

# **Housing and Property Chamber**

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

---



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

**Note of Decision following hearing: First-tier Tribunal for Scotland**  
**Housing (Scotland) Act 2014, section 48**  
**Housing and Property Chamber (Rules of Procedure) Regulations 2017 as**  
**amended, rule 24**

**Chamber Ref: FTS/HPC/LA/23/1198**

**Property at 39 Gardiner Street, Lochgelly, Fife, KY5 9LQ**  
**("The Property")**

**The Parties: -**

**Ms Catherine Harper, Street 2b, Villa 53, Al Bada'a, Dubai, United Arab Emirates**  
**("the Applicant")**

**Rent Locally, West End Office Suites, Dundee, DD2 1SW ("the Letting Agent")**

**Tribunal Members: -**

**Maurice O'Carroll, Legal Member (Chair)**  
**Melanie Booth, Ordinary Member (Housing)**

### **Summary of Discussion**

#### **Background**

1. A Case Management Discussion (CMD) was held at 10am on 4 August 2023 by means of a telephone conference. On that date, the Applicant attended the call in person and spoke on her own behalf. The Letting Agent was represented by Mr Paul Goodman, Director. A Note of that CMD dated 8 August was circulated to parties, together with a Direction, the terms of which are discussed below.
2. It was not possible to conclude all matters at the CMD, as a result of which a formal Hearing by telephone was fixed and took place at 10am on 9 October 2023. On that call, the Applicant once again attended on her own behalf. The Respondent did not attend, nor was it represented, and no advance notification of non-attendance by it was provided.

3. The Tribunal carried out investigations to ensure that notice of the Hearing had been duly sent to the Respondent. On checking, it was found that notice of the Hearing was sent to all parties on 5 September 2023 at 08:51h. The email address used for the Respondent was the same as that used for the CMD on 4 August 2023.
4. The Tribunal therefore being satisfied that notice of the Hearing had been provided by the Tribunal and no reason for non-attendance having been provided by the Respondent, the Hearing then proceeded in the absence of the Respondent.
5. The issues remaining for the Tribunal to consider following the CMD was the question of remedy in relation to breach of Paragraph 17 and the question of breach and remedy in relation to Paragraph 57 of the Code.

### **Tribunal findings in relation to the remaining issues**

6. Paragraph 17 of the Code of Practice for Letting Agents in section 2 under the heading "Overarching Standards of Practice" states: **"You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)."**
7. At the CMD, the Tribunal made a finding that the Respondent had breached the terms of the requirements of this part of the Code. Reference is made to the findings contained within the Note of the CMD. At that time, the Applicant had not lodged any vouching for her losses which she stated amounted to the amount of deposit that ought to have been held, being £495.
8. A Direction dated 8 August 2023 was issued to the parties, one of the requirements of which was for the Applicant to vouch the losses which she claims to have incurred further to the Letting Agent's failure to comply with paragraph 17 of the Code.
9. Such vouching was duly provided by the Applicant by email dated 22 August 2023. The vouching demonstrated that the Applicant had spent £15 in respect of an uplift charge for a heavy item left by the former tenant; £330 in removal costs of items left by the former tenant and a cleaning charge of £150 amounting to £495 in total.
10. The Tribunal accepted the vouching provided and made a decision to make an award of loss in that sum. It also considered the inconvenience associated with the protracted correspondence with the Applicant had required to undertake in investigating what had happened to the tenant's deposit and the inconvenience of being required to make the application itself.
11. The Tribunal decided to make an award of a nominal sum of £250 under this heading. The direct financial loss of £495 and award of £250 for inconvenience will form the basis of the Letting Agent Enforcement Order to follow from this decision.

## Paragraph 57 of the Code of Practice

12. Paragraph 57 of the Code in section 4 under the heading “References and checks” states: **“You must agree with the landlord what references you will take and checks you will make on their behalf.”**
13. The Tribunal asked the Applicant whether she still wished to insist on this ground of her complaint. The Applicant confirmed that she stood by what was stated in her application form, namely that at no point did the Letting Agent agree with her what references it would take for prospective tenants nor what checks would be made on her behalf.
14. At the CMD, this was disputed by Mr Goodman who pointed to the Letting Agent’s Terms of Business. At page 19, second last paragraph, it is stated: “We will take reasonable steps to confirm the identity of applicants and guarantors and to verify references. We will provide you with a copy of all application and referencing paperwork and seek your approval to proceed with the tenancy.”
15. If the above had in fact been done in or about June 2020 that would have been a full answer to the complaint under this paragraph. At the CMD, the Respondent was therefore provided with an opportunity to provide correspondence or other documentation that would confirm that that part of its Terms of Business had been complied with.
16. In the Direction dated 8 August 2023 referred to above, the following requirement was directed at the Respondent: “The Letting Agent is required to provide the following: Any documentation in its possession pertaining to its compliance with paragraph 57 of the Code.”
17. The Respondent did not provide any vouching in support of the oral evidence led at the CMD to the effect that references and checks to be made were agreed in advance as required by this section of the Code. It did not do so either prior to the CMD or following the CMD in answer to a specific Direction calling upon it to do so.
18. Providing that information would have been a complete answer to the allegation that the Respondent had failed to comply with Paragraph 57 of the Code. The Tribunal noted that its decision at the CMD was assisted by complete and accurate historical records provided by the Respondent in the form of an archived consolidated landlord statement covering the entire period of time during which the Applicant used the services of the Respondent. The Tribunal therefore considers that the Respondent has efficient office systems in place which enable it to retrieve necessary documents as required.
19. The Tribunal considered that in those circumstances it was entitled to draw an inference from the Respondents’ failure to comply with the Direction (compliance with which is compulsory and not discretionary) together with its

failure to attend the Hearing, that the reason why such documentation was not provided was because it did not exist. Accordingly, it found on the balance of probabilities that the Respondent did not comply with Paragraph 57 of the Code.

### **Conclusions and outcome**

20. The Tribunal's final conclusions in respect of the breach of Paragraph 17 of the Code have been set out above.
21. In relation to the breach of Paragraph 57, the Tribunal finds that there was also a breach of the obligations contained within that paragraph of the Code.
22. In relation to remedy for the breach of the latter paragraph, the Tribunal notes that compensation has been awarded for the losses arising from the breach of Paragraph 17. It also notes that losses arising from the absence of a deposit covering damage to the let Property, and the subsequent inconvenience thereby caused, are also losses which could be attributed to a breach of Paragraph 57. There is therefore an overlap between the two claims in terms of losses resulting from breach of the Code.
23. Accordingly, it made no further award in relation to the breach of Paragraph 57 other than just satisfaction that such a finding of breach on the part of the Letting Agent has been made by the Tribunal.
24. A Letting Agent Enforcement Order accompanies the present Decision.
25. **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 within 30 days of the date the decision was sent to them.**

Signed: \_\_\_\_\_

Date: 9 October 2023

Legal Member and Chair