

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Sections 46 and 48 of the Housing (Scotland) Act 2014 and Paragraphs 17, 26, 28, 85, 90, 111, 112 and 125 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016**

**Chamber Reference: FTS/HPC/LA/22/4471**

### **The Parties:**

**Miss Antonia Adams, 6 Davidson Street, Stirling, FK7 0ND (“the Applicant”)**

**Wallace Property Stirling, Springfield House, Laurelhill Business Park, Stirling, FK7 9JQ (“the Respondent”)**

**Tribunal Members: George Clark (Legal Member/Chair) and Elizabeth Williams (Ordinary Member)**

### **Decision**

The Tribunal determined that the Respondent has failed to comply with Paragraph 112 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 and made a Letting Agent Enforcement Order requiring the Respondent to pay to the Applicant by way of compensation the sum of £200.

### **Background**

1. By application dated 14 December 2022, the Applicant sought a Letting Agent Enforcement Order against the Respondent under Sections 46 and 48 of the Housing (Scotland) Act 2014 and Paragraphs 17, 26, 28, 85, 90, 111, 112 and 125 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code of Practice”).
2. The Applicant’s complaints were, in her own words and with the relevant Paragraph of the Code of Practice shown in brackets:
  - a) The Respondent has failed to be open, honest and transparent (Paragraph 17). He failed to pass on correct or full information to the owner/landlord regarding repairs, resulting in unacceptable waiting times for repairs to be carried out or done at all.

- b) The Respondent regularly failed to respond and if he did respond he would advise he would speak to the landlord which never happened (Paragraph 26).
  - c) The Applicant regularly felt intimidated by the Respondent and some of the workmen supplied (Paragraphs 28 and 111).
  - d) The Respondent failed to properly manage the statutory repairs (Paragraph 85)
  - e) Repairs are not dealt with properly or at all (Paragraph 90).
  - f) The Applicant had regularly raised complaints to which the Respondent had failed to respond in a timeous manner (Paragraph 112).
  - g) The Applicant believed the Respondent did not repay monies to the landlord in relation to payment of rent in advance, leaving the Applicant in debt to the landlord (Paragraph 125).
3. The Applicant provided copies of a Private Residential Tenancy Agreement between her and Angela Neilson commencing on 1 May 2020, in which the Respondent is named as letting agent, and a large number of emails between her and the Respondent's Mr Will Barrett regarding works required to the shower cabinet and the central heating system. These included an email of 25 October 2022 in which she advised him that she had had to instruct contractors to leave the Property and an acknowledgment but not a substantive response to her formal complaint to the Respondent.

#### **First Case Management Discussion**

- 4. A Case Management Discussion was held by means of a telephone conference call on the morning of 18 May 2023. The Applicant was present. The Respondent was not present or represented. The Applicant confirmed that she is still living in the Property and that she understood the Respondent was no longer acting as the letting agent, her recent communications having been directly with the owner/landlord.
- 5. It was accepted by the Applicant that the duty of letting agents under Paragraph 125 of the Code of Practice was owed by the Respondent to the landlord and not to her and that the Tribunal would not, therefore, be considering her complaint under that Paragraph.
- 6. In continuing the case to a further Case Management Discussion, the Tribunal advised the Applicant that, whilst she had provided evidence relating to repairs and the Respondent's failure to respond to her complaint, she had not provided any supporting evidence in relation to her complaints under Paragraphs 17, 28 and 111 of the Code of Practice. The Tribunal would, therefore, require her to provide such further information or documentation on which she would seek to rely, including, if appropriate, a written statement from any witness to the conduct of which she was complaining.
- 7. The Tribunal issued Directions to the Parties.
- 8. The Applicant was required to provide any further information and documentation relative to her complaints under each Section of the Letting Agent Code of Practice on which she seeks to rely.

9. The Respondent was required to provide the following:
  - a) Confirmation as to whether he is still acting as letting agent in respect of the Property.
  - b) A Copy of his written agreement with the owner/landlord in relation to the letting and management of the Property.
  - c) A copy of his written Complaints Procedure and
  - d) Confirmation as to whether he consents to the Tribunal communicating with him by email.
10. The said documentation was be lodged with the Chamber no later than close of business 14 days prior to the date of a continued Case Management Discussion in relation to the application.
11. On 27 June 2023, the Applicant responded to the Direction by providing the Tribunal with a large number of emails between the Parties relating to issues requiring repair and emails between the Applicant and her landlady, from which it appeared that her landlady had not fully aware of the situation. The landlady said that she had understood that the Applicant had been given a couple of months rent-free to reflect the fact that she had redecorated the Property to her own taste when she moved in. The Applicant stated that all she had received was a deduction of £50 for a carpet which had cost over £200. The Applicant's view was that the Respondent had stopped dealing with the Property when she intimated her formal complaint in October 2022. In her latest submissions, the Applicant advised that she understood that certain elements of her complaint, relating to the conduct of the Respondent which had been witnessed by her son might have to be dropped, as she did not wish to call him as a witness.
12. On 18 July 2023, the Respondent replied to the Tribunal's Direction. He provided copies of his written agreement with the landlady and his Complaints Procedure. He confirmed that he was no longer acting as letting agent for the Property. The written agreement with the landlady provides that authorisation is required for any maintenance work costing more than £50. The Complaints Procedure states that any formal complaint will be acknowledged in writing within 5 working days, with, under normal circumstances, a formal response within 15 working days.

## **Second Case Management Discussion**

13. The second Case Management Discussion was held by means of a telephone conference call on the morning of 31 July 2023. Both Parties were in attendance, the Respondent being represented by Mr Will Barrett.
14. The Applicant explained that the tenancy had begun in May 2020. She had been told that the Property would be cleared and that the radiators would be fixed, but that had not happened. All she had received was £50 off one month's rent to go towards the cost of a carpet.

15. In relation to her specific complaint under Paragraph 17 of the Code of Practice, the Applicant referred the Tribunal to the emails that she had provided and which are summarised in Paragraph 11 of this Decision.
16. The Applicant stated that the essence of her complaint under Paragraph 26 of the Code of Practice was the constant going back and forth and chasing up that she had to do. People who inspected the Property would report to Mr Barrett that a new shower was required, but he did not then resolve the matter. The shower cabinet was finally replaced in September/October 2022.
17. Mr Barrett told the Tribunal that the issues were in part due to the COVID-19 lockdown. Several attempts had been made to find out what was wrong with the shower cabinet, but nobody actually came back to him to say what the fault was. Several repairs were attempted. The shower cabinet was not replaced during his time as letting agent for the Property. The contractors did what they thought was right and it was the owner's contractors who ultimately replaced the shower cabinet.
18. The Applicant told the Tribunal that it was clear to see what was wrong. She had sent Mr Barrett videos, photographs and emails, but nobody had sealed the cabinet and she had to buy sealant herself. The shower cubicle was broken and there was a clear gap to be seen. Further, although the boiler has been replaced, it has never worked properly. She told the Tribunal that she had been unable to use the system for just over a month, in winter. She accepted that the Respondent had given her two heaters and that she had been given £100 off her rent to cover additional electricity charges.
19. Mr Barrett said that the boiler was an old Baxi back boiler behind the fireplace, so it was not a quick fix. Heaters had been provided to the Applicant during the process. The timescale had been as quick as the contractors could manage at the time.
20. In relation to Paragraphs 28 and 111 of the Code of Practice, the Applicant referred again to the copy emails she had provided. She had explained to Mr Barrett her complex health issues and that he knew that she had concerns regarding admitting to the Property men that she did not know. She accepted that the contractors that she had ordered to leave the house did not return, but objected to the assertion of Mr Barrett that it was she who had been aggressive.
21. The Applicant accepted that her complaint in relation to Paragraph 85 of the Code of Conduct had been more or less covered in the discussion relating to Paragraph 26, but added that there had been other issues with the Property, including the fact that the stop cock could not be accessed and that the cooker was not properly attached to the wall. Mr Barrett responded that, as a letting agent, he had to go back and forward to the owner for authorisation. There had been the matter of the contractors having to leave the Property and there had also been an issue between the Applicant and a plumber, who had then refused to return to the Property on his own. There had also been a

problem when the front and back windows were smashed and the Police contacted him to arrange to have them boarded up. He had been unable to find a contractor at short notice so had undertaken the work himself. The Applicant responded that she had not been aware that it was Mr Barrett, as she had not met him before and he had not introduced himself, but, she said, he had been rude and had knocked broken glass into the Property rather than knocking it out into the garden. She told the Tribunal that she does not take kindly to men coming into her home, especially if they are not nice to her.

22. The Applicant had nothing to add to her written submissions in relation to Paragraph 112 of the Code of Practice. Mr Barrett told the Tribunal that he had been hospitalised in October 2022 after being ill for two weeks and he accepted that there might have been occasions during that period when he did not reply timeously to enquiries.
23. The Applicant told the Tribunal that what she wanted as an outcome of her application was to feel reassured that Mr Barrett would not treat other tenants in the way she had been treated. She had been emotionally and physically drained by the process.

### **Reasons for Decision**

24. **Paragraph 17 of the Code of Practice** stipulates "You must be honest, open, transparent and fair in your dealings with landlords and tenants." The Tribunal did not uphold this head of complaint, as it related to an allegation that the Respondent had passed on incorrect information to the landlady. If established, that would relate to the Respondent's duties towards the landlady, not the Applicant, and would be for the landlady to pursue should she wish to do so.
25. **Paragraph 26 of the Code of Conduct** states "You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement." The Tribunal did not uphold the complaint under Paragraph 26. There was evidence of regular correspondence between the Parties, and the Tribunal accepted that the Respondent would have to revert to the owner of the Property for authorisation before instructing work and there was no evidence that he had failed to do so. Several unsuccessful attempts had been made to repair the shower cubicle, but the delay in resolving the issue was not attributable to the Respondent.
26. **Paragraphs 28 and 111 of the Code of Practice** are in identical terms and state "You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening." The Tribunal did not uphold the complaints under Paragraphs 28 and 111. There was no evidence before the Tribunal of abusive, intimidating or threatening behaviour by the Respondent. The Applicant had stated that he had accused her of being aggressive towards a tradesman who called at the Property, but he was relaying to her the comments made by the tradesman and, when she had indicated to the Respondent that she felt intimidated by some tradesmen, he had responded

to her concerns by ensuring that the individuals involved did not visit the Property again.

27. **Paragraph 85 of the Code of Conduct** 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.” The Tribunal did not uphold the complaint under Paragraph 85. There was no evidence to indicate the Respondent did not have appropriate systems and controls in place or that he did not keep relevant records of work carried out.
28. **Paragraph 90 of the Code of Conduct** states “Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.” The Tribunal did not uphold the complaint under Paragraph 90. It was accepted that the problem with the shower cubicle, resulting in its eventual replacement, took a long time to resolve, but the Respondent was entitled to rely on the tradesmen that he instructed and the fact that earlier attempts at repair were unsuccessful were not the fault of the Respondent. As regards the replacement of the boiler, the Tribunal accepted that it was not a simple like-for-like replacement as it involved the removal of a Baxi back boiler and that the work could only be done when suitably qualified contractors were available. The Tribunal recognised that after the Pandemic lockdown, contractors had to deal with enormous backlogs of work and that this would have had an impact on the availability of the necessary trades. The Tribunal also noted that, during the period when the Applicant had not had use of the boiler, the Respondent had provided her with two heaters and that she had been given £100 off her rent to cover additional electricity charges.
29. **Paragraph 112 of the Code of Conduct** states “You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must contain the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.” The Tribunal upheld the complaint under Paragraph 112. The Respondent’s Complaints Procedure states that any formal complaint will be acknowledged in writing within 5 working days, with, under normal circumstances, a formal response within 15 working days. His response in the present case to the Applicant’s formal complaint of 10 November 2022 was merely to acknowledge it and to tell the Applicant “I will reply in due course”. The Tribunal noted that the Respondent had been hospitalised in October 2022, after an illness of two weeks and that, during that period, he did not reply to some communications, but that did not excuse his failure to respond formally to the Applicant’s complaint.
30. Having decided that the Respondent had failed to comply with Paragraph 112 of the Code of Conduct, the Tribunal considered whether to require the Respondent to pay compensation to the Applicant. The Tribunal recognised

that the Respondent had suffered health issues resulting in his having to be off work, but that did not excuse his responsibility to respond fully to a formal complaint made by the Applicant. Having taken into account all the evidence, written and oral, presented to it, the Tribunal determined that the Respondent should pay to the Applicant the sum of £200 as reasonable compensation for the inconvenience caused to her by the Respondent's failure to comply with the Code of Conduct.

31. The Tribunal's Decision was unanimous.

Legal Member/Chair  
18 August 2023.