

Housing and Property Chamber First-tier Tribunal for Scotland



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

Property: 13 Greenbank Drive, Glenburn Paisley ("the Property")

Chamber Reference: FTS/HPC/LA/20/0517

Parties:

Mrs Christine Gilbert, 47 Langton Crescent, Barrhead, G78 2HD ("the applicant")

and

R&J Properties, 65 Causeyside Street, Paisley, PA1 1YT ("the Respondents")

Tribunal Members:

Fiona Watson (Legal Member/Chairperson) and Linda Reid (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 the Letting Agent Code of Practice.

Background

1. By application dated 11 February 2020, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 of Practice") 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 Respondents had failed to comply with their duties under Paragraphs 108, 118, 120, 123, 124 and 125 of the Code of Practice.

3. A Hearing took place by tele-conference on 1 September 2020. The Applicant was present and accompanied by Mrs Kelly from East Renfrewshire Citizens Advice Bureau. There was no appearance by or on behalf of the Respondents. The Tribunal was satisfied that intimation of the date and time of the Hearing made been duly made on the Respondents and the Hearing could take place in their absence.

Findings of fact

4. The Tribunal makes the following findings of fact:
 - (i) The Respondents are letting agents appointed by the Applicant. Accordingly, their work on her behalf 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 19 December 2019, 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 Applicant entered into an agency agreement (“the Agreement”) with the Respondents.
 - (iv) In terms of section 7 of the Agreement the Respondents agreed to *“receiving ongoing rental payments, preparing and forwarding to The Owner and/or their accountant financial statements on a monthly basis, and remitting the balance of rental payments within one month of the due date, provided the same shall have actually been received.”*
 - (v) In terms of section C of the Agreement, the Respondents were entitled to deduct a *“Management Commission equivalent to 10% of rental received.”*

Reasons for the decision

5. The Tribunal accepted the evidence presented by the Applicant in her application and verbal submissions made at the Hearing. The Respondents had not made any written representations to the Tribunal, so had not sought to contradict any of that evidence.
6. The Applicant submitted that she had been a first-time landlord when she instructed the Respondents to act on her behalf in managing the Property. The tenancy agreement commenced in November 2014 with a monthly rent of £500. The tenancy continued until May 2018 when the Tenant vacated the property. Less the agreed commission of 10%, she should have received a net payment of £450 each month. At no point during the course of the tenancy did she receive this sum. The payments made to her account varied. For a number of months, the payments were £419.54, but in other months lower or higher amounts were paid in. There were a number of months where no payments were received at all. The Applicant confirmed that there were a number of repairs which required to be carried out to the property during the course of the tenancy and therefore for those months where no payment was received by her at all, it was likely to have been where the rental received was retained to cover the cost of repairs carried out. However, as no invoices for any of the repairs were ever produced by the Respondents she could not be sure of this.
7. When the Applicant queried early on in the lease why the rental receipts were of a variable amount, she was told that the tenant was in receipt of benefits which were not paid monthly, that a family member would be topping up the payments due, and that the figures would all work themselves out by the end of the tenancy. The

Applicant submitted that she had never rented out a property before and she therefore simply believed that the Respondents knew what they were doing and trusted their advice. She made a number of requests during the course of the tenancy for monthly statements showing rental received and commissions/fees taken, and nothing was ever provided.

8. The Applicant did not know how the sums paid to her were calculated, nor how much rent had or hadn't been paid by the tenant. The Applicant did not know by how much the tenant was in arrears, nor how much was being deducted by the Respondent by way of fees or commissions. The Applicant's application stated that she believed she was due the sum of £900. She had calculated this on the basis that on average, she was paid £30 less each month than she had expected to receive and over the course of 30 months, this equated to £900. However, she considered that it was likely that the Respondent owed far more, and indicated that it was likely to be in the region of £1230 being the equivalent of 41 months..
9. On 19 December 2019, the Applicant notified the Respondents that she believed they had failed to comply with Paragraphs 108, 118, 120, 123, 124 and 125 of the Code of Practice. There was no response by the Respondents.
10. Paragraph 108 of the Code of Practice provides that a Letting Agent must respond to enquiries and complaints within reasonable timescales.
11. Paragraph 118 of the Code of Practice provides that a Letting Agent must have robust and transparent written procedures for handling client money.
12. Paragraph 120 of the Code of Practice provides that a Letting Agent must be able to account immediately to a landlord for all money held on behalf of clients.
13. Paragraph 123 of the Code of Practice provides that a Letting Agent must regularly record and monitor all transactions and reconcile these monthly as a minimum.
14. The Tribunal was satisfied that the Letting Agent had failed to comply with Paragraphs 108, 118, 120 and 123. The Applicant had made numerous requests to the Respondent for copy invoices and monthly statements showing funds received and deductions made, none of which had been provided. There was no monthly reconciliation provided by the Respondent, nor was any clear procedure for handling client money in place. The Applicant had made complaints to the Respondent regarding the lack of such information being provided and said complaints were not adequately responded to. The Applicant's formal notification to the Respondents that she believed they had failed to comply with Paragraphs 108, 118, 120 and 123 of the Code of Practice was ignored.
15. Accordingly, the Tribunal upheld the Applicant's complaints under Paragraphs 108, 118, 120 and 123 of the Code of Practice.
16. Paragraph 124 of the Code of Practice provides that a Letting Agent must ensure that clients' money is available to them on request and is given to them without unnecessary delay or penalties.
17. Paragraph 125 of the Code of Practice provides that a Letting Agent must pay or repay client money as soon as there is no longer any need to retain that money.
18. The Tribunal was not satisfied that there was sufficient evidence before it to find a breach of either paragraph 124 or 125 of the Code of Practice. There was no evidence produced that the Respondents were holding money belonging to the

Applicant, or retaining any funds due to be repaid to her.

19. The Tribunal determined that the Order should incorporate a requirement to pay to the Applicant the sum of £500 to compensate her for the loss suffered as a result of the failure to comply.

20. 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.

Legal Member/Chairperson

1 September 2020