs which the Applicant suggested could be four months. The Applicant stated that the tenant had died in March 2018 and it had taken just over 24 months to renovate the Property.

38. The Applicant referred to an email exchange with the Respondents of 20 August 2018 regarding attempting to seek agreement with the Respondents regarding them taking some responsibility for the Applicant's losses. The Applicant stated that at that stage he had intended to continue to utilise the Respondents as managing agents and instruct them to refurbish the Property however he wanted any funds that he sent to them to be kept in a separate bank account and wanted them to agree their responsibility for a share of the

costs before proceeding.

39. The Applicant stated that by December 2018 he had sent £6000 to the Respondents for payment of works. The Applicant stated that by April 2019 he was exasperated by delays and felt that he was going round in circles. He had used his own contractor, Jax Maintenance, which upset the Respondents as they did not want to use them. The Applicant stated that he had spoken to Jax Maintenance at length and they had shared with him problems they had also had with the Respondents. The Applicant stated that the Respondents had insisted that payment of the contractors go through them but he did not wish to do so. The Applicant stated that he terminated business with the Respondents in September 2019. The Applicant stated that he felt that he should have moved away from them after 12 months but it was not easy as he was living in Australia and that he felt that the Respondents should have terminated the business arrangement, rather than he having to do so himself.

40. The Applicant stated that the tenant had died in March 2018 and he found a new letting agent in November 2019. At that point there was still a lot that needed done, there were no carpets, the Property still smelled of cigarette smoke, there were no electrical or gas safety certificates etc. The Applicant stated it was May 2020 when the Property was re-let, which was 26 months after the death of the tenant. The Applicant stated that it had taken two years to renovate the Property because the Respondents did not do the work timeously. The Applicant stated the work should only have taken approximately 4 months.

41. The Applicant stated that he was also seeking to increase the rental loss claimed to £10,856 as per his intimated application under rule 14A of the Rules. The Applicant referred to a fax received from the Respondents of 30 September 2015 in which it was stated that Edinburgh Council had notified them that the tenant was entitled to up to £504 a month in Housing Benefit. The Applicant stated that the rent had been less than it should have been and that if the tenant had been entitled to Housing Benefit in that sum, then the Respondent should have increased the rent to that sum and in line with the relevant Housing Benefit rate going forward. The Applicant stated that the

Respondent should have been contacting the local authority every six or twelve months and adjusting the rent accordingly. When asked, the Applicant clarified that the sum claimed of £10,856 was calculated by him based on an assumption of what the housing benefit figure might have been and was not based on any actual figures awarded by the local authority.

42. Under cross examination the Applicant accepted that the tenant had been in arrears of rent previously and that no action was taken against the tenant to remove her from the Property during those periods of rent arrears. The Applicant stated that he thought that the Respondent should have acted more timeously and that he relied on them as his agents to take appropriate action. The Applicant stated that the Respondents had allowed the arrears to go on for so long and it was their fault.

43. The Applicant stated that this was a most intolerable set of circumstances. Both parties were effectively "carrying the can" for the local authority's default and in failing to carry out their responsibilities. The Applicant stated that there had been communication problems on both sides and that neither side had been "an angel". However, it was stated that the issues were predominantly on the side of the Respondents. The Applicant restated that the Respondents should have terminated the arrangement with him sooner and it should not have been left to him to do so. It was stated that Respondents should have acted decisively to bring the situation to an end sooner.

- Respondent's evidence

44. The Respondent's evidence at the Hearing is summarised as follows:

45. The Respondent stated that the inspection reports had consistently shown the standard of the Property which had begun to deteriorate. It was stated that the Applicant had initially agreed to their works recommendations but the tenant had refused access so these could not be carried out. When the tenant fell into arrears, the Applicant did not want to pay any expenses to have the arrears resolved. The Applicant did not wish to instruct the repairs which had been recommended and incur the expense of doing so until the arrears were resolved.

46. The Respondent stated that they had inspected the Property and provided an assessment of works required and costs of same within only a few days of the tenant's death. It was submitted that if the Applicant wanted to get on with the renovation works, he should have paid the funds up front to get the works started. It was submitted that the Respondent could not be expected to commence works without being in funds from the landlord. It was submitted that had their advice been followed by the Applicant, the Applicant would not be in the scenario that he is now. The Respondent stated that looking at the communications with the Applicant following the death of the tenant, these showed the Respondent consistently asking for clarification on when they would receive instructions and payment for works to be carried out. The Respondent was regularly chasing the Applicant for decision-making and the Applicant would regularly revert back with accusations of fraudulent misrepresentation and seeking a contribution from the Respondents to cost of the works, which simply delayed matters from progressing.

47. The Respondent stated that they have followed appropriate procedures at all times when managing the Property on behalf of the Applicant. It was accepted that there was unpaid rent at the time of the tenant's death, and it was stated that this had happened three times previously but things had got back on track. The tenant had told the local authority that she did not need housing benefit anymore because she was employed, however this was not true and this was a condition of her mental illness.

48. The Respondent stated that the local authority has fallen short in their duties here too. The Respondent stated that they had worked with the tenant's family to try and get help for the tenant. The Respondent had applied to the local authority to have rental payments paid directly to them rather than to the tenant. The Respondent stated that they as agents had done all they could under the circumstances. The Respondent stated that they had advised the Applicant previously to commence proceedings to evict the tenant from the Property each time she'd fallen into rent arrears but that the Applicant had chosen not to follow these recommendations.

49. The Respondent stated that they do not increase rent to the maximum level of housing benefit entitlement automatically. They require to take into account the condition of the Property and its location. It was stated that it was not appropriate to automatically increase the rent in line with housing benefit entitlement when the condition of the Property was not to an appropriate standard. Reference was again made to the fax of 30 September 2015.

50. The Respondent stated that the renovations had taken over two years whereas they should have been carried out within approximately 4 months. It was stated that the Respondent had chased the Applicant for payment for works or to get confirmation of instruction of the works on a number of occasions. It was stated that at one point the Applicant was not contactable for a whole month.

51. The Respondent stated that as regards the Applicant instructing Jax Maintenance directly, the Respondent had used this company previously and they were not happy with their workmanship. They had advised him not to use them on that basis. They had then further advised the Applicant not to pay the contractor directly in order that the Respondent could check the workmanship and arrange payment if all was satisfactory.

52. The Respondent stated that the full cost of the funds required for the refurbishment were never paid by the Applicant and therefore they could not complete the works. The Respondent stated that the Applicant never provided authorisation for them to carry out renovations on the kitchen and therefore they could not go ahead with these with neither instructions nor funds.

53. The Respondent stated that the Applicant was aware throughout the tenancy that there was an ongoing issue with the tenant refusing access. The Applicant had assumed that the Property had been painted and it was submitted that this had not been done due to issues with gaining access and the Applicant was aware of that and would have been aware that he had never been charged for this work. The Respondent stated that unless repairs

were of an emergency nature, they would not be in a position to force access to a property to carry them out.

54. The Respondent confirmed that regular inspections had been carried out and reference was made to the various inspection reports lodged. The Respondent stated that these reports were all sent to the Applicant and the Applicant paid for them each time and no questions were raised with these costs being deducted nor were any communications received that he had been charged for something he had not received. As far as the Respondents were aware, the inspection reports were received by the Applicant.

55. The Respondent stated that the delays at the end of the tenancy in having works carried out were entirely down to the Applicant. It was stated that multiple emails were sent from the Respondent to the Applicant chasing him for payment or for instructions to carry out works. It was stated that there would be no advantage to the Respondents having a property sitting off-market. It was submitted that there was a huge amount of work and time involved in communicating with the Applicant, and arranging works. If the Respondents are not getting rent, then they are not getting paid to manage the Property. The Respondent would effectively be working for free and they were trying to get the Property back on the market as soon as possible. It was submitted that the Applicant had only ever sent partial payments because he claimed that the Respondents were responsible for 50% of all costs, which had not been agreed.

56. The Respondent submitted that if the Applicant was not happy with the Respondent, then he should have terminated their business arrangement. At all stages the Respondent had tried their best to get the Property back on the market as soon as possible. It was submitted that the Applicant must accept responsibility, in that the tenant had been in arrears on three occasions and he had chosen not to take forward eviction proceedings. It was submitted that there was a clear pattern of behaviour by the tenant which the Applicant was aware of.

57. It was submitted that the Applicant's claim for £2000 of commission was in relation to commission which they were going to take from the costs of the renovation works, had they been completed. The Respondents had stated that they would not carry out the works unless they were paid commission. It was stated that some of this was paid as they had charged commission on some of the works that they did have carried out. It was submitted that the total sum paid to the Respondent was £14,144 for all of the works carried out under their management. It was stated that they did not charge commission on all of that sum but had they done so, this would have equated to £1414. It was stated that it was communicated to the Applicant that a commission charge was a stipulation for them to manage the works and that they would not do so for free.

58. The Respondent stated that as regards their communications with the Applicant, this was initially by letter from Edinburgh to Australia. It was stated that on one occasion a letter took over six months to arrive. It was submitted that from when the Respondents took on management of the Property in 2006, email was their preferred method of communication. They consistently tried to get an email address from the Applicant and they eventually got a business one which meant communicating with the Applicant via his secretary. It was submitted that the Respondent knew that the Applicant was using email to communicate with other people and they did not know why he would not do so with them. It was submitted that the Applicant knew that the Respondents were having issues regarding communicating with him by post and fax. All property managers who had been involved with the Applicant had asked him for better contact details. It was submitted that it was difficult to get hold of the Applicant on the phone and that he had refused to do so and would only communicate in writing.

59. As regards the offer to purchase the Property made by a member of staff, the Respondent stated that she should not have done that without communicating it to other people within the office first. Had she spoken to other staff she would have been told not to have that conversation with the Applicant and as a result of this, the team was told not to approach any landlords in this way and training was provided in this regard. He did not

believe this incident was symptomatic of a wider and more systemic communications problem.

60. The Respondent submitted that they agreed that the local authority had acted inappropriately under the circumstances and it was clear that the tenant required more support than she was getting. The Respondent had tried their best to engage the local authority and providing more support but this was fruitless. The Respondent had managed the Property to the best of their ability and followed appropriate procedures. They had recommended evicting the tenant on each of the occasions that she had fallen into rent arrears in 2004, 2013, 2016 and 2017 and the Applicant had failed to follow those recommendations. On the previous three occasions the Respondent had managed to get the rent arrears repaid but they could not on this occasion as the tenant passed away. It was submitted that had the Applicant followed their advice previously, this would not have happened. It was submitted that the Applicant was fully aware that the tenant consistently refused access and he was fully aware of the tenant's mental health condition. It was submitted that the Respondent had been managing the Property in a very difficult situation, the Applicant wanted maximum rental for the minimum investment and there was no financial inconvenience for which the Respondents are responsible.

Findings of fact

61. The Tribunal makes the following findings of fact:

(i) The Respondents are letting agents who were appointed by the Applicant to manage the letting of the Property on their behalf. 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 5 May 2022 the Applicant notified the Respondents of his 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 not in breach of the Letting Agent Code of Practice.

(iv) The Respondents were not in breach of the terms of the management agreement between the parties.

Reasons for the decision

62. The Tribunal found the evidence of Mr Wilcken to be both credible and reliable. The Tribunal found the evidence of the Applicant to be at times confused, exaggerated and unclear. The Tribunal noted that there was clearly a significant breakdown in the relationship between the Applicant and the Respondent which resulted in the termination of their business arrangement in September 2019. This was a long-standing tenant who had been in the Property for over 20 years, and who had suffered from mental health difficulties which resulted in issues arising during her tenancy over a period of some years.

63. The Tribunal noted that the purpose of the application before it was to determine whether or not the Respondent had breached one or more of the parts of the Letting Agent Code of Practice ("the Code"). The Code came into force on 31 January 2018. It was noted the vast majority of the documentation and evidence submitted by the Applicant predated the Code coming into force. Accordingly, the Tribunal cannot make any determination of any breach of the Code for any actions which took place prior to 31 January 2018. It was noted that the Applicant stated at the outset that for any failures on the part of the Respondent which predated the Code coming into force, he considered that he had a claim in relation to breach of contract. The Tribunal noted that at no point during the course of the Hearing did the Applicant refer to the contract in place between the parties nor provide any specification as to which particular sections he considered had been breached. However, the Tribunal has considered the relevant contract which was lodged by the Respondent as part of their inventory of productions, in coming to its conclusions as set out below.

64. The Tribunal addresses each of the Applicant's heads of claim as follows:

65. *Rent arrears*

The Tribunal is not satisfied on the basis of the evidence before it that the Respondent has any liability as regards the outstanding rent arrears due by the tenant at the time of her death. The Tribunal was satisfied that these rent arrears were accrued by the tenant under a separate contract in place between the tenant and the Applicant directly. Whilst it is unfortunate that the Applicant does not appear to have been able to make a claim against the estate of the late tenant for repayment of these arrears, this does not automatically mean that the Respondent becomes liable. The Tribunal was not persuaded by the evidence before it that there was any failure by the Respondent to address the issue of the rent arrears accrued by the tenant, nor that the arrears were exacerbated due to any failure by the Respondent in carrying out their duties. There was no mention during the course of the Hearing as to whether or not the Applicant had any appropriate landlord insurance in place which could have covered any such losses but it is assumed from the lack of any evidence led in that regard, that the Applicant did not have such insurance.

66. The Tribunal also noted that the Respondent had provided the Applicant with advice on a number of occasions regarding commencing repossession proceedings against the tenant on the basis of her regular accrual of rent arrears. The Applicant had failed to follow such advice from his managing agents and therefore on that basis, the Applicant has taken on the risk knowingly of the likelihood of further arrears accruing. The Applicant has had the option on a number of occasions to terminate the tenancy agreement and minimise his risk of further accrual of arrears, and has failed to do so.

67. The Applicant's subsequent claim to increase the amount claimed to the figure of £10,856 is refused. By the Applicants own admission, this is an arbitrary figure which he has calculated on the basis of an assumption of what the housing benefit entitlement of the tenant may have been. It is not based on any fact whatsoever. The Tribunal does not consider that any such increase is appropriate.

68. *Loss of rental profits*

The Tribunal was not satisfied on the evidence before it, that there is any liability on the part of the Respondent as regards the loss of rental during the period within which the Applicant was refurbishing the Property. The Tribunal was satisfied that the Respondent had made a number of attempts to obtain instructions from the Applicant as regards carrying out works to the Property and further to obtain funds from the Applicant to commence such works. The Applicant's own failure to provide adequate instructions and funds, meant that such works could not be carried out within a reasonable timescale. The Tribunal was not satisfied that there was any reasonable explanation as to why loss of rental over the course of 40 months was being claimed in the application, when it had been confirmed that the tenant died in March 2018 and the Property was re-let in May 2020. That is a period 26 months not 40 months as stated in the application. The Tribunal noted that much of the delay in works being carried out appeared to be due to the Applicant failing to provide proper instructions and obfuscating the position by attempting to seek agreement from the Respondent that they will take on liability for part of the refurbishment costs. The Tribunal was not satisfied that the lengthy time taken to refurbish the Property was caused by any fault or neglect on behalf of the Respondent. This Tribunal was not satisfied that the Applicant had taken any appropriate measures to mitigate his losses. The Tribunal was not satisfied that a satisfactory response had been given by the Applicant as to why he spent such a lengthy time effectively arguing with Respondent about not having provided instructions or providing funds, when had he wished to mitigate his losses, he could have instructed alternative agents to get going with the works whilst he could choose to continue a dialogue with the Respondent separately on that issue so as not to hold up the renovation of the Property.

69. *Commission payments*

The Applicant seeks payment of £2000 in commission payments. There was no evidence put to the Tribunal in relation to these commission payments, nor could the Applicant explain what these were, when they were paid and what they related to, when asked by the Tribunal. Accordingly, the Tribunal is not satisfied that there is any evidence as to the basis of this head of claim.

70. *Potential loss*

The application refers to potential loss of £70,000 should the sale of the Property have gone ahead in terms of the offer referred to over the telephone from a member of the Respondent's staff. It was quite clear that this offer was not entertained by the Applicant, no sale proceeded and no agreement was made in any shape or form. Therefore, there has been no loss incurred by the Applicant in this regard nor is there any risk of future loss being incurred when this offer is not even live. Accordingly, the Tribunal could see no basis whatsoever for this head of claim.

71. The Tribunal was not satisfied that there was sufficient evidence before it to make a finding of a breach of any of the paragraphs of the Code of Practice as set out in the application. The Tribunal was also not satisfied that there was sufficient evidence before it to make a finding of a breach of any of the parts of the management agreement in place between the parties. The Tribunal determined that the Application is accordingly refused.

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.

Legal Member/Chairperson 4 October 2023