

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 48 of the Housing (Scotland) Act 2014 (“2014 Act”)

Chamber ref: FTS/HPC/LA/22/4019

Re: Flat 1/3, 1117 Cathcart Road, Mount Florida, Glasgow, G42 9BD
 (“Property”)

Parties:

Mr Gordon Miller, 49 Barlae Avenue, Eaglesham, Glasgow, G76 0DA
 (“Applicant”)

R&R Lets (Scotland) Ltd (trading as Ross Sales & Lettings), incorporated under the Companies Acts with registered number SC578312 and having its registered office at 116 Elderslie Street, Glasgow, G3 7AW
 (“Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member and Chair) and Frances Wood (Ordinary Member)

Present:

The hearing in relation to case reference FTS/HPC/LA/22/4019 took place at 10am on Friday 23 June 2023 by telephone conference call (“**the CMD**”). The Applicant was present and the Respondent was represented by Kimberley Ronald (“**Ms Ronald**”), lettings manager, and Russell Fleming (“**Mr Fleming**”), director. The clerk to the Tribunal was Lisa McMonagle.

Background

1. The Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“**the Tribunal**”) under section 48 of the 2014 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 95 (*Application to enforce letting agent code of practice*) of the HPC Rules.

2. A case management discussion was held on Monday 6 March 2023, at which time the Tribunal identified that the following matters remained outstanding and required to be resolved:
 - a. what (if any) responsibilities did the Respondent have in relation to the Property and what (if any) duties did the Respondent owe to the Applicant, with particular reference to paragraphs 85 and 90 of the Letting Agent Code of Practice (“**Code**”);
 - b. on what basis were the contractors (e.g. electricians) engaged on each occasion in relation to the Property and by whom were they engaged;
 - c. what (if any) responsibilities did the Respondent have with regard to the management of and works carried out by the contractors;
 - d. had the Respondent complied with paragraph 85 of the Code in relation to the gas safety certificate;
 - e. had the Respondent complied with paragraph 90 of the Code in relation to the washing machine problems; and
 - f. if the Respondent were to be found not to have complied with the Code, what losses (if any) were suffered by the Applicant as a result and/or what (if any) compensation should be paid by the Respondent to the Applicant.
3. A notice of direction was issued to both the Applicant and the Respondent by the Tribunal dated 6 March 2023 (“**First Directions**”) with a view to assisting the Tribunal in the determination of the case. There was, amongst other things, a direction to each party to provide (by 14 March 2023) a note of any dates in May 2023 and June 2023 on which that party would not be available to attend a hearing. The Applicant responded to this direction but the Respondent did not.
4. Accordingly on 20 March 2023, the parties were notified that a hearing had been scheduled for 31 May 2023.
5. On 30 March 2023, Ms Fleming submitted a postponement request on behalf of the Respondent and, on 31 March 2023, Ms Fleming submitted a request to extend the deadline for the Respondent to provide copy documentation as directed in the First Directions.
6. After providing evidence satisfactory to the Tribunal regarding the reason for the request to postpone, the request to postpone the hearing on 31 May 2023 was granted and the Hearing was then scheduled.
7. In addition, a second notice of directions was issued to both the Applicant and the Respondent by the Tribunal dated 24 April 2023 (“**Second Directions**”) which extended the date by which the Respondent was required to provide both (i) a “paginated and indexed bundle” of documentation (extended from 31 March 2023 as set out in the First Directions) and (ii) its written submissions (extended from 4 May 2023 as set out in the First Directions), to 19 May 2023 as set out in

the Second Directions. The Second Directions also allowed the Applicant a period of time to respond.

8. In addition to the information available to the Tribunal at the CMD, the following was also made available to the Tribunal prior to the Hearing:
 - a. Initial written submissions from the Respondent by e-mail dated 31 March 2023;
 - b. High-level timeline and written submissions from the Applicant by e-mail dated 15 April 2023;
 - c. Productions 31 to 34 from the Applicant (attached to e-mail dated 15 April 2023);
 - d. Response to Second Directions from the Applicant by e-mail dated 25 April 2023;
 - e. Response to Second Directions from the Respondent by e-mail dated 19 May 2023 (bundle enclosed was not paginated as directed and so not reviewed by the Tribunal);
 - f. Response from the Applicant to Respondent's e-mail of 19 May 2023;
 - g. Response to Second Directions from Respondent by e-mail dated 19 May 2023 (enclosing indexed and paginated bundle of 110 pages).
9. The Applicant's productions in his bundle were numbered by document and will be referred to in this decision as "AppProd" with the relevant document number.
10. The Respondent's productions in its bundle were numbered by page and will be referred to in this decision as "RespProd" with the relevant page number.
11. During the Hearing, Ms Fleming indicated that an updated indexed and paginated bundle (which had additional screenshots of some e-mails) had been provided to the administration team of the Tribunal but neither of the Tribunal Members had received this.
12. The Tribunal had been informed by the Respondent that it was unable to comply with the direction (in both the First Directions and the Second Directions) to provide copies of various chains of e-mail correspondence including the usual "From", "To", "Date" / "Sent" and "Subject" line details. The Tribunal was informed that this was because the Respondent "was having issues with [its] emails, which have been archived/backed up, and [it] currently [had] an IT company looking into this". This was unhelpful in that the full context of certain e-mails could not be ascertained and which was the reason underlying the particular direction. A number of e-mails in the Respondent's bundle were cut off in the middle, which did not suggest that the e-mail was not available at all. One example of this is at RespProd 103.

13. The reasons set out by the Applicant in the application form dated 28 October 2022 (“**Application Form**”) for considering that there had been a failure to comply with the Code were as follows:
 - a. paragraph 85: “gas safety certificate expired on 26 April 2022 and despite reminders from me, it was not renewed until 15 July 2022”; and
 - b. paragraph 90: “tenant reported fault in washing machine on 25 March 2022. She went without a proper working washing machine until 5th August 2022”.
14. In terms of the question on losses in the Application Form, the Applicant noted the following with regard to each section of the Code:
 - a. paragraph 85: had suffered no loss;
 - b. paragraph 90: paid out £705 comprising the following –

i. Electrician	£90
ii. Washing machine	£239
iii. Install machine	£90
iv. Disconnect old machine	£90
v. Remove old machine	£90
vi. Laminate flooring and underlay	£58
vii. Disposal of floor tiles	£48

Relevant provisions of the Code

15. Paragraph 85 of the Code is in the following terms:

“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.”

16. Paragraph 90 of the Code is in the following terms:

“Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.”

Key relevant legislative provisions

17. The key elements, for the purposes of understanding this decision, of sections 47 and 48 of the 2014 Act are in the following terms:

47(1) *“The terms of any agreement of a kind mentioned in subsection (2) are of no effect in so far as they purport to—*
 (a) *exclude or limit any duty a letting agent has under the Letting Agent Code of Practice, or*

- (b) *impose any penalty, disability or obligation in the event of a person enforcing compliance by the letting agent with such a duty.*
- 47(2) *“The agreements are (a) an agreement between a landlord and a letting agent, ...”*
- 48(1) *“A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.”*
- 48(7) *“Where the Tribunal decides that the letting agent has failed to comply [with the Code], it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.”*
- 48(8) *“A letting agent enforcement order—*
 - (a) *must specify the period within which each step must be taken,*
 - (b) *may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.”*

Proceedings

Paragraph 85 – gas safety certificate

18. The Applicant submitted that the Respondent had not complied with paragraph 85 of the Code because it did not have appropriate systems and controls in place to ensure that the gas safety certificate was renewed on time.
19. It was accepted on behalf of the Respondent that the gas safety certificate for the Property had expired on 26 April 2022 and was not renewed until 15 July 2022.
20. The Tribunal had been provided with copies of the “LEGISLATION UPDATE” e-mails from the Respondent to the Applicant which related to “an update of the current legislative requirements due for renewal” dated:
 - a. 2 April 2021, which referred to both portable appliance testing and the gas safety certificate (AppProd 3); and
 - b. 27 April 2022, which referred only to the portable appliance testing (AppProd 5).

Both e-mails stated “Please feel free to use your own suppliers to have these works carried out. Please email back to confirm if you are using your own suppliers to have these works carried out. If we do not hear from you within 5 working days, we will arrange to have these works carried out and raise an invoice to your account.”

21. It was accepted on behalf of the Respondent that the Respondent was responsible for arranging annual gas safety inspections.

22. It was explained by Mr Fleming that the “LEGISLATION UPDATE” e-mails were generated manually, rather than automatically by the system.
23. Various submissions were made by each party regarding whether or not the Respondent had made any attempt to contact the tenant in order to obtain access for the relevant gas safety certificate inspection.
24. The submission on behalf of the Respondent was that it had made three attempts to do so on 7, 14 and 20 April 2022 and that that was evidenced by the entries on the MRI system (RespProd 99).
25. The Applicant’s submission was that the Respondent had made no attempt to do so (which was confirmed, he submitted, by what he had been told by the tenant in her e-mail of 20 January 2023 (AppProd 10)). In addition, the Applicant submitted that no approach should have been made to the tenant without first checking with him as to whether or not he wanted the Respondent to organise the gas safety inspection on his behalf (as they had checked in 2021 – AppProd 3). He submitted that the entries in the MRI system were not genuine. Mr Fleming strongly rejected this suggestion.
26. There was no dispute from Mr Fleming or Ms Ronald (on behalf of the Respondent) that the Applicant had contacted the Respondent on 4 May 2022 (AppProd 7), 27 June 2022 (AppProd 8) and 4 July 2022 (original case papers) to enquire about the renewal of the gas safety certificate for the Property. An e-mail in the original case papers from Mr Fleming stated that the gas safety check was instructed on 5 July 2022. It was agreed by the parties that the gas safety certificate for the Property was not renewed until 15 July 2022.
27. The explanation provided on behalf of the Respondent as to why the gas safety check had not been undertaken (and so the certificate was not renewed) on time was:
 - a. As a result of the way the Property was set up on the system, it having been taken over mid-management and not from the start of the tenancy (Respondent’s e-mail dated 13 January 2023 (“**Resp 13 Jan**”)) – it not being explained what was meant by this, given that a “LEGISLATION UPDATE” e-mail had been sent on 2 April 2021, almost a year after the Property was taken over in May 2020 (as confirmed by AppProd 2) but had not been sent for the April 2022 renewal;
 - b. That, when a gas safety certificate gets to its date of expiry, it “falls off the system” and so this was why the “LEGISLATION UPDATE” e-mail of 27 April 2022 did not refer to it, as the certificate had already expired on 26 April 2022; and
 - c. The lack of a handover between one member of staff leaving and others starting and use of temporary staff by the Respondent between April and June 2022 (Resp 13 Jan).

28. Ms Ronald confirmed that, “when this was brought to [her] attention in July” 2022, the inspection was booked in and the contractor organised it to be carried out (Resp 13 Jan).
29. In the written submissions dated 19 May 2023 (and confirmed orally in the Hearing), it was confirmed on behalf of the Respondent that it had “implemented measures to ensure that this does not happen again. We set reminders on the MRI system as well as having a backup spreadsheet with expiry dates”. During the Hearing, Ms Ronald also confirmed that a note was added to the diary for the following year and that it would send a reminder the following year. It was understood by the Tribunal that any such diary entry needed to be entered manually.
30. The Applicant submitted (in his written submissions dated 15 April 2023 and had also referred to this in his e-mail to Mr Fleming dated 4 July 2022 (included in original case papers)) that he had been told by Mr Fleming that the Respondent “had previously been working two months ahead of themselves on the Gas Safety Certificates and he [Mr Fleming] had told...ex employee Andrew Muir...to slow down with the renewals”.
31. Upon being questioned about this, it was not clear to the Tribunal whether or not this was said and/or what was meant by this (if said) but Ms Ronald confirmed the new process in place for reminders, namely that the first reminder was now sent exactly one month before the gas safety certificate was due to expire and both the landlord and the contractor should then be contacted, one month being more than enough time to make the necessary arrangements. She also confirmed that an owner always had a choice whether or not to use their own contractors and that owners were always given time of five days, to respond before the inspection was booked in.
32. The Respondent had been directed (in both the First Directions and the Second Directions) to provide “a printout of a report generated and/or downloaded from the customer relationship management system used by the Respondent (understood to be provided by MRI) showing all entries for April 2022 (or for such longer period for which the Respondent is able to generate and/or download a report from the system)”, but various redactions had been applied and the only entries provided were for 7, 14 and 20 April 2022. When questioned on this, Mr Fleming explicitly confirmed to the Tribunal that all of the other entries on the screenshot provided (which the Tribunal noted only covered dates between 25 March 2022 and 28 April 2022) related solely to banking and payment information and so had been redacted for that reason.

Paragraph 90 – washing machine

33. The parties agreed, during the Hearing, the dates (and actions taken on those dates) as set out in the high-level timeline set out in appendix 1 to this decision.
34. The Applicant submitted that he had put his trust in the Respondent to get the job done and, had it been done properly, it would have been finished within two days – instead, he submitted, it continued from March to the beginning of August 2022 - and ended up costing him a lot of money.

35. Ms Ronald confirmed that the Respondent did not have a written repairs procedure and that, how a repair would be dealt with, would depend upon the severity of each repair.
36. Ms Ronald confirmed that the Respondent had not carried out a routine inspection during the management of the Property and that she would have to look into that further in order to determine why not. She noted that the tenant would have needed to let the Respondent in to the Property as the Respondent did not hold keys. She suggested that COVID restrictions may have been the reason for no inspection but, when asked if there were still restrictions in place between March to August 2022, she confirmed that there were not and so agreed that that would not have been the reason.
37. The Applicant submitted that he was not made aware of the full extent of the fault until August 2022. He submitted that timing of the provision of information by the Respondent to him was an issue at various stages.
38. Upon being asked to explain if two e-mails were received from the tenant on 25 March 2022 (AppProd 9), Ms Ronald confirmed that there were two e-mails from the tenant, respectively at 12:54 (which was the main e-mail about the washing machine issue) and at 12:59 (which was a "PS" that the issue reported was also affecting her heating, hot water and internet).
39. Ms Ronald indicated that the Respondent would not necessarily look through all e-mails and that the information which was sent to the Applicant was based on the information in the 12:54 e-mail (AppProd 18). She also confirmed that the job raised with the contractor on 25 March 2022 was "can you contact the tenant regarding the power cutting out when using her washing machine" and that no specific mention of the heating, hot water or internet being affected was made. The Tribunal noted that reference to "power cutting out" could have indicated either the power to the washing machine alone or more generally affecting one or more electrical circuits in the Property.
40. Ms Ronald was asked about the job name "TA – Possible socket issue" on the job sheet for 28 March 2022 (RespProd 90). She noted that there was no mention from the Respondent that the issue was anything to do with the socket and so the contractor must have come up with that description. Ms Ronald stated that she did not know what someone would have done with job sheets when received from the contractor but that the details from a job sheet, rather than a copy of a job sheet, would have been sent to the Applicant.
41. In terms of what was sent to the Applicant after receipt of the job sheet for 28 March 2022 (RespProd 90), Ms Ronald confirmed that a copy and paste of what was in the notes on the job sheet was sent to the Applicant (AppProd 19). It was noted that the Applicant was not given the job name, namely "TA – Possible socket issue".
42. Ms Ronald was asked to explain the delay between the contractor attending the Property on 28 March 2022 and the Applicant being updated on that visit by e-

mail on 21 April 2022 but was unable to do so as she said that there was nothing on the system to explain that.

43. Each of the parties was asked to confirm when the back of the cabinet had been broken through to expose the location of the socket for the washing machine (as could be seen in AppProd 11 and 14). The Applicant confirmed that it was before he bought the Property but Ms Ronald confirmed that she did not believe that to be the case. Ms Ronald confirmed that, having checked the Respondent's system during a short break in the Hearing, it did not have any photos to aid the Tribunal as to when the back of the cabinet had been broken through. She noted that one would not have to be an electrician to be able take the drawers out to see an issue but that the Respondent could only go on the feedback given by contractors. She noted that the report for the 28 March 2022 visit of the contractor stated that they had removed things and checked things and the Respondent had to take them at their word.
44. Upon being asked to clarify why the Respondent submitted that there were two different issues, the first being a faulty washing machine and the second being water getting on to the socket for the washing machine, she submitted that various different contractors had gone out but no one had mentioned water / water leak, it was not known when the leaks into the shop below (RespProd 106) occurred nor could she find the photos referred to in the e-mail in RespProd 106. She submitted that not every power outage was in relation to the escape of water and, had the issue with the washing machine in March 2022 been to do with water, this would have been mentioned by one of the contractors. In addition, she noted that the tenant had confirmed that she had been able to use the machine in between times (AppProd 19). Ms Ronald submitted that there was no correlation between the two issues relating to the washing machine and that, when the second washing machine was put in place, the outlet was not properly secured and so that's what caused the second issue.
45. The Applicant submitted that the power outage both with the original washing machine and the new washing machine occurred when it was on the spin cycle (AppProd 24). He noted that the tenant described it as being the same issue in her e-mail of 2 August 2022 (RespProd 104).
46. Ms Ronald confirmed that AppProd 24 was the report generated on the Respondent's system when the issue was reported to the Respondent. She did not know how the Applicant had a copy of that document as it was an internal document.
47. Both parties agreed that going through the agreed timeline line-by-line would not be worthwhile and so it was agreed that the Tribunal would consider the respective written submissions and productions of each party in that respect.

FINDINGS IN FACT - general

48. The Tribunal was satisfied, on the balance of probabilities, that the Respondent was a "relevant letting agent" for the purposes of section 48 of the 2014 Act and, accordingly, that it was subject to the Code.

49. The parties had agreed, during the Hearing, that the agreement between the Applicant and the Respondent in respect of the Property comprised terms of business in the same terms as those agreed between them for the property at 0/2, 140 Old Castle Road, Glasgow and set out in RespProd 3 to 10 (inclusive) (“**TofB**”).
50. Paragraph 2 f) of the TofB was in the following terms: “The Owner authorises the Agent to act on behalf of the Owner in the letting and management of the Property during the period of this Agreement...”
51. Ms Ronald, on behalf of the Respondent, had confirmed at the CMD that there was a full management contract in place between the Respondent and the Applicant. This was consistent with the TofB.
52. Paragraph 73 of the Code was in the following terms: “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.”
53. The Respondent confirmed that it had charged the Applicant a management fee of 9% plus VAT (so 10.8%) of the rent and this was accepted as correct by the Applicant. The rent payable by the tenant under the tenancy agreement was £550 per calendar month in March 2022 and then increased to £595 per calendar month from 1 April 2022.
54. The parties also agreed that an “Approved Repair Limit” of £180 including VAT had been in place for the Property but the Respondent confirmed that it would only ever be used if it were not possible to get a hold of the owner.

FINDINGS IN FACT – gas safety check (paragraph 85 of the Code)

55. The gas safety certificate for the Property dated 26 April 2021 (AppProd 4) stated that the next safety check was due by 26 April 2022.
56. The Tribunal was satisfied that no annual gas safety check (for the renewal) was carried out on or before 26 April 2022.
57. There was no valid gas safety certificate for the Property from (and including) 27 April 2022 to 14 July 2022, a period of over 11 weeks.
58. The Tribunal was satisfied on the balance of probabilities that the Applicant had contacted the Respondent on 4 May 2022 (and at least twice more thereafter by e-mail and telephone) to ask about the renewal of the gas safety certificate but no meaningful action was taken by the Respondent until July 2022.
59. The TofB contained the following provision, directly relevant to the gas safety check, at paragraph 3.2 f): “The Owner agrees to the Agent carrying out the following management services on the Owner’s behalf...Arranging gas and electrical safety checks...where these are required to fulfil the Owner’s legal duties as a private landlord;...”

60. Accordingly, the Tribunal was satisfied, on the balance of probabilities, that the Respondent had a responsibility to arrange the gas safety check on behalf of the Applicant so as to ensure that there was a valid annual gas safety certificate for the Property from no later than 26 April 2022.
61. The Tribunal found that the Respondent had not complied with paragraph 85 of the Code in relation to the gas safety check for the Property which was due no later than 26 April 2022 in that the Respondent did not “have appropriate systems and controls in place to ensure [the gas safety check was] done to an appropriate standard within relevant timescales”.

FINDINGS IN FACT - washing machine (paragraph 90 of the Code)

Responsibility for repairs

62. Paragraph 2 n of the ToFB was in the following terms: “The Owner will implement his obligations to ensure that the Property meets the Repairing Standard as set out in the Housing (Scotland) Act 2006 at the commencement of any lease of the Property and at all times during any such lease, and hereby authorises the Agent to instruct repairs on the Owner’s behalf up to the Approved Repair Limit [i.e. £180] without the Agent requiring to seek the Owner’s prior consent to do so. The Owner authorises the Agent to instruct repairs to the Property which are above the Approved Repair Limit without the Owner’s prior consent where such repairs, in the sole opinion of the Agent, are of an emergency nature”.
63. In addition, paragraph 3.2 e) of the ToFB was in the following terms: “The Owner agrees to the Agent carrying out the following management services on the Owner’s behalf:...Carrying out repairs to the Property in accordance with the Agent’s written repairs procedure, a copy of which is available on request;...”
64. Accordingly, the Respondent had responsibility for instructing repairs to the Property, which it was authorised to do up to a cost of £180 without obtaining the Applicant’s prior consent.
65. The Respondent also had responsibility for carrying out repairs to the Property, albeit that was to be in accordance with its written repairs procedure.
66. Notwithstanding paragraph 3.2 e) of the ToFB (which stated that the Respondent had a written repairs procedure) and paragraph 86 of the Code (which required that the Respondent have appropriate written procedures and processes for repairs and maintenance), there were no such written procedures and processes. This had been confirmed in the Respondent’s written representations by e-mail dated 19 May 2023.
67. The Respondent also had responsibility (in terms of paragraph 89 of the Code) for managing the repair in line with its agreement with the Applicant, i.e. the ToFB.
68. As confirmed by the Respondent, there were no terms of business or a letter of engagement with the contractors used (Respondent’s written submissions by e-mail of 19 May 2023).

Timings and delays

69. The tenant reported to the Respondent on 25 March 2022 that she was “experiencing some power issues” when she used the washing machine, in that it had been “throwing a switch in the breaker box” and this affected not only the washing machine but also the plugs in her bedroom and “possibly some other things [she hadn’t] noticed yet” (AppProd 24).
70. This was reported by the Respondent to the Applicant on 25 March 2022 (AppProd 18).
71. The tenant followed up her initial report on the same day with a message to the Respondent to say that it “seems that switch controls my boiler and my internet – so I am currently out of heat, hot water, internet and washing machine” (AppProd 24). As noted above, Ms Ronald confirmed, during the Hearing, that there were two e-mails from the tenant on 25 March 2022 which were approximately 5 minutes apart. The Respondent did not inform the Applicant of the second e-mail or the contents of it (AppProd 109) at the time.
72. On Monday 28 March 2022, a contractor (Quinnergy) appointed by the Respondent attended the Property and reported back to the Respondent with a job sheet (RespProd 90) which stated that the job name was “TA – Possible Socket Issue” and included the following notes: “Unable to remove washing machine due to floor tiles, meaning it was jammed in the space. I looked behind drawers etc and was unable to locate where the socket powering the washing machine was. It appears that the circuit is tripping only when the washing machine is switched on which leads me to believe that there is a fault with the washing machine itself rather than the wiring of the circuit.”
73. There was a delay of approximately 3.5 weeks before the notes from the contractor from its visit on 28 March 2022 were provided to the Applicant in an e-mail on Thursday 21 April 2022 (AppProd 19).
74. There was a delay of almost 10 days by the Respondent in providing the tenant’s confirmed availability for delivery of a new washing machine (29 April 2022 to 9 May 2022) but then there was a further delay until 11 May 2022 because the dates needed to be clarified in light of the initial delay.
75. The Respondent accepted during the Hearing (as part of the timeline in the appendix) that the Applicant had been told by Andrew Muir (employee of the Respondent at the relevant time) that, having looked at photographs (it not being clear to the Tribunal which photographs these were) Andrew Muir was of the opinion that the first washing machine would come out, without removing the floor tiles. This was referred to in the e-mail from the Applicant to the Respondent dated 23 May 2023 (AppProd29). The Tribunal was satisfied, on the balance of probabilities, that the Applicant had been told this and had relied upon this. As a result, a further delay was caused because the new washing machine which was attempted to be delivered on 18 May 2022 could not be installed because the old one was tiled in, the floor tiles were not taken up until 31 May 2022 and it was not redelivered until 16 June 2022. Accordingly, the delay between 18 May 2022 and 16 June 2022 had been avoidable if the floor tiles had been taken

up between 28 March 2022 (when the contractor noted in the job sheet that the old washing machine was tiled in (RespProd 90)) and 18 May 2022 when the first attempt to deliver the machine was made.

76. The plug socket for the washing machine was identified as being cracked on 25 June 2022 (RespProd 91) and had been replaced on 13 July 2022 (RespProd 92).
77. At some time between 13 July 2022 and 18 July 2022 (RespProd 100), the new washing machine was connected and installed beneath the counter top.
78. The tenant was without a fully working washing machine from before 25 March 2022 until 5 August 2022, a period of over 4 months.
79. Arrangements for delivery and installation of the new washing machine by AO were made by the Applicant rather than the Respondent.

No check for plug socket fault

80. The Tribunal was satisfied, on the balance of probabilities, that the plug socket for the washing machine was not checked in order to determine whether or not there was any fault with it before a new washing machine was ordered and/or installed.
81. Accordingly, it was not possible to say definitively whether there was one continuing issue or two different issues related to the washing machine but the Tribunal was not satisfied, on the balance of probabilities, that there were two different and entirely separate issues.

Routine inspections

82. No inspection was carried out by the Respondent (as required in terms of paragraph 3.2 d) of the ToFB) while it was the letting agent of the Property (for the Applicant) and, in particular, no such inspection was carried out between March 2022 and August 2022. This was confirmed by Ms Ronald during the Hearing.

REASONS FOR DECISION – gas safety certificate (paragraph 85)

83. The Respondent accepted that the gas safety certificate had not been obtained on time.
84. The Respondent had undertaken to arrange the gas safety check on behalf of the Applicant in terms of paragraph 3.2 f) of the ToFB so as to ensure that the “Owner’s legal duties as a private landlord” were met. Accordingly, paragraph 85 of the Code applied in this case.
85. The Respondent did not comply with either paragraph 3.2 f) of the ToFB or paragraph 85 of the Code in that the gas safety check was not done on or before

26 April 2022 and so was not within “relevant timescales” so as to ensure that the Applicant’s legal duties in that respect were met.

86. Indeed, the Respondent did not even act with urgency when prompted by the Applicant on 4 May 2022. The Respondent took over a further two months before arranging the gas safety check.
87. The Tribunal was unclear why (if contact had in fact been made with the tenant about the gas safety inspection) the “LEGISLATION UPDATE” e-mail did not mention the gas safety certificate (which e-mail Mr Fleming during the Hearing had confirmed was generated manually and apparently had been sent by the same person, Andrew Muir (AppProd 5), as the Respondent says had contacted the tenant (RespProd 99)).
88. There was no suggestion made by either party that the Applicant was made aware by the Respondent in April 2022 that the Respondent was having difficulty in contacting the tenant to have the gas safety check carried out, nor that the Applicant was asked by the Respondent to contact the tenant about access if the Respondent was having such a difficulty. These steps would have been reasonable if there had, in fact, been a difficulty in contacting the tenant to obtain access where the deadline for renewal of the gas safety certificate was imminent. The Tribunal did not accept, on the balance of probabilities, that the Respondent had contacted the tenant for access or that the Respondent was prevented from complying with its obligations as a result of an inability to gain access to the Property.
89. The Applicant was entitled to rely upon the management services provided by the Respondent in ensuring that his legal duties with regard to having a gas safety check were done on time (on or before 26 April 2022).
90. There was no valid gas safety certificate for the Property for over 11 weeks and so the Applicant was at risk during that period given that his legal duties were not being met. This was a very serious matter and the Applicant should not have been put in this position by the Respondent.
91. The Tribunal was not satisfied, on the balance of probabilities, that the Respondent had “appropriate systems and controls in place to ensure” that “statutory repairs, maintenance obligations or safety regulations” were properly managed, at least in respect of renewing the gas safety certificate for the Property in April 2022, nor that they were met “within relevant timescales”.
92. Accordingly, a letting agent enforcement order will be granted for this failure to comply with paragraph 85.
93. Given the seriousness (and risk and potential for very serious consequences for the Applicant) of not having a valid gas safety certificate for such a long period of time and that this was as a result of the Respondent’s failure to comply with the Code (despite various enquiries by the Applicant which should have prompted the Respondent to act urgently), the Tribunal determined that it was appropriate and reasonable for the Respondent to pay compensation to the Applicant (for the failure to comply with paragraph 85 of the Code) in an amount

equivalent to the cost of obtaining the gas safety certificate (£90) and the management fees for the period for which there was no gas safety certificate in place (£167 being 79 days @ 10.8% of £595 per calendar month), namely a total of £257.

94. The Tribunal relied upon the assurances given by the Respondent in respect of the changes that it confirmed that it had already made to its systems and controls regarding ensuring gas safety checks were undertaken within relevant statutory timescales and so made no specific order in that respect.

REASONS FOR DECISION - washing machine (paragraph 90)

Delays

95. It was submitted in Resp 13 Jan that the Respondent “actioned all required maintenance as quickly as we possibly could, once authorisation from the owner had been received.”
96. However, this submission was not supported by the evidence before the Tribunal in relation to the washing machine and power issue.
97. The Respondent provided no explanation for the delay in informing the Applicant of the outcome of the contractor’s visit on 28 March 2022 and the Tribunal was satisfied, on the balance of probabilities, that it was an e-mail (AppProd 19) from the tenant (and not any proactive step by the Respondent) which eventually prompted the communication from the Respondent to the Applicant on 21 April 2022.
98. This was an unacceptable delay (during which time, a period of approximately 3.5 weeks, no progress was made to carry out the necessary repair or, if required, replacement) and was a delay which was entirely within the control of the Respondent. The Respondent also did not appear to have kept either the Applicant or the tenant updated about the repair and the reason for the delay (and so also failed to comply with paragraph 93 of the Code in that respect).
99. The Respondent was also unable to provide any explanation for the delay of approximately 10 calendar days between the tenant providing availability to the Respondent for delivery of a new washing machine and those dates being provided to the Applicant by the Respondent, which dates then needed to be clarified (causing a further delay) as a result of the passage of time since the original response from the tenant.
100. It also appeared to take until 5 July 2022 for the Respondent to inform the Applicant about the second contractor’s visit on 25 June 2022 (e-mail from the Respondent to the Applicant in the original case papers).
101. These were the longest of the delays but were not the only ones in relation to the communication and provision of updates by the Respondent to the Applicant.

102. Given that the new washing machine (and installation of it) were arranged directly by the Applicant, the Respondent could not be held responsible for any delays in relation to delivery lead-in times.
103. The Applicant had confirmed that the first washing machine was in the Property prior to his purchase of it. Accordingly, the Respondent could not be held responsible for the manner in which the first washing machine had been installed and whether or not it had been tiled in.

Access to plug socket

104. It was not possible for the Tribunal to make any finding of fact as to exactly when the backboard of the cabinet (behind which the plug socket for the washing machine was located) was broken through. However, the Tribunal was satisfied, on the balance of probabilities, that it had not been removed prior to 28 March 2022 (when the first contractor attended the Property) or 25 June 2022 (when the second contractor attended the Property).
105. This was in light of:
- a. the note in the job sheet for 28 March 2022 (RespProd 90) which stated "I looked behind the drawers etc and was unable to locate where the socket powering the washing machine was".
 - b. the exchange between the Applicant and the Respondent on 21 April 2022 (Resp Jan 13 and included only in part in AppProd 20) in which the Applicant wrote: "If access cannot be gained to the working of the machine I would only as a last resort like to see floor tiles being ripped up to allow this. Could you ascertain if it would be possible for a joiner to turn the worktop above the washing machine into a lid, thus allowing access". The Tribunal was satisfied, on the balance of probabilities, that had the Applicant known that the backboard of the cabinet had been broken through to expose the socket prior to March 2022, he would have mentioned that rather than suggesting the creation of a "lid".
 - c. the Respondent had stated that it received a response from the contractor on 25 April 2022 (Resp Jan 13), only part of which was copied into an e-mail to the Applicant on 26 April 2022 (AppProd 20), the missing part being that the technical manager's "advice would be to get a joiner to perhaps remove part of a unit or if they could remove the washing machine that would give a better idea of where the socket is."
 - d. the note in the job sheet for 25 June 2022 (RespProd 91) which stated "...was plugged into a socket, had to remove drawers and countertops to get to it".
106. Accordingly, the Tribunal was also satisfied, on the balance of probabilities, that the plug socket was not tested at any point before the new washing machine was ordered and/or installed in order to establish if there was any fault with it, rather than with the first washing machine.

Plug socket or washing machine

107. Whilst the job sheet from the contractor dated 28 March 2022 described the job as “TA – Possible Socket Issue” (RespProd 90), this was not reported to the Applicant and the Respondent does not appear to have raised or interrogated that with the contractor in any way.
108. Neither the Respondent nor the contractor engaged by the Respondent appear to have considered exploring whether or not the issue was with the plug socket (despite it being clear that this was a possibility from the description on the job sheet) before the Respondent recommended to the Applicant that a new washing machine be purchased (at significant additional cost).
109. It was not clear to the Tribunal why the contractor who attended on 28 March 2022 did not “remove drawers and countertops” to get to the plug socket for the washing machine, given that the contractor (from the same company, Quinnergy) who later attended on 25 June 2022 had done so (RespProd 91). Furthermore, the reference in the job sheet for 28 March 2022 to the phrase “leads me to believe” suggests that that first contractor did not investigate or test the washing machine itself to try to identify a fault.
110. It took until 5 July 2022 for the Respondent to inform the Applicant (apparently about the contractor’s visit on 25 June 2022) that: “The new machine is plugged in elsewhere just now as the socket is cracked, where it should go. For the socket to be replaced, uni[t?] need to be removed for access. He said it’s a bit of a nightmare job and something [they] wouldn’t do a joiner would be needed to rem[ove?] for access and then the socket replaced.”
111. The clear indication from this communication was that this was a difficult job (“nightmare”) which the contractor selected by the Respondent (Quinnergy) was unable to carry out without involving a joiner.

One or two issues

112. The Respondent’s position was that there were two separate issues in March 2022 and August 2022 because:
 - a. a number of contractors had attended the Property and no one mentioned any water leak.
 - b. “Even after the machine was removed and reconnected etc, no one had noted anything to do with dampness or escape of water” (Resp 13 Jan).
 - c. “If the issue was initially [i.e. in March 2022] to do with water, the issue with the electrics tripping should have in theory happened each and every time she has used the machine – regardless of how full the machine was, which does not seem to have been the case.” (Respondent’s written submissions of 19 May 2023).

113. The Tribunal was not satisfied, on the balance of probabilities, that the issues reported in March 2022 and August 2022 were definitely separate and different issues for the following reasons:
- a. There had been no testing of the plug socket or the washing machine before the washing machine was replaced;
 - b. The issues were both arising when the washing machine was being used, specifically on the spin cycle (RespProd 104);
 - c. The issues were having substantially similar results – “throwing a switch in the breaker box” which controlled the washing machine, boiler (heat and hot water), internet, plugs in the bedroom; (AppProds 18 and 24 and RespProd 104);
 - d. The note from the tenant copied to the Applicant on 21 April 2022 (AppProd 19) stated “I’ve been doing some experimenting with the machine and it seems that if I pack it about half as much as I have been it works without flipping the switch. So I am able to do laundry now – but only at about half the amount I was able to for the last three years” - this was consistent with a small / half load ordinarily using less water than a full load, such that there would be less water draining and so less risk of an overflow;
 - e. By e-mail from the tenant to the Respondent dated 5 August 2022 (RespProd 106), the tenant stated “I would also like to point out that the damp and mould from the leaking of the washing machine (which you can see in the photos I have sent previously) should probably be looked at and taken care of. The man who has the shop downstairs has actually come up twice asking if I had a leak, but since I had no idea that the washing machine pipe had been leaking – I told him that there was no leak here. I am unsure to what extent the damp and mould has spread behind the existing cabinetry.”
114. However, it was clear from the submissions made by the Respondent that it considered its role to be to “pass on the feedback that we have been provided through qualified contractors” but that the Respondent “cannot be held responsible for the information passed across to the landlord or tenant via a 3rd party.”
115. The Tribunal noted that the Respondent undertook in its ToFB to carry out repairs on behalf of the Applicant which suggested a more proactive approach to managing the issue with the washing machine and the power than simply passing on feedback, which sometimes appeared to have happened only after a prompt / chaser from the tenant or the Applicant.
116. Whilst the submission made by the Respondent was true that, had the Applicant chosen to do so, he could have chosen a different contractor and/or asked for a second opinion, the Applicant was paying a management fee for a full

management service from the Respondent, which included a service to carry out repairs and so he was entitled to expect that this was done by the Respondent.

117. In Resp 13 Jan, the Respondent stated: “We instruct reputable contractors who we have engaged in a working relationship for many years, which is extremely important as we are not qualified tradespeople and need to trust the advice and feedback we are given.” However, the Respondent confirmed that it did not have any terms of business or letter of engagement with the contractors it engaged in this case.
118. As noted above, the Respondent did not carry out any inspection (as required in terms of paragraph 3.2 d) of the ToFB). If the Respondent had carried out an inspection of the Property at an early stage, in the presence of the tenant and an appropriate tradesperson, this might have resulted in (not only the Respondent complying with paragraph 3.2 d) of its ToFB) but also an easier and quicker resolution of the issues with the washing machine and power for all concerned. The repeated job orders and dispatch of four different tradespeople on five different occasions did not provide any continuity or overview in solving the problem. It is not possible to say definitively that this would have resulted in a quicker resolution but the Tribunal considered, on the balance of probabilities, that it was likely that it would have.

Lack of written repairs procedures

119. Notwithstanding paragraph 3.2 e) of the ToFB (which stated that the Respondent had a written repairs procedure) and paragraph 86 of the Code (which required that the Respondent have appropriate written procedures and processes for repairs and maintenance), there were no such written procedures and processes. This had been confirmed on behalf of the Respondent in the Respondent’s written representations by e-mail dated 19 May 2023.
120. Accordingly, the Respondent had failed to comply with paragraph 86 of the Code. Whilst paragraph 86 was not referred to by the Applicant in the Application Form, in considering whether or not paragraph 90 of the Code had been complied with, the Tribunal required to look at the ToFB relating to repairs (including any written procedures relating to repairs) and so it was relevant to consider whether or not the Respondent’s “own terms of business, policies and procedures comply with the Code” (paragraph 8 of the Code) in that context.
121. The Tribunal found that the Respondent was not solely responsible for the delay in there being a fully working washing machine in the Property between 25 March 2022 and 5 August 2022 but that it was responsible for a substantial part of the delays between 25 March 2022 and 18 July 2022. In addition, the Tribunal found that the Respondent had not dealt with the required repairs “promptly and appropriately” and that there were no “written procedures” as required by paragraphs 86 and 90 of the Code.
122. Given that it was not possible (based on the evidence) for the Tribunal to determine whether or not the washing machine required to be replaced and also given that the Applicant (rather than the Respondent) had ordered and arranged

delivery of the new washing machine, the Tribunal determined that it was not reasonable to award the Applicant the other costs incurred in connection with the replacement of the washing machine, the Property then benefitting from a new washing machine. However, the Tribunal determined that it was appropriate and reasonable for the Respondent to pay compensation to the Applicant (for the failure to comply with paragraph 90 of the Code) in an amount of £180 on the basis that at least two of the visits by contractors could, on the balance of probabilities, have been avoided had the plug socket been accessed and tested at an early stage and had the Applicant not been advised by the Respondent's employee that the first washing machine could be removed without lifting the floor tiles.

123. The Tribunal determined that it was appropriate and reasonable for the Respondent to pay compensation to the Applicant (for the failure to comply with paragraph 90 of the Code) in an amount of £200 for the inconvenience caused by the various delays caused by the Respondent both in relation to progressing the repair but also in informing the Applicant of the outcome of visits by contractors.
124. The Tribunal also determined that the Respondent required to produce a written repairs procedure within one month.

The Tribunal made the following Letting Agent Enforcement Order:

- I. The Respondent shall pay the sum of £637 by way of compensation to the Applicant by no later than 31 August 2023; and
- II. The Respondent shall produce and publish on its website a written repairs procedure by no later than 31 August 2023.

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.

Chair



Date 5 July 2023

APPENDIX 1

25 March 2022	Tenant reports fault with washing machine to Respondent Applicant gives Respondent go ahead to oversee repair	AppProd 18 Resp 13 Jan
28 March 2022	Contractor attends Property	Resp 13 Jan
21 April 2022	Respondent updates Applicant. Contractor unable to locate socket and unable to remove washing machine as a result of floor tiles Applicant suggests a joiner to raise the worktop	AppProd 19 RespProd 90 Resp 13 Jan
25 April 2022	Contractor advises they aren't sure if joiner is required but machine will need to be removed regardless	Resp 13 Jan
26 April 2022	Contractor's advice communicated to Applicant Andrew Muir of Respondent advises Applicant that he has looked at photographs and he is of the opinion that the machine will come out	AppProd 20
28 April 2022	Respondent requests possible delivery dates for replacement washing machine from tenant on behalf of Applicant	Resp 13 Jan
29 April 2022	Tenant responds with her dates	Resp 13 Jan
9 May 2022	Respondent passes the dates to the Applicant – "7 th to the 19 th "	AppProd 21
11 May 2022	Respondent asked to clarify the tenant's dates	AppProd 22
18 May 2022	New washing machine delivered but old one tiled in Tenant informs the Respondent of this	

23 May 2022	Respondent informs the Applicant that the machine was not fitted	AppProd 28
31 May 2022	Floor tiles taken up	
16 June 2022	Machine delivered again but tenant confirmed not fitted as old machine fitted by a spur Plumber booked same day	Resp 13 Jan
21 June 2022	Permission given by Applicant for old washing machine to be disconnected	
25 June 2022	Old washing machine disconnected Contractor confirmed was not on a spur	RespProd 91
13 July 2022	Electricity socket replaced	RespProd 92
18 July 2022	By this date, new washing machine in place	RespProd 100
2 August 2022	Tenant reports new machine acting the same as the old one did back in March	AppProd 23
3 August 2022	Different electrician attends and finds the fault which was a loose hose, inside plastic casing causing water to flow over an electric socket The socket was found by removing the drawers to the right of the washing machine	AppProd 25 / RespProd 93
5 August 2022	A plumber attended and fixed the fault	