

# 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/23/1338**

**Re: Property at 45 Lilybank Terraced, Dundee, DD4 6BQ (“the Property”)**

#### **Parties:**

**Kerrie More, Grieves House, Snabs Farm, Longforgan, DD2 5HH (“the Applicant”)**

**Pavilion Properties, 86 Bell Street, Dundee, DD1 1HN (“the Respondent”)**

#### **Tribunal Members:**

**Fiona Watson (Legal Member)**

**Mike Scott (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, 27, 89, 90, 93 and 108 of the Letting Agent Code of Practice.**

#### **Background**

1. By application dated 26 April 2023, 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, 19, 20-21, 26-

27, 86, 89-90, 93 and 108 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 19 of the Code states *“You must not provide information that is deliberately or negligently misleading or false.”*
5. Paragraph 20 of the Code states *“You must apply your policies and procedures consistently and reasonably.”*
6. 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”*
7. Paragraph 26 of the Code states *“You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.”*
8. 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”.*
9. Paragraph 86 of the Code states *“You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required, if you provide this service directly on the landlord’s behalf. Your procedure should include target timescales for carrying out routine and emergency repairs.”*
10. Paragraph 89 of the Code states *“When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed”*
11. 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.”*

12. 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”*

13. 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.

14. A Case Management Discussion took place on 19 July 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 18 September 2023. The Applicant was personally present and represented herself. The Respondent was represented by Mr Letley, of Pavilion Properties.

- **Applicant’s evidence**

15. The Applicant’s evidence at the Hearing is summarised as follows:

16. The Applicant stated that her case fell into two parts. Firstly, how the Respondent dealt with handling repairs at the property and secondly, how the Respondent dealt with handling her complaint to them.

17. The Applicant stated that she was first notified in November 2022 that there had been issues regarding a leak in the shower and also a leak in the roof. The Applicant stated that she was first notified of the leak in the shower at the end of November 2022. The Applicant stated that she was told by the letting agent that this repair was in hand but it went on for 10 weeks during which time she was going back and forth with them. The Applicant stated that she had concerns regarding the plumber having notified the tenant that they should continue to use

the shower. The Applicant stated that it should have been highlighted to the tenant that this could cause further damage. The Applicant stated that in that 10 weeks, there had been no progress made with the repair and therefore she had to step in and instruct her own tradesman to rectify the issue.

18. The Applicant stated that had there been regular checks carried out by the letting agent on the shower seal, then the leak would not have happened. The Applicant stated that she had been told by the letting agent that tradesman had been into the property to check it. She was told in September 2022 that checks had been done and nothing had been reported to them. Thereafter she was told that the Respondent does not do inspections as part of their contract, which the Applicant stated was a contradiction to what she'd been told previously. The Applicant stated that she had been told there had been a check carried out in the Property on 20 September 2022 but then later was advised that this was in fact the date when a gas safety check had been raised.

19. The Applicant stated that the roof leak was not fixed until the start of May 2023. The tenant had reported it at the start of November 2022 and the Applicant was notified of this at the end of November 2022. The Applicant stated that she is still not sure if the leak in the roof has been repaired fully. The Applicants stated that the leak had been identified in November 2022 but she was only notified three weeks later, and she was only notified of the roof leak five weeks after it had been reported by the tenant.

20. The Applicant confirmed that the tenant has continued to occupy and pay rent during this time.

21. The Applicant stated that she had the shower replaced and fully repaired by her own tradesmen because it was unfair to allow the tenant to continue in that situation. The Applicant stated that the continual use of the shower between November 2022 and March 2023 caused significant damage from water going in between the wet wall and the shower tray. The shower tray had dropped onto a floorboard and this led to the wet wall and plasterboard having to be taken off and replaced, as well as the floor replaced.

22. The Applicant stated that she complained to the Respondent regarding the delays and their lack of communication and she was told that she would receive an

acknowledgement to her complaint within five working days. The Applicant stated that she received no reply for 10 working days. At that stage she received an acknowledgement saying that somebody would be in touch and then again she heard nothing for a further 13 working days. The Applicant stated that she was then told that because she had fixed the shower herself using her own contractor, this could not be investigated by the Respondent.

23. The Applicant stated that in December 2022 the Respondent sent out a tradesman to have a look at the shower and they were waiting for a quote. The Applicant stated that she raised with the Respondent the risk to the tenant having continued use of the shower during that period. She stated that she did not get much of a response from the Respondent. The Applicant stated that the Respondent offered to send someone out to reseal the shower and patch up until the full repair was done. The Applicant stated that if the shower tray had already dropped through the floorboard, then as soon as somebody stood on it any re seal would be broken again therefore this would be pointless. The Applicant stated that nothing happened over the 2022 Christmas and new year holiday period and she was told by the Respondent that the tradesmen they used were shut down over the holidays.

24. The Applicant stated that she then received a quote for the roof repair at the start of January 2023, but not a quote for repair to the shower. The Applicant stated that the roof repair quote did not make any sense. It referred to stairrs and a fireplace, neither of which were relevant to her particular Property. There was a lot of going back and forth trying to decipher what the quote was referring to

25. The Applicant stated that she was unsure as to the content of the quote and there was nothing saying what the cause of the issue was and what required to be done. The Applicant stated that she also required to establish if she would be covered under her insurance or not. The Applicant stated that she was concerned that there was still continual damage being done and therefore at the start of March 2023 she instructed her own tradesman to go in and quote and fix the issue. She had lost faith in the Respondent and she wanted to take back control.

26. As regards the roof repair, the Applicant stated that she authorised the works on 2 March 2023 but no repairs were carried out. She chased this on 9 March, 21

March, 27 March, 24 April and 26 April but there was a lack of communication from the Respondent. The works only started at the beginning of May 2023. The Applicant stated that no reason had been given to her by the Respondent regarding the reasons for the delay between her giving authorisation to the works and the repairs being done.

27. The Applicant stated that there were a couple of points within the roof quote that she did not authorise. After she had her own tradesman look at the shower she also had them look at the mould on the ceiling and her own tradesman had told her that of the work quoted, not all required to be done. Against that background she did not go ahead with some of the work but did proceed with other parts. The Applicant stated that the original quote for the roof repairs was £170 and the eventual cost was £200.
28. The Applicant stated that her claim was in the sum of £1,250 which represented a portion of the total cost of the repair to the shower. This represents what she claimed to be additional damage caused through the continued use of the shower and which costs would not have been incurred had the repair been rectified sooner. The Applicant stated that she was also claiming additional sums as compensation for time spent dealing with matters and inconvenience to her.
29. The Applicant stated that when her tradesman went out to the Property, he advised her that sealant tape had been put on the shower and that this should not have been used as it doesn't work and it just lets water in.
30. The Applicant stated that the additional items of work which would not have been needed had the shower repair been done earlier included wet wall, plasterboard, flooring and a portion of the labour costs. The Applicant stated that her tradesman had told her that £1,250 worth of the works were due to the delay in the works being carried out and that this was a best estimate from her tradesman.
31. The Applicant referred to the terms and conditions in place with the Respondents and in particular their failures to adhere to clause 2.4(e) and 2.4(f).
32. The Applicant stated that she had owned the property since 2007. She had not personally been in the property since 2016 when she handed management over to the Respondent. She believed the condition of the Property to be good. She

had lived in the Property prior to that and had put in a new kitchen and bathroom in 2015. She refreshed the whole Property prior to handing it over to the Respondent to manage. This is the only property that the Applicant lets out.

33. The Applicant stated that she had handed over the Property to the Respondent on the assumption that it would be managed properly by them using their expertise. She relied on the Respondent to support and guide her through the lettings process and she felt that in this case, they had let her down and she lost trust in them.

- Respondent's evidence

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

35. The Respondent stated that after the shower leak was notified to them by the tenant they had two plumbers attend to look at the shower. When the tenant had moved into the Property three years prior, the shower was shown on the inventory as being in a good condition. The plumbers had notified the Respondent that water had seeped in, and that this had likely been going on for a long time but had only been noticed by the tenant when the shower tray had dropped. The Respondent had only been notified of the shower tray dropping on 2 November 2022 and at that point the damage had already been done. The Respondent stated that had an upgrade being carried out to the shower prior to this, the damage would not have happened. It was stated that the Applicant had simply kept patching up repairs rather than carrying out a proper upgrade. It was stated that the shower had now been replaced but the Respondent had done all that they could.

36. The Respondent stated that he when he got involved in the matter, he tried to inspect the Property but the tenant refused access, which he understood was on the instruction of the Applicant. It was stated that there had been a number of issues with gaining access to the Property over the years due to the tenant having a large dog and also due to the tenant being away from the Property for periods of time and not allowing access unless she was personally present.

37. The Respondent stated that when they carried out inspections the shower seemed to be fine. It was only when someone stepped in the shower tray and it dropped that it would then be noticeable. The Respondent stated that they were told by their tradesman that this was an issue which had probably been ongoing for a long time. It was a chip board floor underneath the shower which was fairly old, and was a straightforward job to repair.
38. The Respondent accepted that there had been delays in responding to the Applicant's complaint. The Respondent stated that he had personal issues, including the health of his mother who lived abroad, and he had dealt with the matter as quickly as he could. As far as he was aware the repairs had been carried out. It was stated that he had tried to respond to the Applicant as fully as he could but by the time he was able to, the Applicant had already made an application to the Tribunal.
39. The Respondent stated that there had been an inspection on 6 March 2023 to carry out the shower works. Up until then, the Applicant was seeking a revised quote and asking lots of questions and going back and forth. The Respondent did not hold any funds nor did they have an instruction from the landlord to carry out the works. They did instruct the works on 6 March 2023 for the roof repair as soon as they had received the instructions from the landlord. The quote had been received on 16 December 2022 and between December and March the landlord had asked a number of queries about the quote which delayed matters. It was stated that the relevant member of staff (Mr Walker) followed the matter through quickly and it was stated that he would not "have sat on" any instructions. The quote had not been accepted by the Applicant and there had been a lot of toing and froing.
40. The Respondent stated that they received the quote for the shower in the second week of January but that they did not get instructions from the Applicant to act on that quote.
41. The Respondent stated that the flat was tired. It was stated that in 2020 there had been an issue with the heating and their contractor had said that the boiler was old and beyond repair. It was stated that the Applicant had been asked on a number of occasions to carry out certain works but had refused.



42. The Respondent stated that it was a fairly old shower cubicle in an old bathroom and the older fittings are more prone to leaks. It was stated that the leak had probably been ongoing for some time as a longstanding issue which would have been avoided if the Applicant had refurbished the bathroom earlier. It was stated that having considered the correspondence with the landlord over the years, it was likely that even if the landlord had been advised to carry out a refurbishment of the bathroom that she would not have agreed to do so.
43. The Respondent stated that the Property was a 1950s ex-council house and was quite tired. The shower needed replaced. The Respondent had managed the property for over 7 years and had made suggestions to the Applicant regarding repairs and upgrading required but the Applicant had always refused same. It was stated that the Applicant in December 2021 had questioned a quote for £78 for repairing a cupboard which had come off the wall and that she had refused the suggested works.
44. The Respondent stated that the Applicant had not invested money in the Property over the years and that the Respondent had tried to encourage the Applicant to accrue a sinking fund to allow payment for repairs and upgrading but she had refused to do so.
45. The Respondent stated that they had contacted a roofer to go out and quote for the repairs needed to the roof leak but that the roofer was very busy and there was a long period of wet weather which meant they couldn't go up on the roof.
46. The Respondent stated that the Applicant had told the Respondent that no repairs should be carried out of any value without her prior notification and authorisation, and as such this caused delays when instructing repairs.

## **Findings of fact**

47. 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 4 April 2023 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 in breach of sections 21, 26, 27, 89, 90, 93 and 108 of the Letting Agent Code of Practice.

### **Reasons for the decision**

48. The Tribunal noted from the documentation lodged by the Respondent that on 2 November 2022 the tenant reported the shower tray dropping. On 28 November 2022 a plumber was asked to quote to fix the shower tray. On 28 November 2022 the tenant reported water ingress in the kitchen ceiling but indicated that she could not facilitate access until around 9 December. On 8 December 2022 the Applicant was updated on the report from the tenant of water ingress and advised a contractor had been instructed. On 14 December 2022 the Applicant was updated as regards the inspection and advised that quotes had been requested for the shower and the roof repairs. On 2 February 2023 a second quotation was requested in relation to the roof repair, and thereafter the contractor was instructed to proceed on 6 March 2023
49. The Tribunal noted that the terms and conditions between the parties states at clause 2.4(f) that *“we will use our reasonable endeavours to advise you of any work required to your property within 2 working days of being informed.”* The Tribunal was satisfied that this had not happened here, in relation to either the report of the shower leak or the report of the roof leak.
50. The Applicant stated that the leak had been caused due to the use of sealant tape added to the shower by the tenant. However, there was no evidence

presented to the tribunal in this regard, nor in the form of evidence from a treatment or a written report by a treatment with knowledge and experience in this area. It was a matter of dispute between the parties as to whether or not the Respondent had ever advised the Applicant that the shower required to be replaced or upgraded. The Tribunal was not directed to any evidence in this regard.

51. The Tribunal was not satisfied that there was sufficient evidence before it that the Respondent could be held liable for payment in the sum of £1,250 towards the cost of repairing the shower. There was no evidence produced as regards a professional opinion on the extent of the issue, how long such a leak was likely to have gone on for or the cause of same. No evidence was put to the Tribunal to demonstrate that the sum of £1,250 was based on fact but instead was simply said to be a “best estimate” via a conversation with the Applicant’s tradesman. It appeared to the Tribunal that this was simply an assumption being made by the Applicant and the Tribunal was not satisfied that such a reasonable assumption could be made. The Tribunal was not satisfied that the Applicant had presented any case based in fact or law to demonstrate a liability on the part of the Respondent in this regard.

52. The Tribunal noted that the Applicant’s position was that the Respondent had failed to adequately inspect the Property and identify the shower leak timeously. In an email of 23 December 2022, the Applicant set out to the Respondent that they would not expect anyone to be standing in the shower during the course of an inspection, however they would hope that seals would be checked. The Tribunal was not satisfied that there was any evidence before it to suggest that the Respondent would have been able to identify this issue without a report from the tenant regarding the shower tray dropping. The Tribunal was not satisfied that there was sufficient evidence before it to state categorically that the Respondent had missed anything in this regard that they otherwise should have identified earlier.

53. By their own admission, the Respondent had admitted that they had not met their own timescales for responding to the Applicant’s complaint. The Tribunal does note Mr Letley’s personal circumstances which caused delays in him being able to respond fully to the Applicant, which the Tribunal has no reason

to doubt. However, against this admission, the Tribunal must make a finding of a breach of the Code in this regard.

54. The Tribunal was not persuaded based on the evidence before it that there was any evidence of a lack of honesty, openness, transparency or fairness in the Respondent's dealings with the Applicant in terms of section 17 of the Code. Likewise, the Tribunal was not satisfied that there was sufficient evidence before it to demonstrate the Respondent having acted in a deliberately or negligently misleading or false manner in terms of section 19. The Tribunal was not satisfied that there was evidence before it to suggest that the Respondent had not put in place appropriate written procedures and processes as required in terms of paragraph 86 of the Code.

55. The tribunal was satisfied however that the Respondent had failed to notify the Applicant of repairs within a reasonable timescale following report of same by the tenant. The Tribunal was further satisfied that any such repairs were not instructed timeously.

56. The Tribunal was satisfied on the basis of the evidence before it that there did appear to be significant toing and froing between the parties caused by the Applicant asking questions and seeking revised quotes. Whilst the Tribunal is not criticising the Applicant for exercising her right to do so, the Tribunal did consider that the Applicant had contributed in some way to the delays in the works being carried out. However, in all the circumstances, the Tribunal was satisfied that the Applicant was entitled to compensation in respect of the inconvenience and time spent in corresponding with the Respondent, as well as the Respondent's failure to respond to her formal complaint in a timely manner.

57. The Tribunal was satisfied that there was sufficient evidence before it to make a finding of a breach of paragraphs 21, 26, 27, 89, 90, 93 and 108 of the Code of Practice.

58. The Tribunal determined that a Letting Agent Enforcement Order would be issued in the sum of £500.

## **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

25 September 2023