



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014 (Act) and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No.328)) (Rules)**

**Chamber Ref: FTS/HPC/LA/23/0516**

**Re: Property at 17 Ashgrove Court, Elgin, IV30 1UH (“the Property”)**

**Parties:**

**Mr Neil Alexander, Miss Hannah Moore (Applicant)  
Cluny Estate Agent (Respondent)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Angus Anderson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has not complied with paragraphs 21, 74, 84, 90, 91 and 93 of the Code of Practice for Letting Agents (Code) as required by the Act and issues a Letting Agent Enforcement Order (LAEO).**

This was an application under Rule 95 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** and section 48 of the Act to enforce the Letting Agent Code of Practice (**Code**).

The Tribunal had regard to the following documents:

1. Application and attachments received 20 February 2023;
2. Supporting Documents from Applicants;
3. CMD Note and Direction dated 14 June 2023;
4. Respondent’s Written Representations by email of 14 August 2023; and
5. Email from local authority dated 20 June 2023.

**Hearing**

The Applicants participated and represented themselves. The Respondent participated and was represented by Mr Charlie Beck (Director).

The Tribunal set out the procedure to be followed at the outset and identified the documents and productions that would be referred to.

The Applicant asserted breaches of paragraphs 17, 21, 74, 75, 84, 90, 91 and 93 of the Code.

Following the CMD on 14 June 2023 and Tribunal Direction of the same date the Respondent had lodged comprehensive written submissions in response.

The Tribunal informed the Parties that it would accept their written submissions as read. There was no need to rehearse evidence contained within the submissions.

The Tribunal would afford the Parties the opportunity to supplement their evidence and to clarify any matters that required clarification.

### *Preliminary Issues*

The Applicants raised the issue of their current tenancy and comments that had been made by the Respondent. The Tribunal confirmed that the current tenancy was of no relevancy to the matter in hand.

### *Evidence*

The Tribunal then heard evidence from the Applicants. They both spoke to their written submissions which were taken as read. They were questioned by the Tribunal members and Mr Beck.

The Applicants gave their evidence in a considered and articulate manner. The Tribunal accepted their evidence as credible and reliable.

The Tribunal then heard from Mr Beck.

Mr Beck spoke to his written submissions he had lodged in response to the Tribunal's Direction which were taken as read. He was questioned by the Tribunal members and the Applicants.

Mr Beck also gave his evidence in a considered and articulate manner. The Tribunal accepted his evidence as credible and reliable although clearly there were matters he could not speak to first hand (which he conceded).

### **Consideration of the Evidence**

The main issues in dispute between the Parties were:

1. The language used by the Respondent in communications with and concerning the Applicants. Also misinformation.
2. Missed repair deadlines and delays in conducting repairs.
3. Tradesmen attending Property without the Applicants' knowledge or consent.

4. Lack of communications regarding repairs, failure to update and excessive delay in having repairs actioned.

There was no significant factual dispute between the Parties.

Having heard the Parties' oral and written evidence the Tribunal made the following findings in fact:

1. The Applicants entered into a PRTA with the landlord commencing 17 December 2021;
2. The Respondents were the Letting Agents for the landlord who dealt with the Applicants;
3. Clause 2 of the PRTA provided that the Respondents would provide a full letting and management service on the landlord's behalf and that they were the first point of contact for all queries relating to the letting and management of the Property;
4. Mr Beck gave advice to the Applicants to give 28 days notice on the Property in the knowledge that they did not have another property to let on the understanding that the landlord would be flexible;
5. The Applicants secured the tenancy of another Property at 7 Meadow Crescent at the end of the PRTA. The Respondents dealt with that tenancy and Mr Beck gave information to the Applicants regarding access to that Property and the need for quotes for various works before they could obtain access;
6. In a work order to a private contractor regarding the mould/damp in the Property Mr Beck expressed a personal opinion that either the Applicants were managing the issue "horrendously" or there was something structurally unsound with the Property;
7. Mr Beck sent an email of 6 January 2023 in which he criticises the condition the Property was left in by the Applicants;
8. On 18 August 2022 the Applicants reported poor water pressure from the cold tap in the kitchen. On 19 August they reported there was no pressure. The Applicants chased by email on 7 December 2022 and work was completed that day;
9. The Respondents have a Repairs and Maintenance Policy which requires emergency repairs to be carried out within 5 working days and routine repairs within 10 working days;
10. On 27 April and 29 September 2022 routine inspections were carried out in the Property. On 27 April Mr Beck was made aware of an issue with the toilet cistern flushing continuously and the Applicants asked for this to be repaired. Despite having been reminded on 23 June this was still not repaired by 29 September 2022;
11. The Applicants were not informed that a joiner would visit the Property unaccompanied on 10 March 2022;
12. Unauthorised access was made to the Property by plumbers on 12 December 2022 without the Respondents notifying the Applicants;
13. The issue of black mould growth was brought to the Respondents' attention by email of 26 January. Mr Beck visited the Property on 31 January 2022 and gave advice to rectify the issue. The Parties believed the issue had been

resolved until it re-emerged and the Respondents were informed on 25 October 2022, 2 and 22 November 2022.

14. Environmental Health and Scotia Preservation both produced reports on the mould and condensation which were produced and referred to;
15. 49 working days passed from the re-emergence of the issue being reported on 25 October 2022 until the Respondents inspected the Property;
16. No remedial action was taken in respect of the mould issue by the time of the Applicants departure from the Property;
17. The need for repair to the living room window to be repaired was reported on 31 January 2022. The Respondents informed the Applicants that the window would be replaced on 11 March 2022. The window was not replaced (despite reminders on 18 April, 24 June and 8 August 2022) until 12 September 2022;
18. The Respondents' practice was to report repairs/maintenance/defects to the landlord and await instruction on dealing with the matters that arose;
19. The Applicants issued formal complaints to the Respondent by letters of 17 January and 2 February 2023;
20. The Respondent responded to these complaints by letters of 5 February 2023.

Having considered the evidence and made the above findings the Tribunal decided:

**(a) Paragraphs 17 of the Code**

**17.** You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).

The Applicants' complaint was that the Respondents failed to conduct themselves in compliance with the Code in their dealings regarding giving notice to leave the Property, the new Property they were moving too and the "accusatory" language used in respect of the Applicants and to third parties.

The Tribunal considered the evidence and found that:

(i) Mr Beck was doing his best to help the Applicants to minimise their liability for rent on the existing Property.

(ii) Any issues regarding the new Property were not relevant to the current application.

(iii) Whilst the wording of the work order and email of 6 January 2023 was unfortunate it was expression of opinion.

The Tribunal did not consider that Paragraphs 17 had been breached by the Respondents in all the circumstances of this case.

**(a) Paragraph 21 of the Code**

**21.** You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.

The Applicants' complaint was that the Respondent failed to conduct themselves in compliance with the Code in not dealing with the repair of the cold water tap in a timely way. They also complained this breached the Respondents' own policy.

The Tribunal considered and found that the Respondents' dealings with the Applicants breached paragraph 21. The issue was reported on 18 August 2022 and was not dealt with until 7 December 2022. Whilst the Respondents had raised the issue with the landlord they had not kept the Applicants up to date with progress (or the lack of it) towards having the repairs carried out. Essentially, this was a communications issue. This was also a breach of the Respondents' own policy.

#### **(b) Paragraphs 74 and 75 of the Code**

**74.** If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also [paragraphs 80 to 84](#) on property access and visits, and [paragraphs 85 to 94](#) on repairs and maintenance).

**75.** Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.

The Applicants contend the failure to have repairs actioned timeously constituted a breach of 74 whereas unauthorised access constituted a breach of 75.

The issue here again was communication. The Respondents did raise the need for repairs with the landlord but did not keep the Applicants updated.

The Tribunal did not consider that a breach of paragraph 75 was established. The Applicants argued that the unauthorised access was a breach of the tenancy agreement. Whilst that is correct there was no evidence to support the assertion that underlies paragraph 75 which is that the Respondents failed to deal with it promptly and appropriately.

#### **(c) Paragraph 84 of the Code**

**84.** You must make it clear to the tenant or occupier beforehand if a third party will visit the property unaccompanied.

This relates to the Applicant's contention that there were unauthorised visits by contractors.

The Tribunal preferred and accepted the Applicants' first hand evidence about the conversation with an employee of the Respondents regarding the unauthorised visit by the plumbers.

Once again there does appear to have been a lack of communication about the plumber's visit in December 2022 and the joiner's visit to the Property on 10 March 2022.

Mr Beck's evidence about any policy or procedure for giving keys to the Property was vague.

The Tribunal consider this breach to have been established in the circumstances.

**(d) Paragraph 90, 91 and 93 of the Code**

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

**91.** You must inform the tenant of the action you intend to take on the repair and its likely timescale.

**93.** 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.

The Tribunal finds that all of these paragraphs have been breached in the circumstances. The breaches were, in the main, constituted by the Respondents failure to adequately communicate with the Applicants and keep them informed with regard to progress over the repairs.

The Respondents communicated the need for repairs to the landlord but failed to chase the landlord up and to keep the Applicants apprised.

This was the case in respect of the toilet cistern, the kitchen tap, the living room window and the mould/condensation.

**(e) Remedy**

Having determined the breaches of the Code by the Respondents the Tribunal considered the impact this had on the Applicants and any losses suffered by them as a direct consequence of that.

The Applicants wish compensation in respect of damaged property/belongings detailed in their application. The damage was caused by the mould/condensation issue. This was the responsibility of the landlord not of the letting agent. It was the landlord's obligation to provide the Property in a fit and habitable state conform to the repairing standard. The correct process would be to pursue the landlord rather than the Respondents whose obligations were different and distinct.

The Tribunal did not award any compensation for the damaged property/belongings.

The Applicants seek compensation for the distress and disruption caused by the unauthorised visits by tradesmen and failure to address issues timeously.

It is clear that the Respondents did not adhere to the Code in the respects identified above. For that reason the Tribunal consider that an appropriate remedy is for the Respondents to pay compensation to the Applicants in respect of the distress, inconvenience and disruption that was involved due to the Respondents' failings.

The Tribunal consider that a fair, proportionate and just amount of compensation in respect of their multiple breaches of the Code would be the sum of £500.

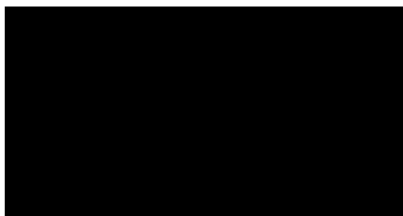
The Tribunal also consider that it would be fair, proportionate and just for the Respondents to put in place a written procedure for dealing with repairs and keeping tenants appraised and updated and also a written procedure for documenting and regulating access to keys to a Property.

**The Tribunal made the following Letting Agent Enforcement Order:**

- 1. The Respondent shall pay the sum of £500 by way of compensation to the Applicants within 21 days; and**
- 2. The Respondent shall provide written procedures for dealing with repairs and the management of access to keys to Properties under their management within 21 days.**

**Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**



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**Legal Member**

**29 August 2023**

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**Date**