



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

(Hereinafter referred to as “the tribunal”)

**Under Section 48(6) of the Housing (Scotland) Act 2014 (‘the 2014 Act’)**

**Chamber Ref: FTS/HPC/LA/24/1857**

**Property address: 2/3 275 Bell Street, Glasgow G4 0SL**

**Parties:**

**Mx Charlotte Sometimes, 2/3 275 Bell Street, Glasgow G4 0SL (“the Applicant”)**

**Be-Rented, 2 North Kirklands, Eaglesham Road, Glasgow G76 0NT (“the Respondent”)**

**Tribunal Members:**

**Sarah O’Neill (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision of the tribunal**

The tribunal determines that the Respondent has failed to comply with paragraph 72 of the Letting Agent Code of Practice (‘the code’). The tribunal therefore issues a Letting Agent Enforcement Order. The tribunal’s decision is unanimous.

**Background**

1. The Applicant made an application to the tribunal on 24 April 2024 in terms of section 48 of the 2014 Act and Rule 95 of Schedule 1 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (‘the 2017 rules’) to determine whether the Respondent had failed to comply with the Letting Agent Code of Practice (‘the code’). In their application, the Applicant stated that the Respondent had failed to comply with paragraphs 16,17,18,19, 20,26, 28, 63, 72, 82,108 and 129.

2. The application form was accompanied by a notification letter to the Respondent dated 18 April 2024. The notification letter stated that the Applicant believed that the Respondent had failed to comply with paragraphs 72 and 83 of the code.
3. Following a request from the tribunal administration for further information, an email was received from the Applicant on 21 May 2024. Attached to the email was an amended application form, together with proof of sending of the notification letter of 18 April 2024 to the Respondent. The Applicant also confirmed in the email that no response to the notification letter had been received from the Respondent.
4. The application was accepted on 23 July 2024. A case management discussion (CMD) was scheduled for 12 December 2024.
5. On 24 October 2024, the Applicant asked for further time to submit written representations due to their disabilities. Lengthy written representations comprising more than 560 pages of email correspondence were received from the Applicant on 30 October 2024. Further written representations were received from the Applicant on 4 and 5 November 2024. Written representations were received from the Respondent on 30 October 2024.
6. The tribunal issued a direction to the Applicant on 11 November 2024. In the direction, the tribunal noted the special requirements which had been notified by the Applicant. Noting that the Applicant said that they were unable to attend the CMD, it suggested that they may wish to consider appointing a representative to represent them on the teleconference call. The direction stated that if the Applicant was not represented at the CMD, the tribunal would consider their written evidence, and the oral and written evidence of the Respondent, and decide how to proceed with the application.
7. The direction also noted that under section 48 (4) of the 2014 Act, an application may not be made to the tribunal unless the Applicant has notified the Letting Agent of the alleged breach of the code in question. The Applicant's notification letter of 18 April 2024 stated that they believed the Respondent had failed to comply with paragraphs 72 and 83 of the code. The Applicant had also included complaints under a number of other paragraphs of the code in their application, as listed above at paragraph 1 of this decision.
8. The Applicant was directed to submit by 5 December 2024: 1) any notification(s) which had been sent to the Respondent regarding these additional complaints before submitting the application and 2) any further written evidence which they wished the tribunal to consider at the CMD.

9. A response to the direction was received from the Applicant on 19 November 2024. Written representations were received from the Respondent on 9 December 2024.

### **The CMD**

10. A CMD was held by remote teleconference call on 12 December 2024. Miss Gillian Herron and Mr Graeme McEwan were present on the teleconference call and represented the Respondent. The Applicant was not present or represented on the call. The tribunal noted that the Applicant had previously advised that they were unable to participate in a teleconference call due to their autism and other disabilities. The tribunal was satisfied that the Applicant had been given reasonable notice of the CMD and proceeded in their absence.
11. The tribunal noted that in their application, the Applicant complained that the Respondent had failed to comply with paragraphs 16,17,18,19, 20,26, 63, 72, 82, 108 and 129 of the code. The notification letter of 18 April 2024, however, only notified the Respondent of the complaints under paragraphs 72 and 83 of the code. The tribunal noted that for paragraph 82, the application referred to *‘threatening to enter the property without me present or my permission’*. The tribunal concluded that the Applicant had in fact meant to refer to paragraph 83, which was included in the notification letter.
12. The tribunal concluded, given the terms of the Applicant’s response of 19 November 2024 to its direction, that they had not notified the Respondent of the complaints under the additional paragraphs of the code included in the application. Miss Herron confirmed that the Respondent had not been notified of these complaints in advance of the application being made. The tribunal therefore determined that it could only consider the complaints under paragraphs 72 and 83 of the code in relation to the application.
13. The tribunal considered that a hearing should be fixed on the application, to give the Applicant a further opportunity to attend or to be represented and/or to make further written submissions to the tribunal.

### **Further procedure following the CMD**

14. The tribunal issued a further direction to the parties on 12 December 2024. The direction noted that the Applicant may wish to consider appointing a representative to represent them on the teleconference call. It noted that should they wish to do so, they should notify the Tribunal of the representative’s details prior to the hearing. Both parties were also directed to make any further written submissions they wished the tribunal to consider at the hearing with reference to the alleged breaches of paragraphs 72 and 83 of the code, including clear

references to any specific emails or other correspondence which they wished the tribunal to consider, by 7 February 2025.

15. A response to the direction was received from the Applicant on 28 December 2024. The Applicant stated that they were unable to travel or use the phone and did not have anyone they could appoint as a representative. They also stated: *“As long as you can confirm my evidence has been admitted and fully read then I am happy with that speaking for me”*.
16. The Applicant again stated in further emails of 30 December 2024 and 8 January 2025 that they were unable to attend the hearing. They asked for confirmation that all of the emails they had submitted had been read by the tribunal. The tribunal responded to the Applicant on 21 January 2025, stating that it had read, and would take into account, all of the evidence received from both parties in reaching its decision. The tribunal noted, however that the Applicant had submitted a large volume of correspondence without any covering note or further details as to why they believed these emails were relevant to their specific complaints.
17. The tribunal again asked the Applicant to make clear references to any specific emails or other evidence which they wished the tribunal to consider in relation to the alleged breaches of paragraph 72 and 83 of the code, stating why they believed these supported their complaints under these paragraphs of the code. In their response, the Applicant stated only that all of the emails were relevant.
18. A response to the tribunal’s direction was received from the Respondent on 10 February 2025.
19. On 12 March 2025, the parties were sent a notification that a hearing would be held by teleconference on 19 May 2025. A further hearing notification was sent to the parties on 13 May 2025.

### **The hearing**

20. A hearing took place by teleconference call on 19 May 2025 to consider both the present application and the conjoined application (reference number FTS/HPC/LA/24/5889). The conjoined application included the other complaints contained in the Applicant’s original application which had not been notified to the Respondent.
21. The Respondent was represented by Miss Gillian Herron. The Applicant was not present or represented on the call.

22. The tribunal noted that several emails had been received from the Applicant stating that they were unable to attend the teleconference hearing due to their disabilities, including difficulties with hearing. The Applicant had not attended the CMD on 12 December 2024. The tribunal had endeavoured to find a way to allow the Applicant to attend a hearing. It had suggested several times that the Applicant may wish to appoint a representative, but they had not done so. The tribunal had offered the Applicant the alternative options of an in person hearing at Glasgow Tribunals Centre (which has hearing loops) or a videoconference hearing. The Applicant had not taken up either of these options, and had previously indicated that they were content for the tribunal to make a decision on the basis of their written evidence.
23. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date and time of a hearing had been duly complied with. The tribunal therefore proceeded with the hearing in the absence of the Applicant.

### **The Applicant's complaints**

12. The Applicant complained that the Respondent had breached paragraphs 72 and 83 of the code,
13. Paragraph 72 of the code states:
- 72. If the tenant asks in writing for the landlord's name and address, you must tell them free of charge within 21 days.*
14. Paragraph 83 of the code states:
- 83. If the tenant refuses access, you, the landlord or any third party have no right to enter the property using retained keys without a warrant.*
15. The Applicant had provided little detail about the nature of their complaints. In the application form, they had stated only as follows: "The letting agent refused to provide the landlords' details after being asked months ago. The letting agent also threatened to enter the property without my permission or attendance."
16. The Applicant had submitted a large volume of email correspondence between themselves and the Respondent. The Applicant had been directed by the tribunal on several occasions to provide clear references to any specific emails or other evidence which they wished the tribunal to consider in relation to the alleged breaches of the code, stating why they believed these supported their complaints. They had not done so, however.

## **The Respondent's submissions**

17. With regard to paragraph 72 of the code. Miss Herron said that the Respondent had provided the Applicant with the landlord's name and address on 24 April 2024. She pointed to an email of that date addressed to the Applicant, which the Respondent had submitted in its response of 10 February 2025 to the tribunal's direction.
18. Miss Herron conceded, however, that this information had not been provided to the Applicant within 21 days of their request, as required by the code. She said that the landlord lived overseas and had asked the Respondent to deal with the matter in hand, namely the replacement of a washing machine in the rented property, on his behalf. She said that there would often be an influx of emails from the Applicant over a short period of time, and then nothing else would be received from them for a long time.
19. She acknowledged that the Applicant had asked the Respondent for the landlord's name and address on several occasions some months before the information had been provided on 24 April 2025. She agreed that emails which had been submitted to the tribunal by the Applicant demonstrated that they had requested this information on 15, 22 and 25 November 2023. She acknowledged that the information had not been provided by the Respondent in response to these requests.
20. As regards paragraph 83 of the code, Miss Herron said that the Respondent had never entered the rented property without the Applicant's consent. Neither had the Respondent ever threatened to enter the rented property without the Applicant's consent, as they had alleged in the application form. There had been a difficulty in obtaining access for a contractor to repair the washing machine, as the Applicant had been unable to be at home due to work commitments. The Respondent had offered to allow access for the contractor, but had sought the Applicant's permission, which had been refused.
21. On another occasion, the Respondent had requested access to the property to carry out a property inspection, but the Applicant had said that they were unable to accommodate this. Mr McEwan had replied to the Applicant, stating that the Respondent could take access to the property using their own keys if needed.
22. Miss Herron said that there had been a misunderstanding, as the Respondent had simply been offering to facilitate access for the contractor to repair the washing machine. The Respondent would often do this to assist tenants when they were unable to be present to allow access themselves, and some were

happy to agree to this. The Respondent would never take access to a tenant's property without obtaining their consent. The Applicant did not agree to the Respondent using their keys to enter the property, and they had not therefore done so. The suggestion that the Respondent's staff could take access with their own keys was not intended as a threat, but as an offer of assistance.

## **Findings in fact**

11. The tribunal makes the following findings in fact:

- a) The Respondent is a registered letting agent (Registration number LARN1903032), which carries out letting agency work in Scotland.
- b) The Applicant is a tenant of the property at 2/3 275 Bell Street, Glasgow G4 0SL.
- c) The Respondent is responsible for management of the Applicant's tenancy on behalf of the landlord.
- d) The code sets out the standards which all those doing letting agency work must meet. The code came into force on 31 January 2018. The Respondent's duty to comply with the code arose from that date.
- e) The Applicant asked the Respondent in writing for the landlord's name and address on 15, 22 and 25 November 2023. In the email of 25 November 2023, the Applicant made specific reference to the code.
- f) The Respondent did not provide the landlord's name and address to the Applicant in response to their emails of 15, 22 or 25 November 2023.
- g) The Applicant again asked the Respondent in writing to provide the landlord's name and address on 17, 18 and 19 April 2024.
- h) Miss Herron stated in an email of 17 April 2024 to the Applicant that the Respondent would email the landlord to obtain his authorisation to pass the information over.
- i) Ms Herron stated in an email of 19 April 2024 to the Applicant that the Respondent would be having a telephone conversation with the landlord that afternoon to get authorisation to pass his details over.

- j) Ms Herron provided the name of the landlord in an email to the Applicant on 17 April 2024. The address provided for the landlord was that of the rental property.
- k) Ms Herron provided the landlord's name and address to the Applicant in an email of 24 April 2024.
- l) The Applicant had informed the Respondent in writing on several occasions that they did not give permission for anyone to access the property in their absence. This included emails sent on 8 September 2023, 18 and 19 April 2024.
- m) On 18 April 2024, Mr Graeme McEwan of Be-Rented stated in an email of 18 April 2024 to the Applicant: *"Whilst writing we wish to conduct a property inspection. What day/time week commencing 25<sup>th</sup> April would suit. We can take access with our own keys if required."*
- n) On 19 April 2024, Miss Herron stated in an email to the Applicant: *"Be-Rented will not access your property without permission and have agreed that you can send video tour of the property showing current condition for the inspection."*
- o) The Respondent's staff did not enter the rented property without the Applicant's permission.

### **Statement of reasons for decision**

- 12. In making its decision, the tribunal carefully considered all of the evidence before it. In doing so, it applied the civil burden of proof, which is the balance of probabilities. The tribunal considered each of the Applicant's complaints in turn, as set out below.
- 13. With regard to the Applicant's complaint under paragraph 72 of the code, the tribunal noted that the Respondent had provided the landlord's name and address to the Applicant on 24 April 2024. This appeared to be in response to the Applicant's email of 17 April 2024 requesting this information, and subsequent emails referring to the request on 18 and 19 April 2024.
- 14. The Applicant had, however, previously requested this information from the Respondent on 15, 22 and 25 November 2023. The Respondent had not provided the information requested within 21 days. Miss Herron admitted that the information had not been provided to the Applicant within 21 days of their request, as required by paragraph 72 of the code.

15. It appeared from the email correspondence that the Respondent had sought the landlord's' permission to provide this information before doing so. Paragraph 72 makes no reference to any requirement on the letting agent to seek such permission before providing the information to the tenant. The tribunal considers that paragraph 72 is clear and that the obligation to provide the information places an absolute requirement on the letting agent to provide the information to a tenant is requested. It is therefore incumbent on the letting agent to make landlords aware that they are obliged to provide this information, whether or not the landlord lives overseas.
12. The tribunal determines that the Respondent has failed to comply with paragraph 72 of the code.
13. The tribunal then considered the Applicant's complaint under section 83 of the code. It was clear that the Applicant had made the Respondent aware on several occasions that they did not give permission for the Respondent or their contractors to enter the rental property without their permission. It was equally clear to the tribunal, however, that the Respondent had not entered the property using retained keys without a warrant.
14. It appeared to the tribunal that the Applicant may have construed the statement in Mr McEwan's email that Be-Rented could take access with their own keys if required as a threat that they would do so. In the tribunal's view, this was actually intended as an offer to assist the Applicant in order to allow contractors to obtain access, or a property inspection to be undertaken, without the Applicant having to take time off work to provide such access.
15. Even in the event that there had been such a threat, however, this would not in itself have constituted a breach of paragraph 83. The wording of the paragraph suggests that any breach would involve entering the property using retained keys, rather than simply threatening to do so. The Respondent had not entered the property without the Applicant's permission.
16. The tribunal determines that the Respondent has not failed to comply with paragraph 83 of the code.

### **Summary of the decision**

17. The tribunal determines that the Respondent has failed to comply with paragraph 72 of the code. The tribunal is therefore required in terms of section 48 (7) of the 2014 Act to make a Letting Agent Enforcement Order

(LAEO) requiring the Letting Agent to take such steps as it considers necessary to rectify the failure. Section 48(8) of the 2014 Act provides that payment of compensation may be made by the Letting Agent to the Applicant as the tribunal considers appropriate for any loss suffered by the Applicant as a result of the failure to comply with the Code.

18. The tribunal therefore makes an LAEO taking the steps it considers necessary to rectify the failure identified, taking into account the Respondent's admission that the breach occurred. The LAEO requires the Respondent to:

- 1) issue a formal written apology to the Applicant in respect of the Respondent's failure to comply with paragraph 72 of the Code.
- 2) pay to the Applicant the sum of £100 as compensation for the inconvenience caused to them as a result of the Respondent's breach of the Code.

### **Right of appeal**

**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.**

Sarah O'Neill

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**Legal Member**

23 May 2025\_\_\_\_\_  
**Date**