

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(6) of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/23/1500**

**Property : Flat 3, 54 Partick Bridge Street, Glasgow G11 6PQ ("Property")**

**The Parties:-**

**Shuangye Yan, Flat 3, 54 Partick Bridge Street, Glasgow G11 6PQ ("Tenant")**

**Real Living Solutions Limited, 25 Braehead Avenue, Milngavie, Glasgow G62 6DH ("Letting Agent")**

**Tribunal Members:**

**Joan Devine – Legal Member**

**Gerard Darroch – Ordinary Member**

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") unanimously determined that the Letting Agent has not failed to comply with the Letting Agent Code of Conduct as required by section 46 of the Housing (Scotland) Act 2014. In all the circumstances the Tribunal determined not to make a Letting Agent Enforcement Order.

### **Introduction and Background**

1. In this Decision the Housing (Scotland) Act 2014 is referred to as the "Act"; the Letting Agent Code of Practice is referred to as the "Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as the "Rules".
2. The Tenant lodged form J dated 11 May 2023. On 12 June 2023 the Tenant lodged a written submission which included the following :
  - A copy of a private residential tenancy in respect of the Property entered into by the Tenant dated 17 September 2019.
  - Screenshots of text messages.
  - Screenshots of bank payments

3. On 2 September 2023 the Letting Agent lodged a written submission which included the following :
  - Excerpts from messages between the Parties.
  - Excerpts from messages between the Letting Agent and the landlord of the Property.
  - Excerpts from messages between the Letting Agent and Gina McGavin
  - Photographs of the Property.
4. In the Form J the Tenant complained about breach of the following sections of the Code :
  - Section 2 paragraphs 17, 19, 21, 24 and 28
  - Section 4 paragraph 49
  - Section 5 paragraph 94, 95 and 96
  - Section 7 paragraph 108 and 111.

#### **Case Management Discussion (“CMD”)**

5. A CMD took place on 28 September 2023. The Tenant was in attendance as was Alasdair Farquhar of the Letting Agent. Ruigi Wang accompanied the Tenant as a supporter.
6. Miss Yan told the Tribunal that the Letting agent over charged her, delayed her complaint and had a bad attitude. The Tribunal noted that the application related to a charge for cleaning of £395 and a charge for supplying and fitting a worktop for £560. Miss Yan confirmed that was correct.
7. As regards the charge for cleaning Miss Yan said that she agreed with the Letting Agent for a third party to clean the Property. She said the Letting Agent would not allow her to find her own cleaner. She said that all the quotes were sent to Mr Wang who sent them on to her. She said she agreed to the quote of £395 on the basis there was no commission.
8. Mr Farquhar told the Tribunal that he deals with the Property on a “let only” basis and deals with management issues as and when instructed by the landlord. He said that in that situation he sees himself as a contractor. He said he sent one communication with a quote for cleaning and it was sent to the

phone number he had had for a long time for Miss Yan. He said Mr Wang replied directing him to contact Miss Yan so he did so by email and on an alternative number he had for her. He said he sent only one quote prepared by him. He said that the landlord had asked him to arrange for professional cleaners. He said that he gave Miss Yan time to find her own cleaner but time went by and nothing happened. Mr Farquhar said he met Miss Yan on 17 March 2023 to discuss a proposed joint tenancy of Miss Yan and Mr Wang. At that meeting he said they discussed the need for the Property to be cleaned and the worktop replaced. He said he followed the meeting up with an email explaining what needed to be done and why it needed to be done. Mr Farquhar said he had been involved with flats occupied by the Tenant since 2017 and the question of cleaning had come up frequently. Mr Farquhar said that he sent his quote for the cleaning by email. He said that he attended the Property and took photographs which he showed to the cleaner who said she would charge £130 or more depending on what she found at the Property.

9. Mr Farquhar said that the cleaner attended the Property but left when she was verbally abused by Mr Wang. He said he believed that the work done was worth £395. He said that the £395 charge was paid by the Tenant in advance. Mr Farquhar said that he attended the Property on the day of the cleaning and was there for around 2.5 hours to explain how things should be done. He said he had asked for the fridge and freezer to be cleared but they were not so that had to be dealt with on the day. He said it is not easy to find cleaners who will work in the Property. He said that all of the cleaning was attended to aside from the cleaning the floors. He said that the cleaners do not take mops from one property to another so they do not spread infection. He said he checked the inventory for the Property and it showed there was a mop and bucket at the Property. The cleaners found that the mop was filthy and not capable of being used. That was why the floors were not cleaned. Mr Farquhar said that the cost of £395 was agreed with the landlord.
10. The Tribunal asked Mr Farquhar if he received commission from the cleaner. He said he did not. The Tribunal asked Mr Farquhar if the clean was at the start of the tenancy. He said it was not, it was mid-tenancy. The Tribunal asked Mr Farquhar if the work done by the cleaners was inadequate. He said it was not. He said that the cleaners had a very difficult job. He referred to the fridge as being horrendous where the drainage was blocked by smelly dark water. The Tribunal asked Mr Farquhar if the cleaners had any professional qualifications. He said he was not aware of them having any but he would expect them to have insurance.
11. The Tribunal asked Mr Farquhar if the cleaning was instructed after the landlord inspected the Property. Mr Farquhar said he was not aware of an

inspection but the instruction to arrange cleaners came from the landlord. The Tribunal noted that the cost quoted included Mr Farquhar's own time and asked what percentage of the cost related to Mr Farquhar's own time. He said that it was around two thirds of the total but that had not been the intention. He said that the price was fixed and he had expected the cleaner to charge more than £130 once they had seen the Property. He said he had obtained another quote that worked out at around £810. The Tribunal asked Mr Farquhar how many labour hours were included in the cost quoted. He said it was three cleaners working for three hours which amounted to 9 labour hours. He said the fixed price of £395 would have applied if the cleaners had taken longer and charged more. He said that the cleaner reported that all of the cleaning work had been completed aside from the floors. The Tribunal asked Mr Farquhar if he had told the Tenant that she could not find her own cleaners. He said that was not correct. He said the Tenant could have cleaned the Property herself or instructed her own cleaner.

12. The Tribunal asked Miss Yan if all of the cleaning work was completed aside from the floors. She said that was correct. She said that she used her own cleaner who attended the Property regularly. The Tribunal asked Miss Yan why she agreed to the quoted of £395. She said she agreed because Mr Farquhar would not let her use her own cleaners. Miss Yan confirmed that Mr Farquhar attended the Property at the start of the clean and that two cleaners were there for three hours and a third cleaner was there for an hour.
13. The Tribunal noted that the tenancy commenced in September 2019 and asked Miss Yan when the clean took place. She said it was in April 2023. The Tribunal noted that the clean was not therefore at the start of the tenancy. She said that it was carried out as a condition of a new tenancy being granted in favour of herself and Mr Wang. She said that a new joint tenancy was entered into at the end of April 2023. The Tribunal noted the application was under paragraph 95 of the Code and asked Miss Yan what professional qualifications she expected the cleaners to have. She said she did expect them to have a professional qualification. The Tribunal asked Miss Yan if she asked to see the cleaner's qualifications. She said she did not.
14. The Tribunal asked Miss Yan if the cleaning followed an inspection by the landlord. She said that she phoned the landlord who said she knew nothing about the cleaning. She said the landlord did not know that Mr Farquhar was forcing her to find a cleaner. The Tribunal asked Miss Yan if the landlord came out to look at the Property. She said she did in February 2023. The Tribunal asked Miss Yan if the landlord said the Property needed cleaned after she had visited. Miss Yan said she could not remember.

15. Mr Farquhar told the Tribunal that a new joint tenancy was put in place on 29 April 2023 for Miss Yan and Mr Wang. He said that Mr Wang had not passed the Letting Agent's referencing process but the landlord wished to proceed.
16. The Tribunal asked Miss Yan about the replacement of the worktop in the kitchen of the Property. She said it had been damaged by water and the landlord told her to replace it. She said it was replaced in early April 2023 before the cleaning work. She said the first quote was for £880. She said the Letting Agent would not allow her to use her own contractor and had forced her to use their contractor at a cost of £560. She said she had asked another joiner to look at the worktop and he had quoted £300 to supply and fit a new worktop. She said that the joiner was a friend of the landlord. She said the Letting agent kept pushing her and said she would not get a new tenancy if she did not accept the quote. The Tribunal asked Miss Yan if she told the Letting Agent that she had a quote for £300 from a joiner who was a friend of the landlord. She said she did not.
17. The Tribunal asked Mr Farquhar about the worktop. He said the landlord instructed him to arrange for the worktop to be replaced. He said it had been damaged by the Tenant leaving standing water on it which caused the worktop to delaminate. He said he was concerned about water running down the back of the worktop and possibly causing damage to the flat below. He said the worktop is an "L" shape and incorporates the sink and hob which meant there was a lot of work involved in replacing the worktop. He therefore proceeded by way of a compromise and arranged for only part of the worktop to be replaced. He said that only part of the worktop was replaced between the fridge and the hob which meant only the sink required to be removed. He said he proceeded this way against the backdrop of the landlord having told him the entire kitchen would soon be replaced and the Tenant having said she would end the tenancy in August 2023, which has not happened. The Tribunal asked Mr Farquhar if the Tenant had told him that a joiner who was a friend of the landlord had quoted £300 for the work. He said she had not. Mr Farquhar said he was shocked to hear the Tenant say that she was forced to use his joiner. He said that suggesting that using his joiner was a condition of a new PRT being granted was ridiculous.
18. The Tribunal asked Mr Farquhar if the landlord had told him that the Tenant should pay for the replacement worktop. He said yes, absolutely. The Tribunal asked Mr Farquhar if the landlord had told him to get the cost paid before the work was undertaken. He said no, the landlord was not involved in that. The Tribunal asked Mr Farquhar if the Tenant was aware of the extent of the work and whether the work was properly done. He said that the Tenant was aware and that the work was properly done.

19. The Tribunal asked Miss Yan if she was happy with the quality of the work to the worktop. She said that she was but that she wished to see an invoice.
20. The Tribunal noted that the application was brought under paragraphs 28 and 111 of the Code and asked when the Letting Agent had communicated in a way that was abusive, intimidating or threatening. She said that when Mr Farquhar attended the Property to look at the worktop he said that if she did not use his joiner and did not use his cleaners then the new joint tenancy would not happen. She said this was a “soft threat”. The Tribunal asked Miss Yan the precise words used by Mr Farquhar. She said she did not remember the actual words. She said she was quite confused at the time. She said she could not recall the date on which the conversation took place.
21. Mr Farquhar said that what Miss Yan had said did not reflect his recollection of the conversation. He said that nothing was further from his mind than the grant of a new tenancy.
22. The Tribunal noted that the application was brought under paragraph 108 of the Code which relates to the failure to respond to complaints within a reasonable timescale and asked Miss Yan to elaborate. She said that she made formal and informal complaints and Mr Farquhar refused to answer his phone.

### **The Code**

23. The Tenant complained of non-compliance with the following sections of the Code : section 2 paragraph 17,19, 21, 24 and 28; Section 4 paragraph 49; section 5 paragraphs 94, 95 and 96; section 7 paragraph 108 and 111 which provide as follows:

#### **Section 2**

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

19 – You must not provide information that is deliberately or negligently misleading or false.

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

24 – You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code’s requirements.

28 – You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.

#### Section 4

49 – You must not, as a condition of granting the tenancy, require tenants to use a third party service that charges them a fee.

#### Section 5

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

95 - If you use a contractor or a third party, you must take reasonable steps to ensure they hold appropriate professional qualifications and the necessary public and professional liability insurance. You should hold copies of all relevant documents.

96 - On request, you must disclose to landlords, in writing, whether you receive any commission, fee, rebate or other payment or benefit and any financial or other interest you receive from a contractor / third party you appoint.

#### Section 7

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.

111 – You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.

### **Remedy Sought**

24. The Tenant asked to see the invoice in support of sums paid to the Letting Agent. The Tenant asked for a refund of £560 in respect of worktop repairs and a refund of £395 in respect of cleaning costs. The Tenant sought an apology.

### **Findings in Fact**

The Tribunal make the following findings in fact:

1. The Tenant is tenant of the Property in terms of a tenancy agreement dated 17 September 2019.
2. The Letting Agent acted as letting agent when the Property was let to the Tenant.

3. The Letting Agent carries out management of the Property when requested to do so by the landlord.
4. The Letting Agent was honest, open, transparent and fair in their dealings with the Tenants.
5. The Letting Agent did not provide information to the Tenant that was deliberately or negligently misleading or false
6. The Letting Agent did not communicate with the Tenant in any way that was abusive, intimidating or threatening.
7. The Letting Agent did not, as a condition of granting the tenancy to which the application relates, require the Tenant to use a third party service that charges them a fee
8. The work carried out at the Property by cleaners in April 2023 was adequate and the cost thereof was reasonable.
9. The work carried out at the Property to replace part of a worktop in April 2023 was adequate and the cost thereof was reasonable.

### **Reasons for Decision**

25. The Tenant had lodged a written submission in support of the application. The Letting Agent also lodged a written submission in advance of the CMD. Both Parties had lodged copies of relevant documents. The Tribunal heard extensive oral submissions from the Parties at the CMD. Having reviewed the written and oral submissions following the CMD the Tribunal considered that it had sufficient information to allow it to proceed to a determination.
26. As regards the complaint under paragraph 17 of the Code Tenant's concern was that the cost agreed for the cleaning was £395 but only £130 was paid to the cleaner. The Tenant's concern regarding the quote to replace part of the worktop was that it was too high. She said she had an alternative quote but did not choose to share that information with the landlord or the Letting Agent. The Letting Agent explained to the Tribunal that the figure arrived at for cleaning incorporated his own time as well as the estimated cost provided by the cleaner. He explained that the cost would remain £395 whether the cleaner charged £130 or more. The Tenant confirmed that the Letting Agent was present at the Property for some time on the day of the cleaning and that three cleaners attended for three hours. The Letting Agent had lodged photographs of the Property taken before the cleaning was carried out. The Tenant did not suggest that they were an inaccurate representation of the Property. The Tribunal considered that a charge of £395 to clean the Property



was reasonable and that the charge to supply and fit the replacement part of the worktop was also reasonable. The Tenant had lodged a copy of the text message in which the Letting Agent provided the quote for the cleaning and the replacement worktop. Whilst the Tribunal notes that it does not state that the cleaning charge includes time spent by the Letting Agent, the Tribunal did not consider that the quote provided amounted to a breach of the Code.

27. As regards the complaint under paragraph 19 of the Code, the Tenant had lodged a copy of the text message in which the Letting Agent provided the quote for the cleaning and the replacement worktop. Whilst the Tribunal notes that it does not state that the cleaning charge includes time spent by the Letting Agent, the Tribunal considered that the information provided was not deliberately or negligently misleading or false.
28. As regards the complaint under paragraph 21 of the Code, the Tenant's complaint related to charges made for cleaning and replacement of part of a worktop. The Tenant made no reference in the application or in oral submissions to a concern about the Letting Agent delivering services without using reasonable skill and care and in a timely manner. The evidence presented to the Tribunal provided no basis for a complaint under this paragraph.
29. As regards the complaint under paragraph 24 of the Code, the Tenant's complaint related to charges made for cleaning and replacement of part of a worktop. The Tenant made no reference in the application or in oral submissions to a concern about record keeping. The evidence presented to the Tribunal provided no basis for a complaint under this paragraph.
30. As regards the complaint under paragraph 28 of the Code the evidence presented to the Tribunal provided no basis for a complaint under this paragraph.
31. As regards the complaint under paragraph 49 of the Code, the complaint under this paragraph appears to be misconceived. The Tenant's complaint relates to charges made for cleaning and replacement of part of a worktop some 4 years after the tenancy commenced.
32. As regards the complaint under paragraph 94 of the Code, the Tenant did not suggest there was any defects in any inadequate work or service provided. She said that the cleaning work was completed (aside from the floors) and that the worktop replacement was carried out properly. There was nothing put before the Tribunal to suggest that a contractor or supplier should be pursued

in respect of inadequate work. The evidence presented to the Tribunal provided no basis for a complaint under this paragraph.

33. As regards the complaint under paragraph 95 of the Code the complaint related in part to cleaners who undertook work at the Property. The Tenant said she expected them to have professional qualifications but could not tell the Tribunal what those qualifications should be. The Tenant also told the Tribunal that she did not ask to see qualifications and said that the cleaning work was completed aside from the floors. As regards the replacement of part of the worktop, the Tenant did not express concern about the qualifications of the contractor and said that the work was properly carried out. The evidence presented to the Tribunal provided no basis for a complaint under this paragraph.
34. As regards the complaint under paragraph 96 of the Code, this part of the Code relates to disclosures to a landlord, not a tenant. In those circumstances there is no basis for the Tenant to make a complaint under this paragraph.
35. As regards the complaint under paragraph 108 of the Code, the only evidence presented in support was the Tenant saying that Mr Farquhar did not answer his phone. The Tribunal would expect to see a formal complaint made in writing and that being followed up in writing. The evidence presented is inadequate to support a complaint under this paragraph.
36. As regards the complaint under paragraph 111 of the Code, the evidence presented to the Tribunal provided no basis for a complaint under this paragraph.

### **Letting Agent Enforcement Order**

37. The Tribunal determined not to make a letting agent enforcement order.

### **Appeals**

**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: 

29 September 2023