

# Housing and Property Chamber First-tier Tribunal for Scotland

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Decision with Statement of Reasons of the First-tier Tribunal for Scotland Housing and Property Chamber under Section 48(6) of the Housing (Scotland) Act 2014 and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No 328)) ("the Procedure Rules") Rule 95

**Chamber File Reference number: FTS/HPC/LA/18/2917**

## **Parties:**

**Paterson United Free Church, c/o 1 McEwan's Way, Stonehouse, ML9 3NP  
(Applicant)**

**Donna Hanlon trading as Hanlon Clark, 8 Main Street, Strathaven, ML10 6AJ  
(Respondent)**

**Tribunal Members: Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)**

## **Background**

On 30<sup>th</sup> October 2018 the Applicant lodged an application with the Tribunal seeking to enforce the Letting Agent Code of Practice against Donna Hanlon trading as Hanlon Clark, 10 Main Street, Strathaven, ML10 6AJ.

In its application the Applicant alleged breaches of paragraphs 16, 17, 66, 108, 124 and 125 of the Code of Practice.

It alleged that it had suffered loss in the amount of £1890, being rental on a property for the months of July, August and September 2018. It also alleged a potential loss of £969, being the tenants' deposit, which did not appear to have been lodged in a Tenancy Deposit Scheme.

It sought payment to it of these sums.

The Applicant served a Letting Agent Code of Practice Notification letter on the Respondent on 26<sup>th</sup> September 2018. The recorded delivery track and trace indicated that it had been signed for by someone named Hanlon.

## **Hearing**

The Applicant was represented at the hearing by Emma Sutherland, Treasurer, and she was supported by Ishbel Paterson, a member of the Church's Management Committee. The Respondent did not appear and was not represented.

Mrs Sutherland told the Tribunal that she, on behalf of the Church, had engaged the services of Hanlon Clark as their letting agent, in connection with their property at 3 McInnes Grove, Stonehouse, ML9 3DZ, in or around November 2016. Mrs Sutherland met with an individual named Danielle Hanlon on the premises of Hanlon Clark. They entered in to a contract, a copy of which was produced to the Tribunal. The contract purports to be with "Hemmings Hanlon Clark", but also makes reference to "Hanlon Clark Lettings Ltd" and "Hanlon Clark". The Applicants have never had any notification of a change of name or business structure of the agents, and ultimately their impression was that the business was owned and run by Donna Hanlon.

The Agent was to deduct 10% from each rental payment by way of their fee.

Mrs Sutherland told the Tribunal that the tenants, Mr & Mrs Thomson, moved in to the property in December 2016. There were problems with the letting agents from the start. The first month's rental payment was taken from the tenants but was not passed on to the Church. Mrs Sutherland had to email Danielle Hanlon frequently, chasing payments.

Mrs Sutherland told the Tribunal that the payments for May 2017 and August 2017 were not made to the Church. Statements were not sent either, and she found it difficult to reconcile what had and hadn't been paid. She emailed Danielle Hanlon again on 9<sup>th</sup> October 2017. She received a reply from Donna Hanlon. Ms Hanlon apologised for the situation and said that Danielle Hanlon was off on long term sick leave, suffering from depression, stress and anxiety. She said that all further queries should be directed to herself, Donna Hanlon.

Mrs Sutherland told the Tribunal that the situation did not improve, and that payments for December 2017, March 2018 and April 2018 were not paid on time.

Mrs Sutherland had a conversation with the tenants, who told her that they hadn't received any notification that their deposit had been paid in to a Tenancy Deposit Scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. Mrs Sutherland emailed Donna Hanlon on 11<sup>th</sup> June 2018 asking for clarification of the position. She received no reply.

On 25<sup>th</sup> June 2018 Mrs Sutherland again emailed Donna Hanlon, this time chasing the missing payments, and asking again for clarification regarding the deposit. She received no reply, but on 29<sup>th</sup> June 2018 a payment in the amount of £1260 was made in to the Church's bank account.

Mrs Sutherland told the Tribunal that another payment of £630 was received in to the Church's bank account on 5<sup>th</sup> July 2018. Mrs Sutherland sent an email that day to Donna Hanlon acknowledging receipt, asking for statements and asking again for clarification regarding the deposit. She received no reply.

Mrs Sutherland told the Tribunal that as far as she could see the rent payments were up to date at this point. However, no further payments were received, but the letting agent continued to collect rent from the tenants for the months of June, July and August 2018. These sums are still outstanding.

Mrs Sutherland emailed Donna Hanlon on 10<sup>th</sup> September 2019 chasing the money and again asking about the deposit. She received no reply.

Mrs Sutherland asked the tenants to make all further rental payments direct to the Church.

Mrs Sutherland told the Tribunal that as at the date of the Hearing she had had no further contact from the Respondent, and the Church was still due to receive the rent for June, July and August and September 2018.

In addition, the tenants had vacated the property in December 2018. Investigation was made and it was established that the deposit had never been placed in a scheme. The Church had to pay the sum of £969 to the tenants (being the deposit) from their own funds.

Mrs Sutherland said that she had experienced a large degree of stress over the situation, particularly given that she was acting on the Church's behalf throughout.

The Tribunal found Mrs Sutherland to be thoroughly credible and reliable witness, and accepted her evidence in full.

### **Findings In Fact**

The Letting Agent Code of Practice came in to force on 31<sup>st</sup> January 2018. some of the behaviour complained of by the Applicant occurred before that date and therefore falls outwith the Code. The following facts were found:

1. The Applicants contracted with the Respondent in or around November 2016 to provide letting agency services for the Applicant's property at 3 McInnes Grove, Stonehouse, ML9 3DZ.
2. The rent payable by the tenant was £700 per month, 10% of which was to be deducted by the Respondent as her fee.
3. The Respondent failed to respond to Mrs Sutherland's emails on a regular basis.
4. The Respondent failed to produce regular rent statements.
5. The Respondent failed to make rent payments to the Applicant regularly and on time.
6. The Respondent has not paid to the Applicant the sum due for rent for June, July and August 2018.
7. The Respondent did not place the tenants' deposit of £969 in a Tenancy Deposit Scheme.

The Tribunal found that the Respondents breached their duties in terms of all of the

the paragraphs of the Code which were complained of, and which are as follows:

**16. You must conduct your business in a way that complies with all relevant legislation**

The Tribunal found that the Respondent has taken a deposit from a tenant and not placed it in a Tenancy Deposit Scheme, in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

**17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).**

The Tribunal found that the Respondent had not been honest, open, transparent and fair in that rent payments have been taken and not paid to the Applicant, and the deposit has not been placed in a Scheme, and not returned to either the tenant or the Applicant

**66. If you lodge tenancy deposits on a landlord's behalf, you must ensure compliance with the legislation.**

The Tribunal found that the Respondent has taken a deposit from a tenant and not placed it in a Tenancy Deposit Scheme, in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

**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.**

The tribunal found that the Respondent did not respond to enquiries and complaints at all, let alone with a reasonable timescale.

**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).**

Rental payments for June, July and August 2018, and the amount of the deposit, are still outstanding.

**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.**

Rental payments for June, July and August 2018, and the amount of the deposit, are still outstanding.

The Tribunal expressed concern regarding the tenant's deposit, as the Applicant had confirmed that it had not been placed in a Tenancy Deposit Scheme. The Respondent has therefore exposed the Applicant to the risk of the tenants making an application under the Tenancy Deposit Schemes (Scotland) Regulations 2011. In terms of such an application the tribunal has the power to make an order for payment against the Landlord of up to three times the amount of the deposit, which in this case would equal £2907.

The Tribunal also expressed concern that the Respondent did not appear to have applied for registration as a Letting Agent.

### **Decision**

The Tribunal found that the Respondent had breached paragraphs 16, 17, 66, 108, 124 and 125 of the Letting Agent Code of Practice.

The Tribunal further considered that, as a result of these breaches, the Applicants suffered loss in the amount of £2859, being the rent for June, July and August 2018, and the deposit which they had to refund to the tenants. The Applicant has also suffered loss, in the form of considerable inconvenience, having to expend time and effort attempting to communicate with the Respondent, and the risk and worry associated with the potential for the tenants raising an application in terms of the 2011 Regulation. The Tribunal decided to order payment of £2859, being the rent and deposit outstanding, and compensation in the amount of £2438.

**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.**

**Legal Member of the Tribunal  
Dated: 11<sup>th</sup> February 2019**