

**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 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/19/1445**

**Parties:**

**Miss Lynn Robertson (“the Applicant”)**

**Homefinders Inverclyde (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Linda Reid (Housing Member)**

**Decision (in absence of the Applicant)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (the Tribunal) determined that the Respondent has not complied with paragraphs 18, 21, 85-86, 88, 90-91 and 93 of the Code of Practice for Letting Agents (Code) as required by the Act and issues a Letting Agent Enforcement Order (LAEO).**

**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 13 May 2019;
2. Emails between the Parties from 27 December 2018 to 21 May 2019;
3. Notification Letter to the Respondent dated 28 May 2019;
4. Written Representations from the Respondent received 24 July 2019 along with attachments;
5. Photographs and emails received from the Applicant on 25 July 2019;
6. Notice of Direction dated 12 August 2019;
7. Applicant’s Response to Direction;

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8. Respondent's response to Direction which included photographs (in the form of an Inventory signed by the Applicant confirming the condition of the Property), Terms of Engagement with the Landlord, Private Residential Tenancy Agreement (PRT) with the Applicant, Complaints Procedure.

The Applicant had notified the Tribunal in advance that she did not wish to attend the Hearing. The Tribunal had enquired if she could participate by telephone but she declined to do so.

## **Hearing**

Campbell Gisbey of the Respondent attend the Hearing on its behalf. The Applicant did not appear and was not represented.

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

The Applicant asserted a breach of paragraphs 16-21, 23, 85-86, 88-91, 93, 95, 108 and 111 of the Code.

The Tribunal then heard evidence from Mr Gisbey specifically with regard to the allegations against the Respondent.

His evidence was to the effect that the Landlord had arranged the viewing and let of the Property himself. The Respondent had entered in to terms of engagement with the Landlord on 6 December 2018. In terms of that agreement, the Respondent was to provide management services on the Landlord's behalf. The Respondent was also to arrange the tenancy.

The Respondent prepared the "Inventory" which comprised photographs, which represented the condition of the Property at 6 December 2018. These had been taken by the Respondent. They were attached to a cover sheet entitled "Check-In and Inventory" which said that the Applicant confirmed the Property was clean and the overall condition was good. The Applicant was given 7 days to report any concerns or issues.

The Applicant had signed the Inventory and cover sheet agreeing the condition of the Property.

The Respondent then prepared the PRT. The Tribunal drew attention to the fact that Section 2 of the PRT only said the Letting Agents would deliver out of hours gas and emergency services on behalf of the Landlord. Mr Gisbey stated that the Applicant was aware of the fact that the Respondent was managing repairs on behalf of the Landlord from her dealings with them.

Mr Gisbey's evidence was that the WC and cistern did not require replacement. There were cracks but no leaks. He was referred to the photographs which showed significant cracking but was of the view that there were no leaks and this had been confirmed when the Respondent's Handyman (Ian McCartney) had attended the Property in January 2019.

Mr Gisbey said that the Landlord had agreed at the outset of the tenancy with the Applicant that various works required to be done but that none were essential and the Landlord "would get round to them". These were replacement of the Kitchen Sink, clearing moss off the roof and gutters, repair an overflow. All of these works had now been completed.

The Applicant's contention that the Handyman had given the go ahead to carry out the repairs to the WC, cistern and taps were denied by Mr Gisbey. He stated that the Handyman denied the Applicant's allegations. Mr Gisbey referred to the receipt that had been produced by the Applicant that was handwritten and gave very little information. His position was that this work had not been authorised, was unnecessary and the Landlord was not liable to pay. In any event, the Landlord had paid the sum of £200 to the Applicant in respect of this.

Mr Gisbey produced the Electrical Certificates and Energy Rating that he said had been given to the Applicant.

Mr Gisbey denied that he had been aggressive or intimidating towards the Applicant. He denied that he or any of his staff had lied to her, hung up or ignored any calls from her.

The Tribunal referred Mr Gisbey to the exchange of emails regarding the kitchen sink from 2 – 15 April 2019. Mr Gisbey could not produce any additional email over that period setting out the response to the Applicant's queries. The Tribunal noted that the email of 3 April from Mr Gisbey's colleague said that he was waiting confirmation from the Landlord that the repairs could go ahead and he hoped to hear later that day. Despite two reminders from the Applicant, no response was given to her until 17 April at which time she was informed that the Landlord wished to delay the repairs a month. The Landlord had emailed and provided this information on 3 April 2019 to the Respondent.

Mr Gisbey confirmed the Respondent did not have any written procedure in place to deal with tenants reporting repairs and timescales for performing such work.

The Tribunal made the following findings in fact:

1. The Respondent's prepared the Check-In and Inventory between 6 and 28 of December 2018 which the Applicant signed on 28 December 2018 accepting the condition of the Property;
2. The Landlord had accepted at the outset that various repairs were necessary and would be carried out such as replacement of the kitchen sink;
3. The Respondent prepared the PRT which the Parties signed and which did not detail the responsibilities of the Respondent with regard to repairs and management of the Property other than for emergency out of hours repairs;
4. The Respondent does not have written procedures in place for tenants to notify repairs;
5. The Respondent was aware of the fact that the Landlord did not wish to proceed with replacement of the kitchen sink for a month on 3 April 2019;

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6. The Respondent did not inform the Applicant of this until 17 April 2019 and did not reply to the Applicant's emails of 12 and 15 April until then;
7. All the repairs had now been carried out;
8. The Applicant carried out repairs without authorisation and without adequate vouching. The Landlord was entitled to refuse to pay these but has paid £200 as a gesture of goodwill.

Having considered the evidence and made the above findings the Tribunal decided:

**(a) Paragraphs 16,17, 19, 20, 23 of the Code:**

There had been no breach by the Respondent. There was no evidence to suggest that there had been any breach as asserted by the Applicant.

**(b) Paragraphs 18 and 21 of the Code**

The Tribunal considered that the Respondent had breached paragraph 18 in that they had failed to provide the Applicant with information about the reporting of and conduct of repairs. Furthermore, the information within the PRT was lacking and potentially misleading.

The Tribunal considered that the Respondent had breached paragraph 21 in that they had not carried out their service with regard to repairs in a timely way. The failure to respond to the Applicant's emails of 3, 12 and 15 April was significant in this respect.

**(c) Paragraphs 85, 86, 88, 90, 91 and 93 of the Code**

The Tribunal considered that these paragraphs had been breached by virtue of the Respondent's failure:

- (i) to have appropriate systems in place to ensure works were done within relevant timescales (the email exchange in April regarding the kitchen sink was evidence of this);
- (ii) to have written procedures and processes for tenants to notify any repairs and maintenance and target timescales;
- (iii) to provide clear information to the tenant about who will manage repairs or maintenance and set out in the tenancy agreement;
- (iv) To deal with repairs promptly in line with written procedures (kitchen sink is again evidence of this);
- (v) To inform the tenant of the action intended to be taken on the repair and necessary timescale (kitchen sink email exchange);
- (vi) To inform the tenant of any delay in carrying out the repair and maintenance work along with the reason as soon as possible. In this case the Respondent delayed 2 weeks after receiving the information from the Landlord with regard to the delay in replacement of the kitchen sink),

**(d) Paragraphs 89 and 95 of the Code**

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The Tribunal found there had been no breach of these paragraphs of the Code and no evidence was advanced of any breach.

**(e) Paragraph 108 of the Code**

The Tribunal found that this paragraph had been breached by the email exchange of April 2019. The Applicant's enquiry and complaint was not responded to within a reasonable time scale.

**(f) Paragraph 111 of the Code**

The Tribunal found no evidence of abusive, threatening or intimidating communication.

**The Tribunal made the following Letting Agent Enforcement Order:**

- 1. The Respondent shall within 21 days lodge with the Tribunal and copy to the Applicant:**
  - (a) Written Procedures and processes confirming appropriate systems and controls are in place to ensure repairs and maintenance obligations are done to an appropriate standard within relevant timescales;**
  - (b) Written Procedures and processes for tenants to notify any repairs and maintenance and target timescales;**
  - (c) Clear information about who will manage repairs and maintenance.**

**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.

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Legal Member/Chair

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20 August 2019  
Date