



First-tier Tribunal for Scotland (Housing and Property Chamber)

Written Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 48 of the Housing (Scotland) Act 2014

Reference number: FTS/HPC/LA/23/1128

The Parties:

Dr Marija Zacharova, 357 Holton Road, Barry, Vale of Glamorgan, CF63 4HX (“the Applicant”)

Rockford Properties, 50 Castle Street, Dundee, DD1 3AQ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member and Chair)

Nick Allan (Ordinary Member)

Background

1. An application was lodged by the Applicant on 12th April 2023, alleging a breach of sections 5 and 7 of the Letting Agent Code of Practice (“the Code”).
2. Lodged with the application were Letting Agent Code of Practice Notification letter dated 6th June 2022 and proof of service of same.
3. The application was accepted by the Tribunal on 5th May 2023.
4. The Respondent lodged written submissions on 14th June 2023.
5. The Applicant lodged further written submissions on 15th June 2023.
6. The Respondent lodged further written submissions on 6th July 2023.
7. The Applicant lodged further written submissions on 9th July 2023.

Case Management Discussion

8. The Case Management Discussion (“CMD”) took place by teleconference on 10th July 2023. The Applicant represented herself. The Respondent was represented by Ms Hazel Young, Property Manager, and Ms Natalie Robertson, Operations Manager. As there was a dispute about each paragraph of the Code referred to it was appropriate for the case to proceed to a hearing.
9. After the CMD the Tribunal issued a Direction to the Respondent regarding documents to be lodged.
10. On 10th August 2023 the Respondent lodged an Inventory of Productions as requested.

Hearing

11. The Hearing took place by teleconference on 11th September 2023. The Applicant represented herself. The Respondent was represented by Ms Hazel Young, Property Manager, and Ms Natalie Robertson, Operations Manager.
12. The Chairperson directed that the application would be dealt with point by point, with the Applicant making her submissions and referring to her documents and then the Respondent being given the opportunity to reply.
13. The first paragraph which the Applicant alleged had been breached was:

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.

14. The Applicant referred to paragraph 18 of the Tenancy Agreement between her and the landlord, Alex Shanks, dated 4th December 2020. This paragraph says that the Landlord is responsible for ensuring that the Let Property meets the Repairing Standard, and that this includes the property remaining wind and watertight. She said that she had had a wet ceiling in the master bedroom for four months and had been unable to use the room. She reported the leak on 5th February 2021 and it was not fixed until the middle of June. There was continuous wet and damp on the ceiling and mould developed. She referred to photographs she had lodged showing the damage.
15. The Applicant said that to the best of her knowledge the Respondent was in charge of completing the repairs and, for the severity of the problem, she did not think it was dealt with quickly enough. She did not think that she should have been charged full rent while she could not use the bedroom.

16. Miss Young replied for the Respondent. She said that the repair which was required was a communal repair. There were ten properties in the block, each of who was liable for a share. She said that the Respondent had done everything it could to move matters on, including knocking on other doors in the tenement to ascertain ownership, contacting other landlords and contacting the local authority for assistance.
17. Miss Young referred to Document 4 of her productions, being an email trail between the Respondent and the local authority. She said that the owners did not respond quickly and the Respondent had done what they could to push matters on.
18. Miss Young said that the leak was reported by the Applicant on 5th February 2021. The Respondent sought out three quotes from roofers. The weather was bad at the time, with rain, snow and extensive flooding, and the country was in its second covid lockdown. It was difficult to get contractors to go out. Once the Respondent obtained the three quotes these were circulated to the other owners, who were slow to respond. Miss Young said that the Respondent only managed one of the flats in the block, and there was no common factor.
19. Miss Young was asked what work was actually required. She said that the gutter above the front window needed repair. Water was running down the building instead of down the pipes. There was also some cement work required, and scaffolding was needed for the work to be carried out. She said that the Respondent had done everything it could. The cost of the work was £1950.
20. The next paragraph of the Code alleged to have been breached was:

88. You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies.

21. The Applicant referred to Document 1 of her productions, which was the emails between her and the Respondent. She said that in the emails at no point did the Respondent say that anyone else would be handling the repairs. It was later suggested by the Respondent that it was the responsibility of the landlord to reimburse the Applicant for rent paid but she did not accept this.
22. The Applicant said that she was not specifically given details about who to contact about repairs and maintenance, but the Respondent's details were in the tenancy agreement and she assumed it would be them.
23. Miss Young said that contact details were in the lease for both the Respondent and the landlord. She said that the landlord was only obliged to provide his address, not his phone number, and this was why the phone number for him in

the lease was actually the Respondent's.

24. Miss Young said that the Respondents do not operate a twenty four hour service, but the message on their answering machine gives telephone numbers to call in the event of an emergency.
25. The Applicant said that she was not given a phone number for the landlord. She wrote to him. She knew he received one of her letters as an employee of the Respondent told her he had, but she said that other letters came back undelivered and she thought that he had sent them back deliberately rather than answer her.
26. The Applicant said that she had reported the leak via the Respondent's online form, but had received no response by 10th February 2021 and had to chase it up.
27. Miss Young said that when the Respondents opened for business on Monday 8th February 2021 there were about twenty five reports of roof leaks in relation to properties which they managed. This was mainly due to the storm.
28. The next paragraph of the Code alleged to have been breached was:

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

29. The Applicant referred again to her Document 1, being the emails between her and the Respondent. She considered that given the severity of the issue it was not dealt with urgently enough.
30. The Applicant referred to her Document 17, "Corrections/responses to the points from the Notes on Case Management Discussion. "She said that although it had been raining it was not anything out of the ordinary. She said that every time it rained the wet patch got bigger.
31. The Tribunal asked the Applicant what she thought the Respondent could have done differently. She said that she did not know, but felt that it was not being treated as an emergency by the Respondent, and there was only movement after she wrote to the landlord and he contacted the Respondent.
32. The Applicant said that she thought that the rent should have been reduced for the period when the bedroom could not be used.
33. Miss Young said that she had addressed this point earlier and felt that the Respondent had acted as quickly as it could. She referred to the timeline set out on page 3 of the Respondent's documents. She said that the leak was reported on 5th February 2021. The Respondent acknowledged the report on

10th February 2021. Between 15th February 2021 and 31st March 2021 she was chasing roofers for quotes. She said roofers were overwhelmed with work at that time due to Storm Darcy. She said that there must be around twenty roofers in Dundee and she tried them all.

34. The Tribunal asked Miss Young how many properties the Respondent managed. She said that they had around five hundred.
35. The Tribunal asked Miss Young if the Respondent had preferred contractors. She said that she had started with their usual roofer but she had had to chase him, and then had to try to find another one.
36. Miss Young said that on Monday 8th February 2021 she had a lot of roofing issues to work through. She could not go for a look at the damage herself due to lockdown restrictions, but the Applicant did send photos.
37. Miss Young said that at the time none of the properties in the block were let, and the tenth was occupied by its owner. A lot of the actual owners did not respond to her and this was why she contacted the local authority.
38. Miss Young said that she did not recall the Applicant asking for a rent rebate. She would have needed to take instructions from the landlord.
39. The Tribunal asked the Applicant if she had contacted the new letting agent with her proposal for compensation. She said that the new letting agent did not respond quickly to correspondence. Her view was that the rent was collected by the Respondent and it was its responsibility. She did confirm that there was a later leak, and that she had a rent reduction of about twenty five per cent for around three months. She was not sure of the cause of the new leak.
40. The next paragraph of the Code alleged to have been breached was:

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

41. The Applicant referred again to her Document 1, the email correspondence with the Respondent. She said that she was never given a timescale for the repair. She said that there was a period from 16th February 2021 to 31st March 2021 when she heard nothing at all from the Respondent. There was also a gap between 4th and 27th May 2021, and a gap between the end of July and when the Respondent was no longer dealing with the property.
42. Miss Young said that the Applicant was not given a timescale because there was not one to give. She said that between 16th February 2021 and 31st March 2021 she was contacting and chasing up contractors. If the Applicant had asked for an update she would have been given one. It is Miss Young's practice to keep people up to date as best she can. She did accept though that it was not the Applicant's responsibility to ask for an update.

43. Miss Young said that between 4th and 27th May 2021 she was collecting the money for the repair and had no update to give.
44. Miss Young said that there was no update to be given from the end of July 2021. She had instructed the painter and chased him, but he had not got round to doing the job.
45. The Applicant referred to emails in her document 1, showing that she had contacted the Respondent for an update in relation to the painter on both 18th and 23rd July. She had not received any reply.
46. Miss Young said that July was a peak time as they dealt with a lot of students. She said she must have overlooked the emails and she wished that the Applicant had emailed her again.
47. The final two paragraphs of the Code alleged to have been breached were dealt with together. They were:

108. You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

and

112. 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 include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.

48. The Applicant referred again to her Document 1 and pointed out the gaps in communication with the Respondent.
49. The Applicant said that she had made three separate complaints about the Respondent and how things were being dealt with to the Respondent and felt that they had not been taken seriously or dealt with properly. She felt that the Respondent was very dismissive.
50. The Applicant said that the first complaint was made by email on 3rd January 2021. A copy of the email was in Document 1. It was headed "2/L 172 Clepington rd-complaint". She received no reply to this email.
51. The second complaint was made via Living Rent. The Applicant referred to Document 5 of her productions, which is an undated letter from Living Rent to

the Respondent, sent by email on 11th February 2021. She felt that it was unambiguous that this was a letter of complaint. She referred to the chain of emails and mentioned that Living Rent, after receiving a response from the Respondent proposed a Zoom meeting to discuss further. This was rejected by the Respondent.

52. The third complaint was contained in the second letter from Living Rent, document 6 of her productions. She said that she received a response on 1st March 2022 merely confirming that the Respondent no longer managed the property and that it was not their responsibility.
53. Miss Young said that she could not comment on the first complaint. This was sent direct to the company director and Miss Young could not speak for her.
54. Miss Young said that the second complaint was responded to within two hours. She said that as it had all been dealt with in the response there was no need to have a meeting. She said that the Respondent did not have the facilities for a Zoom meeting, but when pressed by the Tribunal said that she did not want to do the same work twice. She did not accept that merely responding did not fully address the complaint. She said that the Respondent had offered a phone call, but this had not been accepted.
55. Miss Young said that as far as the third complaint was concerned the Respondent could not provide compensation as they did not hold any funds, and referred the Applicant to the new letting agent.
56. The Tribunal studied the Respondent's Complaints Procedure, which had been lodged with the Respondent's papers. Miss Young did not know who had prepared it, it was just the document she worked with. She was asked if the Applicant had been given a copy. She said that she had not, but would have been given it if she had asked for it. She referred to paragraph 112 of the Code which states that at a minimum the Complaints Procedure should be available on request.
57. The Tribunal asked Miss Young if the Respondent carried out any training on complaints handling. She said that this was the responsibility of the Operations Manager. Miss Robinson is the Operations manager so the Tribunal re-directed the question to her. Miss Robinson said that training was internal, they did not employ any outside organisations to deliver training.
58. The Applicant said that at no point was she told that she had not followed the correct procedure to make a complaint.
59. Miss Young said that the Respondent wants tenants to be happy in their home and she felt that they had done as much as they could for the Applicant.
60. Neither party had anything further which they wished to say. The Tribunal retired to consider its decision, advising the parties that it would be sent out in writing in due course.

Findings In Fact

- a. The Applicant rented the property at 2/L Clepington Road, Dundee, Angus, DD3 8BE from Alex Shanks;
- b. The Applicant and Alex Shanks entered in to a Private Residential Tenancy agreement commencing on 4th December 2020;
- c. The Respondent was listed in the agreement as the Letting Agent;
- d. The tenancy agreement said that the Agent would deliver full management services;
- e. Scotland entered its second national lockdown as a result of the Covid 19 pandemic on 4th January 2021;
- f. On 5th February 2021 the Applicant reported water ingress to her flat using the Respondent's online form;
- g. The Respondent did not immediately reply and the Applicant had to send an email to them on 10th February 2021;
- h. The Respondent responded by email on 10th February 2021;
- i. There was no further contact between the parties until 31st March 2021;
- j. The repair required was a common repair, requiring 10 owners in the block in which the property was situated to be consulted;
- k. The Respondent experienced difficulty in contacting the owners;
- l. The Respondent contacted the local authority for assistance;
- m. There was a gap in contact between the parties between 4th and 27th May 2023;
- n. The Applicant sent emails to the respondent regarding the painting required on 18th and 23rd July 2021 and received no response;
- o. The applicant made a complaint to the Respondent by email on 31st January 2021 complaining about their services;
- p. The Applicant received no response;
- q. The Applicant, via Living Rent, made a complaint to the respondent on 11th February 2021;
- r. The Respondent replied on 11th February 2021;
- s. The Respondent refused to meet with the Applicant and her representative to discuss the complaint;
- t. The complaint was not resolved to the Applicant's satisfaction;
- u. The Applicant made a complaint, via Living Rent, to the Respondent in February 2022;
- v. The Respondent replied on 1st March 2022;
- w. The complaint was not resolved to the Applicant's satisfaction;
- x. The Respondent did not supply the Applicant with a copy of their Complaint Procedure;

Decision and Reasons For Decision

61. The Tribunal considered each alleged breach of the Code separately.

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.

62. The Tribunal were not satisfied that this paragraph of the Code applied to the present circumstances. Paragraph 75 follows on from Paragraph 74, which refers to the Agent carrying out routine visits and inspections, and states a duty to record any issues and bring these to the tenant's and landlord's attention. The Tribunal are of the view that breaches of the tenancy agreement in relation to this paragraph means breaches by the tenant. Accordingly the Tribunal did not consider that this paragraph of the Code had been breached.

88. You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies.

63. The Tribunal did not consider that this paragraph of the Code had been breached. There was never any doubt that the Respondent was responsible for managing repairs and maintenance. That was who the Applicant contacted, and it was the Respondent who organised the repair. The Applicant was in possession of the Respondent's contact details. The Respondent did not provide a 24 hour service and emergency assistance details were available on their answering machine.

64. The Respondent did tell the Applicant she would need to contact the landlord in relation to rent reduction. This is a matter separate from the matter of dealing with repairs and maintenance and is not something that the Respondent can make a decision on without instruction from the landlord.

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

65. The Tribunal was mindful of the fact that Scotland was in lockdown at the time the leak was first reported, and that staff were working from home. The Tribunal was also mindful of the fact that the weather was particularly bad at that time and that the Respondent would be dealing with a number of different tenants with similar issues. However, the Applicant was experiencing water ingress. That is a breach of the repairing standard. The Respondent should have been contacting the Applicant regularly to enquire as to the ongoing situation. Leaving a gap in correspondence between 10th February 2021 and 31st March 2021 demonstrates that the Respondent did not prioritise the repair to the extent that they should have done.

66. The Applicant also sent two emails to the Respondent in July 2021 asking about the painting which required to be done. She received no reply. Miss Young's

answer was that she wished the Applicant had contacted her again. She did concede when pressed that it was not the applicant's responsibility to contact her for a third time.

67. The Tribunal were of the view that this paragraph of the Code had been breached.

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

68. Again, the Tribunal was mindful of the fact that Scotland was in lockdown at the time the leak was first reported, and that staff were working from home, and of the fact that the weather was particularly bad at that time and that the Respondent would be dealing with a number of different tenants with similar issues. However, the Tribunal considered that having responded to the Applicant on 10th February 2021 and then not contacting her again until 31st March 2021 was a breach of this paragraph of the Code. The Applicant should have been given updates during this period, even if the updates were to say that no progress had been made. The Applicant was entitled to know the steps that the Respondent was taking and to be given information about why the repair had not yet been carried out. The Applicant was experiencing water ingress. That is a breach of the repairing standard. The Respondent should have been contacting the Applicant regularly to enquire as to the ongoing situation.

69. This also applied to the painting work. Again, the Applicant had to chase for information and did not receive a reply.

70. The Tribunal considered it fair to say that the Applicant had been given very little information about what the Respondent was doing to try to facilitate the repairs. From the evidence given by Miss Young it appeared that the Respondent was working to try to resolve matters, but this was not properly and fully explained to the Applicant.

108. You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

71. It has already been established that the Respondent did not reply to several emails from the Applicant, in particular the first complaint on 3rd January 2021, and the emails of 18th and 23rd July 2023.

72. As far as complaints are concerned the Applicant said that she felt that the Respondent was dismissive. The Tribunal agrees with this.

73. The first complaint was made by email on 3rd January 2021. It was headed

“Complaint” and was from the first paragraph it was clearly a complaint about members of the Respondent’s staff and how they dealt with the Applicant. This email was not responded to. Again, the Tribunal were mindful that the second lockdown was imminent at this time, but the Respondent should have responded to the email.

74. The second complaint was made through Living Rent by email on 11th February 2021. There is a distinction to be drawn between complaints about repairs etc and complaints about the Respondent and their service provision, but it was clear from the Living Rent letter that the Applicant was complaining because she felt that the Respondent had failed to take appropriate action.

75. The Respondent did reply the same day, with a fairly detailed response. However, the Applicant was not satisfied with their response and sought, through Living Rent, a virtual meeting to discuss it further. The Tribunal found Miss Young’s answers to be somewhat glib. She was of the view that a response was given within two hours and that was enough to satisfy the Code. When pressed she said that she did not want to have a meeting as nothing would change and she did not wish to do the same work twice. The Tribunal did bear in mind the pressures that staff were under at that time, but the Respondent did not invoke its Complaints Procedure on learning that the Applicant was not satisfied. The impression given to the Tribunal was that an answer had been given and no further time was to be spent on it.

76. The third complaint was made in February 2022, again through Living Rent. Although not well worded, there was clearly a complaint about the service provided by the Respondent, whether well founded or not. Rather than dealing with the complaint the Respondent chose to reply saying that they no longer dealt with the property. The fact that they were no longer involved it did not absolve them from their responsibility to deal with complaints quickly and fully.

77. On each occasion the Respondent should have sent a copy of the Complaints Procedure and invoked it.

78. The Tribunal concluded that the Respondent had breached this paragraph of the Code.

112. 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 include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.

79. The Respondent produced a copy of its Complaints Procedure. Miss Young said that it is not sent out to tenants but it is available on request. She was quick to point out that this is all that the Code requires.

80. The Tribunal considered the Complaints Procedure to be very basic. It does not contain a phone number or an email address for complaints to be directed to.

There is no timescale for dealing with initial complaints. Paragraph 6, which deals with what happens once the internal complaints procedure is exhausted contains spelling errors and is missing words. It does not explain who ARLA are, nor does it give an address at which they can be contacted. It refers to the Housing Chamber as opposed to the First-tier Tribunal for Scotland (Housing and Property Chamber), and it does not give an address for contact to be made. It relies on the complainer to find out that information.

81. It appeared from the evidence given by both Miss Young and Miss Robertson that training for staff in relation to complaints is not high on the Respondent's agenda. Both gave answers which suggested that they considered complaints to be a nuisance and of an adversarial nature.

82. The Tribunal was satisfied that this paragraph of the Code had been breached.

Letting Agent Enforcement Order

83. The Tribunal were satisfied that a Letting Agent Enforcement Order should be made.

84. The Applicant was seeking an abatement of 50% of the rent for the period between reporting the leak and it being repaired, totalling £820. It is not appropriate for the Tribunal to make such an order as it was never in the behest of the Respondent to be able to agree to it. This would have been a decision for the landlord.

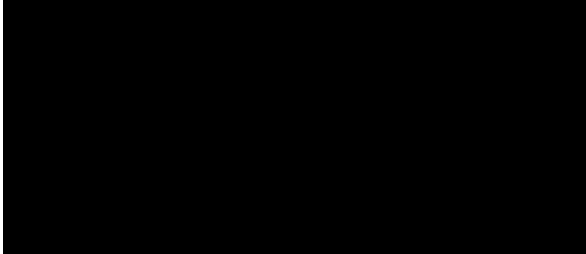
85. However, the Applicant should receive compensation for the Respondent's breaches of the Code. The Tribunal considers that the sum of £500 in total should be paid to the Applicant by the Respondent, £250 in respect of the lack of communication leading to breaches of paragraphs 90 and 91, and £250 in respect of the way in which the Respondent dealt with the Applicant's complaints leading to breaches of paragraphs 108 and 112 of the Code.

86. The Respondent should also consider updating their Complaints procedure and ensuring that staff are adequately trained in how to identify a complaint and how to deal with it.

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.

Please note that in terms of section 51(1) of the Act, a Letting Agent who, without reasonable excuse, fails to comply with an LAEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.



19 September 2023

Legal Member

Date