

# 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 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“The Rules”)

**Chamber Ref: FTS/HPC/LA/18/1039**

**7 Earnsheugh Crescent, Cove Bay, Aberdeen AB12 3RU (“the Property”)**

**The Parties:- Mrs. Morag Duncan residing at Flat 2/1, 281 Old Rutherglen Road, Gorbals, Glasgow G5 0UU (“the Landlord”)**

**AM-PM Leasing being the trading name of SD (Aberdeen) Ltd., a company registered under the Companies Acts with company number 341513 and having a place of business at 441, Union Street, Aberdeen AB11 6DA (“the Letting Agent”) hereinafter together referred to as “the parties”**

### Tribunal Members

**Karen Moore (Legal Member and Chairperson)**

**David Fotheringham (Ordinary Member)**

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Letting Agent had failed to comply with its duty in terms of Section 48 (1) of the Act in respect of compliance with the Letting Agent Code of Practice (“the Code”) in respect of Section 2 at paragraphs 21, 26 and 29 (d), Section 4 at paragraph 68 and Section 7 at paragraph 108 of the Code. Having so determined, the tribunal made a Letting Agent Enforcement Order in terms of Section 48(7) of the Act.

### Background

1. By an application comprising application form dated 2 May 2018 with supporting documents (“the Application”), the Landlord applied to the tribunal for a determination that the Letting Agent had failed to comply with the Code as required by Section 48 (1) of the Act.
2. A legal member of the First -tier tribunal the Chamber with delegated powers of the Chamber President having considered the application in terms of the Act and having determined that there were no grounds to reject the Application in terms of Rule 8 of the Rules accepted the application in terms of Rule 9 of the Rules, issued a Notice of Acceptance (“the Notice”) and referred the Application to the tribunal to hold a Hearing on 1 August 2018 at 10.00 a.m.

## **Hearing.**

3. The Hearing took place on 1 August 2018 at 10.00 a.m. at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Landlord appeared on her own behalf. The Letting Agent was not present, having contacted the tribunal to advise that it would not attend and would rest on its written submissions.

## **Preliminary matter**

### **Jurisdiction of tribunal in relation to matters complained of and application of the Code.**

4. The tribunal had regard to that part of the Letting Agent's submissions which indicated that the Letting Agent considered that the matters complained of by the Landlord predated the Code coming into force and so the application was not valid. The tribunal took the view that whilst the core complaint predated the Code, the Landlord complained of matters which appeared to have occurred after the Code came into force and that the only way to establish this was on a hearing of evidence and so the tribunal considered that it had sufficient jurisdiction to proceed. The tribunal noted that the Letting Agent did not appeal or review the Notice. Therefore, in accordance with the tribunal procedure set out in the Rules and in the absence of any appeal or review decision to the contrary, the tribunal determined to proceed with the Hearing.

### **Landlord's submissions at the Hearing**

5. The Landlord addressed the tribunal on all of the elements of her complaint with reference to the Application. The Landlord acknowledged to the tribunal that she accepted that elements of her complaint predated the Code coming into force and acknowledged that these elements of the Application might not succeed.
6. The Landlord advised the tribunal that the main element of her complaint was the disappearance of her furniture, other household items and possible garden furniture and garden implements in or around 2015. The Landlord explained to the tribunal that the Property had been her home and main residence until she relocated with her employment to the Glasgow area in 2008. She had intended to return to the Property as her home and main residence within a few years and so rented the Property out complete with her own personal furnishings and household items. She engaged the Letting Agent as letting agents. The Landlord explained further that on receiving a photographic record of a tenancy inspection carried out by Letting Agent in or around 2015, she became aware that her personal furnishings and household items were no longer in the Property and had been replaced by different furnishings and household items. The tribunal noted that from the Letting Agent's written representations there is no dispute that the furnishings and household items currently in the Property are not those left in the Property by the Landlord. The Landlord advised the tribunal that she still engaged the Letting Agent as her letting agent and that the Letting Agent

acted for her and continues to act in respect of a new tenancy which commenced in April 2018.

7. With regard to her complaint in respect of Section 2, para 21 of the Code which states: *“You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way”*, the Landlord explained to the tribunal that although she has had an ongoing complaint with the Letting Agent in respect of the disappearance of her furnishings from the Property and the Letting Agent’s continued failure to provide her with a satisfactory explanation, it was not until she received renewed Terms and Conditions in March this year that she became aware of the Letting Agent’s duty to her in terms of the Code. The Landlord submitted that the Code applied to her continuing complaint as questions and matters put to the Letting Agent in respect of the whereabouts of her furnishings and her responsibility and liability for the furniture now in the Property made by her in March of this year had gone unanswered. The Landlord submitted that this was a failing in respect of Section 2, para 21 of the Code.

8. With regard to her complaint in respect of Section 2, para 24 of the Code which states: *“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”*, the Landlord explained to the tribunal that, to her knowledge, no written records are maintained by the Letting Agent and that, in particular, she could not recall being given a written record in respect of the new tenancy.

9. With regard to her complaint in respect of Section 2, para 26 of the Code which states: *“You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement”*, the Landlord explained to the tribunal that the terms and conditions received by her from the Letting Agents in March 2018 contained a complaints procedure which referred to complaints being acknowledged within 3 days and that the Letting Agent had not complied with this in respect of her email of 28 March 2018. The Landlord also submitted that the complaints procedure was erroneous in respect of the procedure it set out as she had been advised by the Scottish Association of Landlords that complaints procedures should be referred to that association after the outcome of an application to the tribunal and not in reverse order as set out in the Letting Agent’s procedure.

10. With regard to her complaint in respect of Section 2, para 29 (d) of the Code which states: *“If you become aware in the course of your business that a property does not meet appropriate letting standards (e.g. repairing standard, houses in multiple occupation and health and safety requirements), inform the landlord of this”*, the Landlord explained to the tribunal that this related to the lack of an inventory in respect of the new tenancy which left her unaware if the furnishings in the property and forming part of the items leased to her tenants met the required statutory standards.

11. With regard to her complaint in respect of Section 4, para 68 of the Code which states: *“If you are responsible for managing the check-in process, you must produce an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example marks on walls, carpets other fixtures) unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct”*, the Landlord advised the tribunal that

this complaint related to the new tenancy which commenced in April 2018 and explained that she had not received an inventory of the items currently in the Property, a report on the condition of the Property or a copy of the new tenancy agreement.

12. With regard to her complaint in respect of Section 5 at paragraph 73 of the Code which states; *“If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code”*, the Landlord advised the tribunal that this complaint related to the new tenancy which commenced in April 2018 and explained that as she was unaware of the position regarding the safety compliance of the furnishings now in the Property, she could not be certain that this part of the Code was being complied with.

13. With regard to her complaint in respect of Section 7 at paragraph 107 of the Code which states: *“You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act”*, the Landlord accepted that this duty did not come into force until 30 September 2018.

14. With regard to her complaint in respect of Section 7 at paragraph 108 of the Code which states; *“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”*, the Landlord advised the tribunal that this complaint related to the Letting Agent's persistent failure to respond to not only the ongoing complaint since 2015 but also to the complaint and questions raised in March of this year in respect of her status and responsibility for the furnishings currently in the Property and now let to the new tenants.

15. With regard to her complaint in respect of Section 5 at paragraph 112 of the Code which states: *“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”*, the Landlord accepted that the Letting Agent did have a complaints procedure, albeit her view is that the Letting Agent did not adhere to it.

16. With regard to her remaining complaints in respect of Section 5 at paragraph 74 of the Code which states: *“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)”*; Section 5 at paragraph 88 of the Code which states: *“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”*; Section 5 at paragraph 89 of the Code which states: *“When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.”*; Section 6 at paragraph 102 of the Code which states: *“If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may*

*include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began”; Section 6 at paragraph 104 of the Code which states; “You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared”.; and Section 8 at paragraph 137 of the Code which states: “You must notify the appropriate authorities, such as the Police or National Crime Agency, if you suspect any person using your services is engaged in money laundering, human trafficking, or another criminal activity”, the Landlord advised that tribunal that these complaints all related to her core complaint in respect of her missing furniture and so accepted that these complaints predated the commencement of the Letting Agent’s duty to comply with the Code.*

## **Findings in fact**

17. There being no dispute between the parties on the core complaint and background to that core complaint, the tribunal found that: -

- i) a contract exists between Ms Duncan, the applicant and Landlord and AM-PM Leasingas Letting Agent for the provision of letting agency and management services for the Property;
- ii) the Property had been let under that contract since 2008 and had been let fully furnished with furnishings and other household items which were owned by the Landlord;
- iii) at some time in 2015 the Landlord’s furniture had been removed by parties unknown and had been replaced with other furniture, and that without the permission, knowledge or agreement of the Landlord;
- iv) the Landlord had pressed the Letting Agent for an explanation for the removal and replacement of her furniture but the Letting agent had failed or been unable to provide a satisfactory explanation or reason for the removal and replacement of the furniture and
- v) a new tenancy had been entered into by the Landlord in April 2018 with the Letting Agent continuing to provide letting agency and property management services;

18. The tribunal found further that in March 2018, the Landlord had renewed her request for information from the Letting Agent in respect of her liability and responsibility for the furniture currently in the Property and forming part of the Landlord’s fittings let to the tenants and the Letting Agent had failed or been unable to provide a satisfactory response to the Landlord.

19. With regard to the manner in which the Landlord gave evidence, the tribunal found that the Landlord gave evidence in a measured and straightforward manner and the tribunal had no reason to disbelieve her or consider that she exaggerated her position.

20. With regard to the written submission made by the Letting Agent, the tribunal found that the Letting Agent did not attempt to deceive but genuinely relied on its erroneous belief that the Landlord’s complaint was limited to matters which occurred before the commencement of the Code and did not relate to its continuing contract with the Landlord and the duties which arose from that in respect of the tenancy which had begun in April 2018.

## **Decision of the tribunal and reasons for the decision**

21. The tribunal's decision was based on all of the information before it being the Application, the written representations of both parties and the evidence of the Landlord at the Hearing. The tribunal noted that a great deal of the supporting information submitted by the Landlord related to matters which predated the commencement of the Code and, other than acknowledge where relevant to its decision making that the Landlord's furniture had been removed by parties unknown and had been replaced with other furniture without her knowledge or agreement, the tribunal disregarded this supporting information.

22. The tribunal had regard to the Letting Agent's apparent position that the Landlord's complaint was limited to matters which occurred before the commencement of the Code. The tribunal, having regard to Rule 2 of the Rules which states: "*(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly. (2) Dealing with the proceedings justly includes (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; (b) seeking informality and flexibility in proceedings; (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take; (d) using the special expertise of the First-tier Tribunal effectively; and (e) avoiding delay, so far as compatible with the proper consideration of the issues*", gave careful consideration as to why the Letting Agent might have taken such a restrictive view of the Application and, in particular, asked itself "had the Letting Agent been given notification of that element of the Landlord's complaint which occurred after the Code came into effect as required by Section 48(4) of the Act and so ought the Letting Agent have been aware that the complaint related to matters which occurred after the Code came into effect?". In this respect, the tribunal had regard to the Landlord's notification dated 26 March 2018 to the Letting Agent in terms of Section 48(4) of the Act and took the view that although this notification refers back to the core complaint which predates the commencement of the Code, it also relates to the continuing contractual relationship between the parties and, by implication, to the new tenancy and so answered this question in the affirmative and proceeded to make its determination.

23. With regard to the complaint in respect of Section 2 at paragraph 21 of the Code, the tribunal found that the Letting Agent had breached this part of the Code. The tribunal took the view that, as the Letting Agent /Landlord relationship continues, this part of the Code applies in respect of the parties' dealings in March of this year and to the new tenancy. The tribunal noted that Section 2 of the Code sets out overarching standards of service and so is a general guide as to how letting agents should conduct their business and provide a service to landlords. The tribunal had regard to the remaining part of the Code which provides greater detail as to how this service should be delivered in particular circumstances. The tribunal took the view that a competent letting agent who was aware of a particular complaint made by a landlord and who was aware of its duty in terms of the Code would take steps to ensure that matters complained of by that landlord would be addressed and paid heed to in future dealings. In this case, the Letting Agent knew that the Landlord was dissatisfied in respect of the lack of an inventory and was dissatisfied in respect of a lack of response and information in respect of the condition of the furnishings and whether or not the furnishings conformed to current safety standard regulations but did not take any action to address these concerns or to provide the information requested. Accordingly, the tribunal had no hesitation in finding that the services provided by the Letting Agent fell short of the level of "reasonable care and skill" required by the Code. Accordingly, the tribunal found that the Letting Agent had breached this part of the Code.

24. With regard to the complaint in respect of Section 2 at paragraph 24 of the Code, the tribunal found that the Letting Agent had not breached this part of the Code. The tribunal accepted the Landlord's position that most of her dealings with the Letting Agent had been verbal and accepted that in respect of the new tenancy, the Landlord had not received a written inventory, nor had she received a copy of the tenancy agreement. However, there was nothing before the tribunal to lead it to believe that the Letting Agent had no records in respect of the Property. Accordingly, the tribunal found that the Letting Agent had not breached this part of the Code.

25. With regard to her complaint in respect of Section 2 at paragraph 26 of the Code, the tribunal found that the Letting Agent had breached this part of the Code. The tribunal accepted the Landlord's evidence that she had emailed the Letting Agents on 26 and 28 March 2018 and had not received a written response within the requisite three days and, as the Letting Agent had not lodged anything to the contrary, the tribunal found that the Letting Agent had breached this part of the Code.

26. With regard to her complaint in respect of Section 2 at paragraph 29(d) of the Code, the tribunal found that Letting Agent had breached this part of the Code. The tribunal accepted that the Landlord's evidence that, in spite of her repeated request to the Letting Agent for advice and assurances as to whether or not the furnishings in the Property which now form part of the fittings and fixtures let to her new tenants, meet the required statutory standards, there had been no response from the Letting Agents. The tribunal had no hesitation in finding that this failure on the part of the Letting Agent amounted to a failure to keep the Landlord informed of the Property meeting the letting standards.

27. With regard to her complaint in respect of Section 4 at paragraph 68 of the Code, the tribunal found that Letting Agent had breached this part of the Code. The tribunal accepted the Landlord's evidence that, in respect of the new tenancy, she had not received a written inventory, nor had she received a copy of the tenancy agreement and so found that the Letting Agent had breached this part of the Code.

28. With regard to her complaint in respect of Section 7 at paragraph 108 of the Code, Letting Agent had breached this part of the Code. The tribunal accepted the Landlord's evidence that she had not received a detailed response from the Letting Agent in respect of the matters raised in her emails of 26 and 28 March 2018 and as the Letting Agent had not lodged anything to the contrary found that it had breached this part of the Code. The tribunal found that it was irrelevant that the incident to which these matters referred occurred in 2015 and that the incident predated the Code coming into force. The Landlord made the enquiries in March 2018 at which time the Letting Agent had a duty to deal with the enquiries "fully and quickly" and so found that the Letting Agent had breached this part of the Code.

29. With regard to the remainder of the Landlord's complaints, namely Section 2 at paragraph 27; Section 5 at paragraphs 73, 74, 88 and 89; Section 6 at paragraphs 102 and 104; Section 7 at paragraphs 107 and 112 and Section 8 at paragraph 137 of the Code, the tribunal found that as these related to the incident and events which occurred in 2015 – 2016, at which times the Code did not apply, the Code could not have been breached. Accordingly, the tribunal found that the Letting Agent had not breached this part of the Code.

### **Letting Agent Enforcement Order**

30. Having determined that the Letting Agent has failed to comply with the Code, the tribunal must in terms of Section 48(7) of the Act (7) by order (a "letting agent enforcement order")

require the Letting Agent to take such steps as the tribunal considers necessary to rectify the failure. Further, in terms of Section 48(8)(b) of the Act the tribunal may by the letting agent enforcement order provide that the letting agent must pay to the Landlord such compensation as the tribunal considers appropriate for any loss suffered by the Landlord as a result of the failure to comply.

31. The tribunal, therefore, gave consideration to the letting agent enforcement order which it must make. The tribunal determined that the Letting Agent at its own cost must take all steps to comply with Section 2 at paragraphs 21, 26 and 29(d) and Section 4 at paragraph 68 of the Code and must provide the Landlord with a full inventory in writing and by photographic record of the furnishings and other household items which are let by her in terms of the new tenancy with full details of whether or not these furnishings and other household items meet current safety standard regulations and must provide the Landlord with a copy of the new tenancy agreement. The tribunal considered that a period of 28 days should be a sufficient and reasonable timescale for the Letting Agent to comply with these requirements.

32. The tribunal then had regard as to whether or not the Letting Agent should compensate the Landlord for any loss suffered by her as a result of its failure to comply with the Code since the Code came into force. The tribunal was mindful that the losses suffered by the Landlord in respect of the loss of her personal possessions predated the commencement of the Code and the Act. The tribunal did, however, take the view that not only has the Landlord suffered loss in respect of her recent dealings with the Letting Agent in respect of her time and effort in pursuing the Letting Agent with regard to the new tenancy and the continued stress and worry in respect of not knowing whether or not the fittings and fixtures let to the new tenants meet current safety standard regulations, but, she continues to suffer loss of her personal possessions without any reasonable or satisfactory explanation from the Letting Agent. The tribunal determines, therefore, that it is appropriate that the Letting Agent compensate the Landlord for her loss for its failure to comply with the Code since the Code came into force and assesses that £3,000.00 is a reasonable sum to compensate the Landlord for her loss.

## **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

Karen Moore

Chairperson 15 August 2018