

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**

Chamber Ref: FTS/HPC/LA/19/0227

**Re: Property at 76/4 Rannoch Road, Edinburgh Midlothian, EH4 7EN (“the
Property”)**

Parties:

**Mrs Arsha Shiebu, Mr Shiebu Joseph, 3 Wells Close, Chester, CH2 4DZ (“the
Applicants”)**

**CMC Property Management Ltd (in liquidation), formerly having its registered
office at 6B New Mart Road, Edinburgh, EH14 1RL and now at C/O WRI
Associates Ltd, Third Floor, Turnberry House, 175 West George Street,
Glasgow, G2 2LB (“the Respondent”)**

Tribunal Members:

**Joel Conn (Legal Member)
Elaine Munroe (Ordinary Member)**

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

1. This is an application by the Applicants to enforce the letting agent code of practice (“the Code”) in terms of rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The application was in regard to paragraphs of Section 7 and 8 of the Code referred to below. The Applicants employed the Respondent as their letting agent in regard to the letting of 76/4 Rannoch Road, Edinburgh, EH4 7EN (“the Property”).

2. The application was dated 21 January 2019 and lodged with the Tribunal on 23 January 2019. The application was accompanied with various emails as well as a letter dated 21 January 2019 to the Respondent setting out the paragraphs of the Code relied upon. The Applicants complained that no rent had been received for six months despite “sending several complaints”.

The Hearing

3. On 5 April 2019, at a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at George House, Edinburgh, we were addressed by Mr Joseph, one of the Applicants.
4. There was no appearance by the Respondent. Prior to the Hearing, the Tribunal members had noted that the Respondent appeared to have entered provisional liquidation on 14 January 2019 and thereafter was wound up by Edinburgh Sheriff Court on 1 February 2019. Ian William Wright of WRI Associates was appointed first as provisional liquidator and now as interim liquidator. The Tribunal intimated a copy of the application and the date of the Hearing upon Mr Wright. On 6 March 2019 the liquidator responded in writing to say that he did not intend to attend the Hearing and wished to rely on written submissions. The written submissions set out the insolvency history and further stated:

Mrs Arsha Shiebu’s rental income arrears is an unsecured claim in the liquidation.

I am not aware of the company holding any funds in a trust account or protected client account for the Applicant.

I confirm that the company ceased to trade on 14 January 2019.

5. The Applicants confirmed that no contact had been received from the Respondent (other than with the liquidator’s office) since the application was lodged. The Tribunal Clerk confirmed no contact had been received from the Respondent to the Tribunal regarding the Hearing.
6. The Applicants’ confirmed that the application was still insisted upon and that they sought an order in the amount of £4,500 in regard to six months of rent arrears not remitted to them by the Respondent, all as in the application. Mr Joseph explained that they were now managing the Property themselves, and had been doing so since around November 2018. The same tenant remained in place paying rent regularly. The tenant insisted that she had paid all rental payments due for the period up to November 2018 to the Respondent.
7. Mr Joseph confirmed that he wished to be added as a co-applicant and clarified the spelling of his and his wife’s names. He confirmed that the Respondent’s full name was “CMC Property Management Ltd” and noted

that it was now at liquidation and at a new registered office address. The Tribunal members allowed these amendments.

Findings in Fact

8. The Applicants are the owners of the Property.
9. The Applicants engaged the Respondent as their letting agent for the letting of the Property on or around 25 February 2016.
10. The Respondent's obligations under the letting agent agreement included collecting monthly rent and remitting same to the Applicants. The Respondent was entitled to deduct appropriate maintenance costs and outlays from the rent. The Respondent was entitled to a monthly management fee of 9% of the rent ingathered (plus VAT).
11. On or about 9 June 2017, the Applicants let the Property to a Tenant ("AB") with the Respondent managing the letting. AB paid £750 per month in rent for the Property. AB remitted the rent direct to the Respondent.
12. AB occupied the property from on or around 9 June 2017 until present.
13. AB has paid £750 per month in rent for each of the months of occupation up to the present.
14. The Respondent failed to remit to the Applicants any sums during October, November and December 2017, and March, June, July, August, October and November 2018.
15. The Respondent remitted sums to the Applicants in January and September 2018 that appeared to comprise of payments of rent covering two months of ingathered rent.
16. The Applicants have not received remittance equivalent to seven months of rent (less relevant deductions) during the period October 2017 to November 2018.
17. The Applicants corresponded with the Respondent, in particular its director Colin Campbell and its Accounts Assistant Sandra Hastie, to request remittance of missing payments through the period from late 2017 until late 2018.
18. The Applicants took over their own management of the letting of the Property in or around November 2018.
19. The Applicants provided notice to the Respondent of their complaints under paragraphs 108, 119, 120, 124, and 125 of the Code by their correspondence and particularly their Notification Letter of 21 January

2019. The Respondent has not remediated the breaches intimated in the Notification letter.

Reasons for Decision

20. The Code includes the following provisions:

“Section 7: Communications and resolving complaints

“Communications...

“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. ...

“Handling landlords' and tenants' money, and insurance arrangements

117. In this section "client money" means money held or rent collected on behalf of a prospective tenant, tenant or landlord (including former tenant or landlord). This section only applies if you hold and handle client money.

“Section 8: Handling landlords' and tenants' money, and insurance arrangements ...

“Client accounts ...

“119. You must keep adequate records and accounts to show all dealings with client money.

“120. You must be able to account immediately to them for all money held on behalf of clients. ...

“124. You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).

“125. You must pay or repay client money as soon as there is no longer any need to retain that money. Unless agreed otherwise in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.”

21. The Tribunal noted that the Notification letter was issued to the Respondent only days before the application was lodged. Nonetheless, the Tribunal members noted that the Respondent did not raise any obligation based on lack of notice or time to remediate. In the circumstances, the Tribunal was satisfied to treat the Notification letter as adequate.

22. The Applicants, in line with the terms agreed, entrusted the Respondent to manage the letting of the Property. A central element was that the Respondent would receive the rent and remit the balance, after fees and costs, to the Applicants promptly.
23. Mr Joseph explained to the Tribunal that the remittances went into Mrs Shiebu's account and during the early stages of the relationship monthly accounting for the figure (that is, what was deducted) was provided. By 2017, and certainly by the time breaks in payments started in October 2017, such accounting was not being provided. The Applicants included in the application a statement of payments received from June 2017 and most months had a unique figure paid for which the arithmetic behind the figure was not obvious.
24. Mr Joseph described a lamentable period of poor communication, where the Applicants frequently requested updates and accounting, as well as the remittance of the missed payments. Instead they received explanations that Mr Campbell was unwell, that the Respondent's computer system was being changed, that Mr Campbell was again unwell, and then a request that they provide evidence from their bank statements showing an absence of remittances from the Respondent. When the Applicants told the Respondent around October or November 2018 that they wished to manage the Property themselves, the Respondent stated that two months notice was required. (This is in the context that the Tribunal has seen no evidence that the Respondent had timeously sought registration as a letting agent and would even be entitled to trade as such during the requested period of notice.) Matters then went quiet and the Applicants became aware in late 2018, from friends still in Edinburgh, that the Respondent's office looked to be closed. Although the Respondent's liquidator says the Respondent ceased to trade on 14 January 2019, it looks like – in practical terms – it had ceased to trade earlier and it certainly had ceased properly to undertake its obligations to the Applicants many months before.
25. Although the Notification letter and application sought payment for six months of missed rent payments, Mr Joseph's evidence clearly brought out seven months of missed payments. The Tribunal was satisfied that all paragraphs of the Code relied upon had been breached by the Respondent. Further to these breaches, the Tribunal was satisfied to grant an order equivalent to seven times the monthly rental of £750 in recognition of both the payments that AB appears to have remitted to the Respondent, but which were not paid to the Applicants, and payment of compensation. The Respondent may have incurred valid maintenance or other costs during the missing months, and may even have undertaken some letting agency work, but the lack of communication and poor service lead us to award the full amount of £750 for each of those months free of any deduction of costs or fees. This totals £5,250. The Tribunal will further award interest from the date of lodging of the application.

26. Though the Respondent has ceased to trade, the Tribunal members direct that a copy of this Decision be intimated to the Scottish Ministers for consideration should Colin Campbell seek to be included in any future application for registration as a letting agent or of a letting agency business in which he is involved.

Decision

27. The Tribunal awards the sum of £5,250 in favour of the Applicants against the Respondent, with interest at 8% from 23 January 2019 until payment.

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.

Legal Member/Chair

Date 5 April 2019

Joel Conn