

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014 (Act) and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No.328)) (Rules)**

**Chamber Ref: FTS/HPC/LA/19/1710**

**Parties:**

**Ms Philippa Brooks-Donaldson and Mr Michael Munro-Dunn (“the Applicants”)**

**Direct Lettings (Scotland) Limited (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Ahsan Khan (Housing Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (the Tribunal) determined that the Respondent has complied with the Code of Practice for Letting Agents (Code) as required by the Act and refuses the application.**

**1. Background**

This was an application under section 48 of the Act and Rule 95 alleging various breaches of the Code of Practice for Letting Agents and seeking to enforce the Code against the Respondent.

The Tribunal had regard to the following documents:

1. Application received 3 June 2019 with supporting documents;
2. Emails and correspondence between the Parties from 1 March 2019 to 29 May 2019;
3. Notification email to the Respondent dated 29 May 2019;
4. Written Representations from the Parties along with attachments;
5. Photographs and emails received from the Applicants showing before and after condition of net curtains;
6. Notice of Direction dated 21 August 2019;
7. Applicants Response to Direction;

8. Respondent's response to Direction, which included photographs (in the form of an Inventory signed by the Applicants confirming the condition of the Property), Private Residential Tenancy Agreement (PRT) with the Applicants, Complaints Procedure, Invoices in respect of waste disposal unit.

## 2. Hearing

The Applicants were present and represented themselves. Ms Weir (Operations Director) and Ms McAinsh (Property Manager) of the Respondent attended the Hearing on its behalf.

The Tribunal set out the procedure to be followed at the outset and identified the documents and productions that would be referred to.

The Applicants asserted a breach of Sections 2, 3, 5 and 7 of the Code as follows:

### 1. Section 2:

- a. Rude attitude of communications;
- b. Failure to respond to initial concerns raised verbally about net curtains.

### 2. Section 3:

- a. Failure to ensure Landlord meets legal obligations to replace broken waste disposal unit.

### 3. Section 5:

- a. Failure to give formal/prior notice of Landlords refusal to replace broken waste disposal unit;
- b. Failure to respond to initial concerns raised verbally regarding the state of the net curtains;
- c. Failure to include within the Tenancy Agreement who is responsible for carpets and curtains.

### 4. Section 7:

- a. Rude Phone Attitude and intimidating comments.

The Tribunal then heard evidence from the Applicants, Ms Weir and Ms McAinsh dealing specifically with each allegation in turn.

### **Rude attitude of communications.**

The Applicants evidence was that there were two incidents that constituted this allegation:

- i) A conversation on the telephone between Ms Brooks-Donaldson and Mr Morton (Respondent's Property Manager) at 7.30am on a Sunday morning in the course of which she was told to "Bugger Off"; and

- ii) A meeting between Mr Morton and Mr Munro-Dunn during which Mr Morton threatened him that the Landlord may decide to sell the Property if the Applicants continued with their complaints.

The Respondent's evidence was that both these allegations were refuted. They had spoken to Mr Morton and he denied using these words to Ms Brooks-Donaldson and of threatening Mr Munro-Dunn that the Landlord may decide to sell the Property.

**Failure to respond to initial concerns raised verbally about net curtains.**

The Applicants' evidence was that they had advised Mr Morton that they were dissatisfied with the state of the net curtains when they moved in to the Property. They raised this again with Ms McAinsh on 18 February 2019 at an inspection. Ms McAinsh advised them that the curtains had been cleaned at the end of the previous tenancy and that it was their responsibility to clean them.

The Applicants accepted that they had signed the Inventory for the Property on 11 July 2018 confirming that they accepted the Property was in a clean condition at the date of entry. The Applicants contended that at the time of moving in they were under pressure, stress and distracted due to a flood in the Property.

The Respondent's evidence was that the Inventory had been signed by the Applicants agreeing the clean state of the Property at entry and the PRT at Clause 16 made the cleaning of the curtains the responsibility of the Applicants. The Applicants had raised the issue of cleaning the curtains and Ms McAinsh had responded to say that the curtains were clean at entry and it was the Applicants' responsibility to clean them.

The Applicants stated that Clause 16 was too broad, general and did not specifically refer to cleaning curtains as it simply referred to fixtures and fittings.

**Failure to ensure Landlord meets legal obligations to replace broken waste disposal unit.**

The Applicants' evidence was that they wished the waste disposal unit replaced. They had used it a lot and had never stated to the Respondent that they only used it to dispose of coffee and did not want it replaced.

They accepted that it had been replaced with a basket strainer and tap in August 2018. Mr Munro-Dunn accepted that he had not raised the issue after the meeting in the café with Mr Morton as a "compromise".

The waste disposal issue was not raised in writing until after the current proceedings were raised.

The Respondent's position was that the waste disposal unit was beyond repair, had been replaced with the basket strainer and that no issues had been raised until the current proceedings by the Applicants.

**Failure to give formal/prior notice of Landlords refusal to replace broken waste disposal unit.**

The Applicants' evidence was that the Respondent had failed to inform them that the Landlord would not replace the waste disposal unit.

The Respondent's position was that the Applicants had been advised verbally by Mr Morton that the Landlord would not replace the waste disposal unit. The issue had not been raised again until the current Tribunal proceedings.

Mr Munro-Dunn accepted that he had not raised the issue after the meeting in the café with Mr Morton as a "compromise".

**Failure to respond to initial concerns raised verbally regarding the state of the net curtains.**

The evidence in respect of this allegation was as above.

**Failure to include within the Tenancy Agreement who is responsible for carpets and curtains.**

The Applicants' evidence was that the PRT did not state who was responsible for the cleaning of the curtains. Their evidence was that the "Welcome Pack" given to them after entry was not part of the PRT but did contain reference to responsibility for cleaning. They did not accept that the reference within Clause 16 of the PRT to the Tenants' responsibility to ensure the fixtures and fittings are kept clean during the tenancy applied to the curtains.

The Respondent's evidence was that the Inventory confirmed the net curtains were clean on entry and this had been signed and agreed. Clause 16 of the PRT provided that it was the tenants' responsibility to clean the curtains.

**Rude Phone Attitude and intimidating comments.**

The evidence in respect of this allegation was as above.

**3. Findings in Fact**

So far as material, the Tribunal made the following findings in fact:

1. The Parties entered in to a PRT dated 25 May 2018;
2. The Applicants signed an Inventory agreeing the condition of the Property and Contents on 11 July 2018;
3. The Inventory provided that the contents were in a clean condition on the date of entry;
4. The Applicants complained about the state of the curtains on 18 February 2019 to Ms McAinsh;
5. Ms McAinsh informed them on 18 February that the curtains were clean at the date of entry and it was the Applicants' responsibility to clean them;

6. The Applicants subsequently raised the issue of the cleaning of the curtains in correspondence dated 1 March 2019, 10 and 23 April 2019. The Respondent responded to that correspondence by letters of 30 April and 10 May 2019 in which they stated the Applicants had accepted the clean condition of the curtains as detailed in the Inventory and they would not agree to pay for cleaning;
7. The Applicants submitted a further email of 11 May 2019 in which they alleged Mr Morton had told Ms Brooks-Donaldson to "...Bugger Off". The Respondent replied by email of 14 May 2019 refuting this allegation;
8. The waste disposal unit was beyond repair and was replaced in August 2018 with a strainer and tap. No further complaints had been made by the Applicants until the initiation of the current proceedings;
9. Mr Morton did not use any rude or intimidatory remarks to Mr Munro-Dunn in the meeting in the café;
10. Mr Morton did not tell Ms Brooks-Donaldson to "Bugger Off";

#### **4. Decision**

The Tribunal did not find the evidence of the Applicants to be either credible or reliable. The evidence given contradicted the documentary evidence provided on the issues that had been raised. For example, the signed Inventory clearly constituted an acceptance of the clean condition of the Property and contents at entry. This was not signed and returned until 11 July. The Applicants had plenty of time to consider the condition of the Property and Contents and to dispute it should they have wished to do so. They did not do so.

The Applicants disputed the interpretation of Clause 16 of the PRT, which is a standard Scottish Government Template. The Terms of Clause 16 clearly imposed an obligation upon the Applicants to clean the fixtures and fittings. Any reasonable interpretation of Clause 16 would be that curtains would be included as fittings.

Accordingly, where there were any conflicts of evidence the Tribunal preferred the evidence of the Respondent.

Dealing with each issue in turn the Tribunal made the following determinations:

##### **1. Rude attitude of communications**

The Tribunal preferred the evidence of the Respondent and found that its employee Mr Morton did not make the remarks claimed by the Applicants.

This allegation is unsubstantiated and rejected.

##### **2. Failure to respond to initial concerns raised verbally about net curtains.**

The Tribunal do not accept that the condition of the curtains was raised with Mr Morton at entry. The Tribunal finds it highly unlikely that the Applicants would have done so and then subsequently failed to qualify the Inventory.

The Tribunal do accept that the condition of the curtains was raised verbally with Ms McAinsh at the inspection on 18 February 2019. It was responded to that same day in writing.

The allegation is a failure to respond. Evidently the Applicants received a response the same day. They did not agree with the response but nevertheless they had a response.

This allegation is accordingly unsubstantiated and rejected.

**3. Failure to ensure Landlord meets legal obligations to replace broken waste disposal unit.**

This complaint is made under section 3 of the Code which primarily regulates terms of engagement between landlords and agents. The only paragraph that could potentially apply is 31.

The Tribunal find in any event that the Landlord and the Respondent complied with their respective obligations.

The waste disposal unit was replaced in August 2018. No further complaint was documented until the current proceedings were raised and Mr Munro-Dunn appears to have accepted he compromised with Mr Morton at the meeting in the café. That is why this was not raised again. The implication being that he gave up any issue with regard to the waste disposal unit at that point.

Given the waste disposal unit was replaced in August 2018 the Tribunal do not accept the Applicants' evidence that this was an ongoing issue and they wished the waste disposal unit replaced.

This allegation is accordingly rejected.

**4. Failure to give formal/prior notice of Landlords refusal to replace broken waste disposal unit.**

The Tribunal accepted the Respondent's evidence that Mr Morton had advised it of the fact that the waste disposal unit was not to be replaced and that is supported by the fact the strainer and tap were fitted in August 2018 without any further documented complaint until the current proceedings.

This allegation is accordingly unsubstantiated and rejected.

**5. Failure to respond to initial concerns raised verbally regarding the state of the net curtains.**

The Tribunal has determined this allegation in the same manner and on the same grounds as 2 above.

**6. Failure to include within the Tenancy Agreement who is responsible for carpets and curtains.**

The Tribunal found that any reasonable interpretation of clause 16 of the PRT was to the effect that the tenants were responsible for cleaning of the curtains as they fell within the definition of "fittings".

This allegation is unsubstantiated and rejected.

**7. Rude Phone Attitude and intimidating comments.**

For the same reasons as contained within the Tribunal's findings on allegation 1 above the Tribunal find this allegation unsubstantiated and reject it.

**Conclusion**

The Tribunal found the allegations against the Respondent unsubstantiated and rejected them.

In all respects the Respondent had complied with the Code.

**Right of Appeal**

In terms of Section 46 of the Tribunal (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.

A Strain

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Legal Member/Chair

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Date

*4 September 2019*