

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/23/1248**

**Flat 02, 47 Larkfield Gate, Glasgow, G42 7BT ("the Property")**

#### **The Parties:-**

**Mr Mark John Munn, Flat 02, 47 Gate, Glasgow, G42 7BT  
("the Applicant")**

**Curb Lettings, Watling House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR  
("the Respondent")**

#### **Tribunal Members**

Miss Gillian Buchanan (Legal Member)  
Mr Leslie Forrest (Ordinary Member)

#### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having made such enquiries as it saw fit for the purposes of determining the Applicant's application to the Tribunal, determined that the Respondent had not breached Paragraph 94 of the Letting Agent Code of Practice contained within the Schedule of the Letting Agent Code of Practice (Scotland) Regulations ("the Code") as required by the Housing (Scotland) Act 2014 ("the Act") and refused the application.**

1. The Applicant indicated in the application that he considers the hallway in the Property needs to be repainted with a water-based gloss paint. In particular all the areas in the hallway where the painters have previously painted over the existing gloss paint with emulsion need repainting and including the inside of the front door of the Property in particular.
2. By decision dated 29 June 2023, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.
3. A Hearing was assigned to take place on 5 September 2023.

4. Prior to the Hearing and by email dated 10 August 2023 the Respondent lodged with the Tribunal representations with attachments.

### **The Hearing**

5. The Hearing took place on 5 September 2023 by telephone conference. The Applicant attended the Hearing. The Respondent was represented by Ms Hayley Clark and Mr Andrew Mudie, employees thereof.
6. At the Hearing the parties made representations by reference to paragraph 94 of the Code that the Applicant complained had been breached. Paragraph 94 and corresponding headings of the Code state as follows:-

### **"SECTION 5 Management and Maintenance**

#### ***Carrying out repairs and maintenance***

*94. You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided."*

#### *Applicant's representations –*

7. At the Hearing the Applicant made the following representations:-
  - i. The Applicant was a tenant of Link Housing Association, and now of the Respondent. The Respondent is the Applicant's landlord.
  - ii. The Applicant could not remember when the identity of his landlord changed to the Respondent.
  - iii. The Applicant could not remember precisely when he moved into the Property but he first paid his deposit and the first month's rent in October 2020. He moved in prior to the Private Residential Tenancy Agreement being signed.
  - iv. There were quite a few months delay in the Applicant being able to move into the Property due to Covid.
  - v. When the Applicant moved into the Property the paintwork in the hall was slightly off colour which he thought was deliberate. However, over time the paintwork has discoloured more. The paintwork has not been altered over the 3 year period of his occupation.
  - vi. The Property comprises a ground floor, 1 bedroom flat. The hallway has no direct light and there are no windows in either the hallway or the bathroom.
  - vii. The Applicant stated that if he left an ornament on a window ledge then after 6 months when the ornament is removed there will be a yellow stain beneath.
  - viii. The Applicant's complaint is with regard to the entire hallway. There are 4 doors off the hallway, including the main door. The door frames and the main door are all painted the same colour. All are affected.
  - ix. There are brush marks of white emulsion on the woodwork. These have come from the paint applied to the adjacent walls and makes the yellow colour of the frames and doors look worse.
  - x. The skirting boards are affected and are discoloured to yellow too.
  - xi. The Respondent has offered to re-paint one door frame but that would leave the rest of the door frames yellow in colour and therefore the Applicant declined that offer. There has been no offer to repaint the rest.
  - xii. The Applicant has asked for the affected areas to be repainted with a water- based gloss paint which would allow them to stay white.

- xiii. The Applicant confirmed that other than the paint turning yellow and with the exception of the brush-marks of white emulsion as mentioned above, the paintwork is otherwise in good condition.
- xiv. The main door itself is "quite streaky". If a torch is shined on the door it is possible to see white paint through the yellow discolouration. The Applicant is not sure what is beneath the discoloured yellow paint. It could be a water-based undercoat.
- xv. The Applicant stated that the hallway is quite dark. When the hall lights are on the issue is more prominent. He has 2 warm white lights within the hall to avoid the discolouration being so obvious.
- xvi. The Applicant thought he first raised the issue of the discolouring paintwork in August 2022. He said he might have e-mailed prior to that to "test the water" with an initial complaint.
- xvii. The Respondent sent out a Clerk of Works. He remarked that the discolouration was quite obvious and said he would see what he could do but could not make any promises.
- xviii. The Applicant referred to the letter from the Respondent dated 20 September 2022 being the stage 2 response to his formal complaint.
- xix. The Tribunal asked about any stage 1 response and the Applicant stated that he probably received a response by e-mail. He couldn't recall.
- xx. The Applicant agreed that there are no provisions in the Tenancy Agreement that allows him to choose a paint finish. However, he remarked that the decision to use an oil based paint where there is no natural light is absurd. He is more than happy if the affected areas in the hallway are repainted.
- xxi. The Applicant only wants the paintwork to look white. He was hoping that common sense would prevail and given that the hallway is small, only an hour of work would be involved in repainting.
- xxii. The Applicant stated that he didn't want to buy paint and paint the hallway himself. He had already bought emulsion at a cost of £34 to touch up certain areas of paintwork.
- xxiii. With regard to the door frame that the Respondent offered to repaint, part of the frame is pure white and the rest is yellowed therefore they offered to deal with that one.
- xxiv. The Applicant stated that if the Respondent had sent out a painter and made the affected areas the same colour, the application would never have been made.
- xxv. The Applicant confirmed that the issue is the changing colour of the paintwork not the choice of paint.
- xxvi. The Applicant remarked that it was a shame matters had reached the stage of the Tribunal. However, he imagined other flats may be affected too.

#### *Respondent's representations*

8. At the Hearing and on behalf of the Respondent, Ms Clark and Mr Mudie made the following representations:-
  - i. "C~urb Lettings" is the trading name of C~urb 6 Limited.
  - ii. C~urb 6 Limited is a subsidiary of the Link Group.
  - iii. Link Housing Association is another subsidiary of the Link Group.
  - iv. On 1 April 2022 title to the Property was transferred from Link Housing Association to C~urb 6 Limited.
  - v. C~urb 6 Limited is the Applicant's Landlord. There is no Letting Agent.
  - vi. The Applicant moved into the Property in May 2021. The development of properties of which the Property forms part were not completed until then. It is correct that there was a delay in the development being completed.
  - vii. The current paintwork within the Property is as it existed as at May 2021. There are indeed 4 doors off the hallway including the main door.

- viii. The Applicant first raised the issue of the discolouration of the paintwork in the hallway with the Clerk of Works who carried out a year end defects inspection on 2 May 2022. The Clerk of Works stated that he would report back to the builder and the Clerk of Works listed the affected item as being the bedroom door frame where the difference in paint finish was very noticeable. He asked the builder to repaint the door frame in a similar finish. There was no reference to any of the other doors or woodwork within the hallway. The Clerk of Works did not regard the discolouration elsewhere to be a defect so could not ask the builder to undertake any remedial works. The internal doors are wood effect. The main door is a composite type door painted white on the internal side.
- ix. Ms Clark and Mr Mudie have not visited the Property.
- x. The builder subsequently offered to make good the issue with the bedroom door frame which the Applicant declined. He then formally complained by e-mail dated 25 August 2022.
- xi. Ms Clark telephoned the Applicant on 29 August 2022 and explained the position of the Respondent. The Applicant was not satisfied and the complaint was therefore escalated to Stage 2. The Stage 2 response reiterated the Respondent's offer to repaint the bedroom doorframe.
- xii. The Clerk of Works mentioned that he has had conversations with a few tenants about the type of paint used and passed over the response from the paint manufacturer in order that any other enquiries could be answered. The response from Akzo Nobel was either obtained from the builder or by the Clerk of Works from the manufacturer directly.
- xiii. It was acknowledged that there is yellowing of similar paint in other properties. There are 185 properties in the area. There have been no other complaints formally raised.
- xiv. The Respondent's position is that the discolouration is not a defect. The discolouration is a consequence of that type of paint and the builder cannot be asked to carry out remedial works.
- xv. The Respondent is not in breach of the Repairing Standard.
- xvi. Redecoration of the flat would only be undertaken by the Respondent if the paintwork fell into a really bad state of repair which is not the case at present and accordingly the Respondent has no obligation to undertake any works.
- xvii. There is a planned maintenance programme for the properties but only after 5 years occupation when the properties will be inspected to see if remedial redecoration is required. Whether or not that is the case will depend upon the condition of the individual properties. If, after 5 years, the issue of discolouration remains then in the absence of any other issues no works would be undertaken.
- xviii. The Respondent would not bear the cost of undertaking works for something that is not a defect. The Property is part of a large development and if liability is accepted in relation to the Property then similar repairs would have to be carried out elsewhere.

*Further submissions for Applicant*

- 9. The Applicant confirmed that he pays rent to C~urb 6 Limited. He was not aware who to raise the Tribunal application against and chose the Respondent. He said it was difficult to tell the difference between a landlord and letting agent.

**Findings in Fact**

- 10. The Applicant entered into a Private Residential Tenancy Agreement with Link Housing Association Limited (SC216300) trading as Link2Let on 25 November 2021 in respect of the Property.

11. The start date of the tenancy in terms of the Tenancy Agreement is stated to be 31 May 2021.
12. In terms of the Tenancy Agreement the Letting Agent is stated to be "Link Housing Association".
13. By Lease dated 2 May 2022 Link Group Limited leased to C~urb 6 Limited various properties detailed in the Schedule attached thereto including the Property with effect from 1 April 2022.
14. From 1 April 2022 C~urb 6 Limited became the Applicant's landlord in respect of his tenancy of the Property.
15. C~urb 6 Limited trades as C~urb Lettings, the Respondent in this application.
16. The Applicant pays his rent to the Respondent.
17. The Respondent is not a Letting Agent.
18. The Applicant's application is dated 18 March 2023 and is made under Section 48 of the 2014 Act and Rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.
19. The Respondent, not being a Letting Agent, has no obligations to the Applicant under the Letting Agent Code of Practice contained within the Schedule to the Letting Agent Code of Practice (Scotland) Regulations 2016 and under Section 46 of the Housing (Scotland) Act 2014.

### **Reasons for Decision**

20. The Tribunal carefully considered the documentation submitted by the parties and their oral representations.
21. Section 62 of the 2014 Act defines "letting agent" as "a person who carries out letting agency work".
22. Section 61 of the 2014 Act defines "letting agency work" as:-

*(1) For the purposes of this Part, "letting agency work" means things done by a person in the course of that person's business in response to relevant instructions which are—*

- (a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord's house as a dwelling, or*
- (b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).*

*(2) In subsection (1)—*

- (a) "relevant instructions" are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and*

*(b) "occupancy arrangement", "unconnected person", "relevant person" and "use as a dwelling" are to be construed in accordance with section 101 of the 2004 Act.*

*(3) The Scottish Ministers may by order—*

*(a) provide that "letting agency work" does not include things done—*

*(i) on behalf of a specified body, or*

*(ii) for the purpose of a scheme of a specified description, or*

*(b) otherwise modify the meaning of "letting agency work" for the time being in this section.*

*(4) A scheme falling within a description specified by the Scottish Ministers under subsection (3)(a)(ii) must be—*

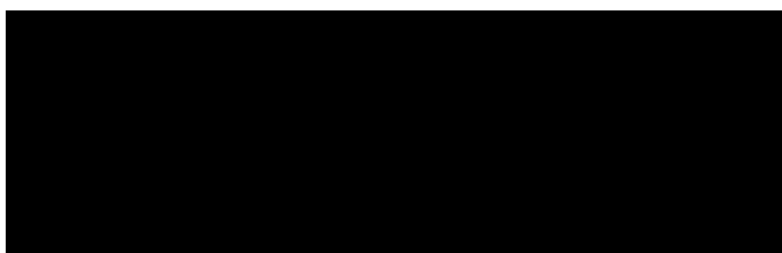
*(a) operated by a body which does not carry on the scheme for profit, and*

*(b) for the purpose of assisting persons to enter into leases or occupancy agreements."*

23. The Applicant accepted that the Respondent is his landlord and stated that he pays his rent to the Respondent.
24. The Respondent denied being a Letting Agent and that the Code applied to it.
25. The Respondent is not a Letting Agent. It is the Applicant's landlord.
26. The Code does not therefore apply to the Respondent relative to the Tenancy Agreement between the Applicant and the Respondent in respect of the Property.
27. Having determined that the Respondent is not a Letting Agent and that the Code does not apply to it in this instance, the Tribunal had no locus to consider the Applicant's application further and the application required to be refused.

### **Right of Appeal**

28. 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.



Legal Member and Chairperson  
5 September 2023