

Housing and Property Chamber
First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) under The Property Factors (Scotland) Act 2011

Reference numbers: FTS/HPC/LA/23/1251

Re: Property at 4 Hawksmuir, Kirkcaldy ("The Property")

The Parties:

Ms Andrea Bradshaw, 5 Knockmuir View, Avoch, IV9 8RY ("the Applicant")

Delmor Estate Agents Ltd, 17 Whytescausway, Kirkcaldy, KY1 2PW ("the Respondent")

Tribunal Members:

Mr Andrew McLaughlin (Legal Member) Mrs Helen Barclay (Ordinary Member)

Background

[1] The Applicant alleges that the Respondent has breached various aspects of the Property Factor's Code of Conduct "The Code". The Sections of the Code alleged to have been breached are standards 19,21,23,26,27,74,75,81,88,90,91,93,108 and 112.

Basis of the Application

[2] The Applicant claims at Part 6 C their Form J that:

"Suffered (sic) a loss of £70 to have the gas hob reconnected as well as the time, effort, and anxiety of having to step in to what should have been a fully managed service. Also- The front Door has clearly been damaged and work been done on the locks. The Original keys to the Flat also gave access through the shared outside entry to the building. Its (sic) if this is no longer the case."

[3] The Application goes on to say at Part 6 D:

"I should be reimbursed for the £70 as well as some compensation for the intentional breach of our contract. Also- the Agent needs to resolve the fact that there are now two people living in the property when only one person is an authorised keyholder. The key situation needs to be resolved as there is a fundamental breakdown in trust, there needs to be a commitment to covering expenses to instruct a replacement letting agent."

[4] There had been Hearings conducted as Case Management Discussions which took place 11 July 2023 and 12 September 2023. Case management orders in the form of Directions had been made at these Hearings which called upon the Applicant to submit further specification of the precise detail of the Application. It was also ordered that re-service of the Application take place on the Respondent as it appeared that Delmor may have been acquired by another letting agency by the name of Belvoir. The Respondent had ultimately then made contact with the Tribunal acknowledging the Application and advising that a further, detailed response would be forthcoming. Nothing substantive was however then received.

The Hearing

[5] The Application called for a Hearing by conference call at 10 am on 29 January 2024. The Applicant was represented by her husband, Mr Graham Bradshaw. There was an appearance on behalf of the Respondent by Ms Kirsty Robertson. She advised the Tribunal that she had reviewed the case papers and familiarised herself with the case *"for a few weeks"*. The Tribunal expressed some surprise about why, in that case, the Tribunal had received no indication that the Respondent would be represented at the Hearing or provided any sort of substantive response.

[6] The Tribunal canvassed with Ms Robertson what her intentions were in terms of proceeding further. Ms Robertson seemed somewhat unfamiliar with the process and reluctant to either confirm whether she was ready to proceed with the Hearing or not. The Tribunal noted that the Applicant had no preliminary matters to raise and wished to proceed. The Tribunal adjourned and noted that Robertson Ms had advised the Tribunal that she had been in possession of the papers for a few weeks and yet had not contacted the Tribunal to confirm her ongoing involvement. The Tribunal considered that it would not be in the interests of justice to adjourn and that instead decided that the Tribunal should start hearing evidence and make a final decision.

[7] The Tribunal then began hearing evidence. Mr Bradshaw confirmed that he would give evidence on behalf of the Applicant and be the only witness. Ms Robertson for the Respondent confirmed that she would likewise be the only witness on behalf of the Respondent. After each party gave evidence the other had the right to cross-examine. At

the conclusion of evidence, each party had the opportunity to make closing submissions. Having therefore heard evidence and submissions, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicant engaged the Respondent to manage their rental property as their letting agent at 4 Hawksmuir, Kirkcaldy.*
- II. *The contractual agreement commenced in October 2021.*
- III. *The Property was latterly let out to a tenant by the name of Ms Valerie Buendia.*
- IV. *There was an incident at the Property on 28 February 2022, when the fire brigade were called after the tenant was thought to have left the gas on in the early hours of the morning.*
- V. *The Applicant has submitted emails that show that the Respondent liaised with the Applicant promptly regarding these issues and recommended that the hob be replaced. The Respondent reported to the Applicant in an email dated 3 March 2022 that:*

“... there has been some conflicting information between the fire brigade, SGN and the tenant which has resulted in the delay in getting back to you...”

The email explains the conflicting information and then states that:

“ SGN are the main gas network company and it is there (sic) final report that we take. This was caused by the tenant leaving the hob on and no further action will be required.”
- VI. *On 28 February 2022, the Respondent had emailed the tenant regarding the issue and advised that:*

“ Hi Valerie, We have had BR Gas out to look at the hob. They advised that there was no fault within the hob, however they have condemned this until they get further information from SGN. You have heating and hot water in the property and the oven works, as I said until we have further information, we are not able to reinstate the hob.”
- VII. *That email was in response to an email from the tenant in which she denied leaving the gas on negligently and explained that:*

"..one of the member (sic) of Fire team approached me and said that the Gas leak is coming from the gas pipe under my sink which the gas engineer repaired and ive been told that it was not my fault."

VIII. *The Respondent emailed further and said:*

" ... to ensure safety the hob will remain capped and not be able to be used until we have the full report. The gas safety Engineer that attended today has ensured that there is no leak and that the heating and hot (sic) water can be fully working."

IX. *The Respondent emailed the Applicant on the morning of 28 February 2022 and updated them about the events of the early hours of that morning. It suggested that the hob may need replaced and that the gas had been isolated.*

X. *There is an incident report from the Scottish Fire Brigade Service that states:*

"Gas meter " Capped Off" and Isolated. Resident advised not to use cooker until a Qualified "gas safe" Engineer has checked it out" The report also states that" Gas cooker hob does not meet current regulations regarding thermocouples".

This report is dated 27 February 2022.

XI. *The Applicant emailed the Respondent in an email dated 20 March 2023 setting out their complaints that:*

"...As stated previously, the hob meets all current legal requirements."

This comment appears to completely ignore the finding of the fire brigade regarding the thermocouples.

XII. *After the incident on 28 February 2022, the Respondent's attention to this matter appears commendable as they urgently communicated with the Applicant, the tenant and the various third parties.*

XIII. *The Applicants appear aggrieved about the hob because they say in their emails of complaint that:*

"there was no fault in the hob and this was a simple case of the tenant not taking due care or attention to the hob settings".

That is wrong and represents a fundamental failing in this Application. The Fire service report and all the relevant emails were sent to the Applicant by the Respondent at least on 20 March 2023 before this Application was raised on 11 April 2023.

- XIV. *On 20 March 2023, Rebecca Barnes of the Respondent also emailed the Applicant and advised that; "You were supplied a quote to replace the hob as stated before after my inspection the hob is not deemed safe as it has no safety dials on it. The hob is not broken nor does not work is it simply because it is not deemed as safe and a gas engineer advised this should really be replaced."*
- XV. *The hob was at that point around 20 years old and not safe or fit for purpose. For example, it didn't have safety markings on the dial and there was an issue that the gas came on even if the dial was moved but the spark not engaged. It was clearly due an upgrade and after this incident clearly should have been replaced.*
- XVI. *The Respondent handled the situation appropriately and recommended to the Applicant that they take the obvious step of replacing the old and faulty hob.*
- XVII. *The Applicants appear not to have acted on that advice and challenged the Respondent about the need for this at every turn.*
- XVIII. *It is unclear why the Respondent's didn't want to replace the hob.*
- XIX. *The Respondent informed the tenant not to use the hob until further notice. The tenant could still safely use the oven and had hot water.*
- XX. *The Applicant appears to have attempted to renew their gas safety certificate later that year. They incurred a charge of £70.00. The Applicant then claims to have been informed that the gas had been capped.*
- XXI. *Inexplicably, the Applicant appears to think that the Respondent is responsible for paying the Applicant's bill for their gas safety checks out of their own pocket.*
- XXII. *There is no term or obligation in the contract between the parties that might possibly be construed as suggesting that the Respondent has to pay the Applicant's outlays. Such a term would also depart from common sense.*
- XXIII. *The Application is premised in part, on the fact, that the tenant was supposedly left without gas for several months until the Applicant herself supposedly resolved the*

situation in October 2022. There is no record or basis for suggesting that in actual fact the tenant was particularly concerned about this in any event.

XXIV. *In July 2022, The Respondent however did email the Applicant stating:*

“We had contact from the tenant this morning advising that they have no gas access to use their hob in the kitchen after a gas leak in February. We contacted the contractor to advise what needs done next and they have advised a new hob needs to be fitted for this to be turned back on. They have sent over a quote which I have attached to this email.”

XXV. *There is no evidence submitted by the Applicant of how they responded to this email but it appears that they elected not to follow the Respondent’s recommendation to install a new hob. It is unclear why they wouldn’t choose to follow such a sensible recommendation.*

XXVI. *It is very possible that there is still an unsafe hob in the Property that the Applicant refuses to upgrade.*

XXVII. *The Applicant has sent various complaints to the Respondent about these issues.*

XXVIII. *The Application is premised on these complaints being ignored. Mr Bradshaw gave evidence to that effect. This premise is completely wrong. The Respondent engaged fully with these complaints and addressed the issues raised entirely appropriately. On 20 March 2023 the Respondent’s Rebecca Barnes fully responded to the Applicant addressing their complaints. There had also been a separate written response by the Respondent’s Rebecca Barnes to the Applicant sent on 19 January 2023. That was in response to a complaint sent to Rebecca Barnes on 11 January 2023.*

XXIX. *The Respondent addressed the Applicant’s complaints in a professional and appropriate manner and in keeping with their obligations under the Code. In any event the complaints themselves seem misguided. They include alleged “failure to properly investigate the cause of gas leak in February 22 before contacting me to resolve the issue in breach of your responsibilities under the fully managed contract that exists between us.” There were other numerous and lengthy heads of complaint outlined in that email that are similarly unfounded.*

XXX. *The Applicant is also aggrieved that the tenant had a partner in the Property without her knowledge or consent and alleges that the Respondent has failed them by not bringing this to their attention.*

- XXXI. *The Property was let to a single tenant, Ms Buendia, who then without prior consultation, moved her partner into the Property in December 2022. The tenant appeared to have phoned the Respondent after the fact and told them this. The Respondent appears not to have then officially informed the Applicant about this. This is not in any way a significant failing. There is no record of the Applicant having given any instruction to the Respondent to at all costs ensure that the tenant did not have a partner in the Property. The reasonableness of any such instruction may very well have been highly dubious in any event.*
- XXXII. *The Applicant appears deeply concerned with who had keys to the Property. They appear not to understand that by letting the Property out for money, there will be things at the Property that are out with their control. The tenant was provided with two sets of keys and the Respondent retained one set. The Respondent would not have been able to stop the tenant from giving a set of keys to whosoever she pleased. She might have given a set to a family member or a carer or anybody for a whole variety of reasons.*
- XXXIII. *There is no merit in any aspect of the Applicant's complaints which appear entirely misguided and unreasonable.*
- XXXIV. *The Applicant had emailed the Respondent asking about the door of the Property and whether it was damaged by the fire brigade and if the lock needed replaced. Her emails also however include: "I was informed by Debbie that the lock is working."*
- XXXV. *It appears that on 19 January 2023 the Respondent sent the Applicant a full inspection report. This confirmed that:*
- "The tenants are taking good care of the Property... There were no causes of concern..."*
- XXXVI. *The Applicant has also submitted an invoice dated March 2022 from Best Property and Garden Maintenance issued to the Respondent for £100.00 for "Emergency call out to fix front door lock". The Applicant appears to have had this document in their possession and so ought to have known that the lock appears to have been fixed. Someone called Debbie also appears to have directly told them this.*
- XXXVII. *There is a clear email from the Respondent to the Applicant dated 28 February 2022 which states:*
- " The lock will also need to be replaced, can you confirm that you are happy for us to arrange for this to be done?"*

XXXVIII. *The Applicant appears not to have submitted their response to this email but, given the fact the Applicant herself then produced an invoice for the costs of replacing the lock, it appears it was replaced with the Applicant's knowledge and blessing.*

XXXIX. *The Applicant's complaints here are hard to understand as rational.*

XL. *The Respondent has been very patient with the Applicant's baseless claims and complaints. The Respondent has acted professionally and disclosed all relevant information in a polite and business-like manner in keeping with their obligations under the Code.*

XLI. *The Applicant's complaints have no merit in them whatsoever and the Respondent has manifestly no statable case to answer.*

Note:-

[7] The Tribunal found this Application and the evidence given in support of it quite bizarre.

[8] Mr Bradshaw would confidently say things that were clearly wrong. He said that the Respondent had completely failed to address the complaints raised by the Applicant. There were clear emails from the Respondent showing that to be completely unfounded.

[9] It was striking to the Tribunal, and worrying, that the Applicant appeared not to have replaced a hob brought to their attention as being faulty by the Respondent and instead were channelling their energies into complaining about their letting agent. The motivation for this Application seemed hard to understand. The Tribunal couldn't understand why, in July 2022, the Applicant didn't just accept the Respondent's recommendation to replace the faulty hob and move on. They had been directly told the hob needed replaced in an email in July 2022. The fact that all this activity had taken place in bringing this Application instead of replacing the hob seemed perverse.

[10] The claim, as it were, against the Respondent for a £70 bill the Applicant incurred for a gas safety check appeared premised on a complete misapprehension of what a letting agent does for a landlord. A letting agent is clearly not expected actually to have to pay a landlord's bills themselves. Mr Bradshaw was taken by the Tribunal to the contract between the parties. He couldn't identify any term that might support such an unusual proposition. When in the Application, the Applicant referred to "*suffering a £70.00 loss*" The Tribunal were left with the impression that this was entirely misguided and ill-conceived. The complaint about the lock was equally devoid of merit. Everything pointed to the Respondent offering the Applicant an excellent service in a time of crisis at the Property.

[9] Mr Bradshaw's concerns about whether the tenant had moved a partner in seemed irrational. The Tribunal however, could not find that there was any basis for concluding that the Respondent had breached any part of the Code whatsoever.

Note:

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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Andrew McLaughlin
Legal Member

29 January 2024
Date