



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/LA/23/4061

**Re: Property at The Old Farm House, Ferneylea, Oldhamstocks, East Lothian,
TD13 5YN (“the Property”)**

Parties:

**Mr Malcolm Alexander Young, 3 Inveresk Estate, Inveresk Village, EH21 7TA (“the
Applicant”)**

**Murray & Currie Limited, t/a Murray & Currie Property Sales and Lettings, 60 Queen
Street, Edinburgh, EH2 4NA (“the Respondent”)**

Tribunal Members:

**Melanie Barbour (Legal Member)
Ann Moore (Ordinary Member)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application would be dismissed in terms of rule
27 of the First Tier Tribunal for Scotland Housing and Property Chamber
(Procedure) Regulations 2017**

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 95 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) to enforce the Letting Agent Code of Practice.

2. The application was accepted on 3 April 2024.
3. It called for a first case management hearing on 16 August 2024. Due to an oversight, the applicant's agent did not appear. The application was dismissed. A review request was received explaining the reason for the non-attendance. The review was allowed, the dismissal decision recalled.
4. The application proceeded to a second case management discussion on 20 January 2025. A direction had been issued on 6 September 2024. The applicant submitted a response on 2 October 2024. The respondent submitted a response on 18 October 2024 including for the application to be dismissed as it failed to comply with section 48 of the Housing (Scotland) Act 2014 ("2014 Act"). The tribunal determined that the application had set out the applicant's reasons for considering that the letting agent has failed to comply with section 74 of the code of practice; and the applicant had notified the letting agent of the breach of section 74 of the code of practice. The tribunal fixed another case management discussion and issued a further direction on the following terms:-

The applicant is required to provide

- a. *a written note giving further and better particulars as to why it considers that the respondent has breached section 74 of the Code of Practice.*
- b. *lodge any material and relevant evidence in support of its complaint when lodging its written note.*
- c. *The applicant should lodge a copy of the contract they were a party to with the letting agent.*
- d. *The applicant should lodge a copy of the Terms of Business referred to in their letter of 7 February 2024.*
- e. *The note should also set out what orders it asks the tribunal to make having regard to the tribunal's powers in terms of section 48 (7) and (8) of the 2014 Act and the terms of section 74 of the Code of Practice.*

- f. If the applicant seeks compensation in terms of the schedule included in the application (amounting to £147,663.97), then the note should also set out the legal basis for the tribunal making any such order, including submissions on the competency and jurisdiction of this tribunal to deal with such a compensation claim. They should also include any relevant legal authorities they intend to rely on.*
5. The applicant submitted a note on 27 February 2025 and some copy emails on 4 March 2025. The respondent submitted a written response on 27 March 2025 making further submissions that the application should be dismissed.
6. The application proceeded to a third case management hearing on 16 May 2025 by telephone conference. In attendance were Mr Kelly, law agent for the applicant and Mr Henderson from Kennedys, law agents for the respondent.
7. As of 19 May 2025 the application papers consisted of:-
- a. the application (which contained emails between the applicant and respondent and a letter to the respondent);
 - b. written representation from the applicant's agent dated 6 May 2024;
 - c. written representations from the respondent's agent dated around 31 July 2024;
 - d. further written submission from the applicant's agent dated 1 August 2024.
 - e. Direction response from the applicant of 2 October 2024.
 - f. Direction response from the respondent of 18 October 2024.
 - g. Direction response from the applicant of emailed on 27 February 2025 and 4 March 2025.
 - h. Direction response from the respondent of 27 March 2025.

Discussion

8. The applicant's agent referred in his written note of 27 February 2025 to a number of emails in section 1d. A number of those emails had not been submitted as part of the direction. The tribunal had no ability to consider those emails. The applicant had been asked to provide a copy of his contract with the letting agents. He had not done so, but

had provided a pro forma contract. The applicant had not supplied any terms of business letter which he had referred to in his letter of 7 February 2024. The applicant sought compensation amounting to £127,150.97 (see para 11).

9. The applicant submitted that there was a legal basis for seeking compensation of such a sum. He said it stemmed from the letting agent breaching their statutory duty under section 74 of the code of conduct. The applicant submitted that the letting agent had a statutory duty to carry out regular inspections during the tenancy and to commit such inspections to written formal reports.
10. That the said breaches had resulted in undetected damage to the fabric of the building. This damage should have been brought to the attention of the applicant earlier which would have avoided or mitigated the cost of putting right the damage.
11. That the tribunal had jurisdiction to order compensation as it was the statutory body charged with regulating letting agents. That it was competent for the tribunal to pronounce an such order to pay such compensation. He said that the section 48 (b)(b) of the 2014 Act says that the tribunal can make an order providing that the letting agent pay to the applicant such compensation as the tribunal considers appropriate for any loss suffered by the applicant as a result of failure to comply. He submitted the use of the word “any” meant the tribunal had jurisdiction to make such award of compensation.
12. The agent referred to reports in support of the compensation claim which were not before the tribunal. He did not provide copy invoices for the compensation he was seeking.
13. He noted that the letting agent now admitted doing inspections he said this was new. He denied that the applicant had taken over the inspections in 2016.
14. The applicant's agent advised that this was not a claim for a breach of contract or for damages, but was for “compensation for any loss”.
15. The agent was asked about the applicant not being the owner of the property. He advised that this had come to his attention when he had received the submission by the letting agent. He accepted that it had been the applicant's wife who had been the owner of the property. That property has been sold. The applicant's agent accepted

that if the applicant had never been the owner of the property, then in terms of the applicant's claim, he had not suffered any loss, as he was not the owner. It was not his property.

16. The applicant had not provided evidence of any contracts between the applicant and the letting agent; the applicant and the owner; or the applicant and the former tenant.

17. The applicant's agent submitted that it would be competent to amend the application and change the applicant, into the applicant's wife's name.

18. The respondent agent's submission was that he adopted his written submission.

19. He submitted that that the letting agents had carried out inspections, but due to the passage of time since they had stopped carrying out them, the reports no longer existed. The agent submitted that the respondents had stopped carrying out inspections in around 2016.

20. He said that there was no contract produced by the applicant of his contract with the letting agents. He disagreed that the submitted pro forma contract would have been same as any entered into.

21. The agent queried the relevance of the emails referred to by the applicant. They were from 2022. His position was that the inspections were cancelled in 2016, but in any event the applicant said that they were stopped in 2020 and so emails sent in 2020 were not to the point of this application.

22. He said that the applicant had not complied with the most recent direction. He submitted that the information provided did not support the applicant's submission.

23. He submitted that given the applicant's agent had confirmed that the applicant had suffered no loss, as he was not the owner of the property, then the application should be dismissed.

24. He submitted that Section 48 (8) required that any order must set out steps to be taken before compensation can be considered. He said that there were no steps to be taken in this case.

25. The agent submitted that it would not be appropriate to substitute a new applicant in this case. He submitted that prescription applied. Furthermore there had not been notice given by the proposed new applicant to the letting agent as required in terms section 48 (4).
26. Finally he submitted that the application had not been brought in good faith. He referred to the claim for £30,000 for a new kitchen. Photographs showed the same kitchen in the property during the check out and when it had gone on the market. Therefore no new kitchen had been installed yet there was a claim for £30,000.
27. The letting agent invited the tribunal to make an award of costs against the applicant. The agent submitted that the applicant was not the owner, and had therefore not suffered the loss alleged. In addition, he submitted that there had been numerous allegations originally made which had been whittled down to 1 outstanding matter in terms of the code. There had been a failure to adhere to the directions issued. There were no prospects of success in this case as the applicant was not the owner and had not suffered loss, and he submitted that matter had been live before the tribunal and the applicant since the first response by the letting agents.
28. The applicant's agent submitted that if prescription had taken place then it would not be possible to amend the application and bring in a new applicant. If prescription had taken place then that would be fatal to the application. He accepted that the applicant's wife would have had to have notified the letting agents in accordance with section 48 (4) of the 2014 Act prior to bringing an application before tribunal. He made no submission on the question of expenses.

Findings in Fact

29. The applicant is Mr Malcolm Alexander Young, 3 Inveresk Estate, Inveresk Village, EH21 7TA.
30. The respondent is Murray & Currie Limited, t/a Murray & Currie Property Sales and Lettings, 60 Queen Street, Edinburgh, EH2 4NA.
31. The applicants' complaint is that the respondent had breached section 74 of the code of practice.

32. The applicant was not the owner of the property, the Old Farmhouse, Fernelyea.
33. The applicant had not provided a copy of the contract between the applicant and the letting agent. The applicant had not provided a copy of any tenancy agreement between the applicant and the owner of the property or other document showing the right of the applicant to grant a lease of the property and to enter into a contract with the letting agents. The applicant had not provided any copy of the tenancy agreement between the applicant and former tenants of the property.
34. The applicant had not provided any evidence of his loss and he did not explain what steps he wanted the letting agent to take to address any breach of section 74 of the code, other than to pay compensation for alleged damage to the property.
35. The applicant had not suffered loss in relation to the condition of the property.

Decision

36. This application involves a complaint that the letting agents breached section 74 of the code of practice namely "*that if you carry out routine visits/ inspections you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate*". The applicant has made various claims for compensation for different but significant sums. He is currently seeking an order for £127,150.97. The applicant's position is that this tribunal is entitled to make a compensation order for that sum. The applicant says this claim is not a breach of contract or a damages claim but falls squarely in section 48 of the 2014 Act.
37. The applicant has not provided any contract between himself and the letting agent; himself and the former tenants of the property; and/or himself and the former owner of the property. This tribunal therefore has no way of knowing what contract terms existed in respect of any of these agreements.
38. It is the position of the letting agent that they were carrying out inspections however, they stopped doing so in 2016. They no longer have the records. From emails sent from the applicant it appears no request for reports was made by the applicant until

sometime in 2022. We do note that the question of when inspections were no longer instructed is in dispute, but at the latest it must have been December 2019.

39. In the applicant's original application he stated that the agreement with the letting agent terminated on or around December 2019. No complaint was brought to this tribunal until November 2023. As the applicant has failed to provide any contractual evidence of his relationship with the letting agent, the tenant an/or the owner, the tribunal does not consider that the application is well made. We do not know any of the terms of the conditions of any of the agreements. We do not know what was agreed.

40. In discussion at the case management hearing the applicant's agent conceded that the applicant had not suffered any loss for the matters he was claiming for. The compensation sought was for the alleged deterioration to the property. As the applicant was not the owner of the property he had not suffered the loss claimed. The applicant's agent could not explain the basis on which the applicant was entitled to claim the sums he was claiming as compensation. Further, and in any event, the applicant has not provided us with evidence of his loss.

41. The applicant's agent indicated that he could move to amend the application. He now seeks to bring in a wholly new party to this application, the applicant's wife and the former owner of the property. Section 48 of the Housing (Scotland) Act 2014 governs the way in which applications to the first tier tribunal to enforce the Letting Agent's code of practise can be brought. Subsection (4) provides that no application may be made unless the applicant has notified the letting agent of the breach of the code of practise in question. There is no evidence that the applicant's wife has done this. While, it may be possible for a new party to demonstrate that they are entitled to be the landlord in terms of the Act; and that the current applicant was her agent and so perhaps the applicant's notice meets the section 48(4) test, the tribunal does not know that any of these matters could be satisfied. There is already a lack of relevant information in terms of the application. The tribunal would have to consider if it would be just to allow such a material amendment at this time.

42. The tribunal believes that any claim may well have prescribed (if indeed it is competent to seek such an award in this tribunal). We consider that to bring a new applicant in would be a material change to the application. The applicant must have known from the commencement of his application that he was not the owner of the property and

therefore he was not entitled to claim the compensation he was seeking. There is no proper evidence before this tribunal of what contracts were in place and what loss has been suffered and by whom. The applicant has also not proved the letting agents have caused this loss (even if it competent to do so in these proceedings).

43. The applicant's own application claims that the agreement with the letting agent ended in December 2019, this is now over five years ago. Since December 2019 there was at least a two year period when the applicant was carrying out inspections. The property has subsequently been sold. It is not clear why there is no evidence of what happened during that period after the applicant became involved, the covid restrictions did not prevent inspections for all of the two years.
44. The tribunal considers that if there was a basis on which to make such a claim then it would have more properly sat within the Sheriff Court who have jurisdiction to deal with such claims for damages or breach of contract between a letting agent and an owner.
45. The tribunal is also concerned regarding the good faith of the application. On the face of the submission by the respondent, it would appear to suggest that no new kitchen was installed after the tenants left yet the applicant has sought a payment of compensation from the letting agents of £30,000 to pay for the cost of the installation of a new kitchen.
46. The tribunal does not consider it would be an accordance with its overarching principle to deal with matters justly, for a new party to be amended into the proceedings at this late stage. We do not consider it would be fair on the letting agents to do so. This is an old claim, with limited evidence to support the claim for over £120,000. In addition it is not accepted that this is correct forum for such a claim to be determined in any event.
47. Accordingly, we accept the position of the applicant that as he is not the owner he has suffered no loss. We refuse his motion to amend the claim and bring in a whole new applicant. The applicant seeks no other steps to be taken by the letting agent. For all of the reasons set out above, the tribunal will dismiss this claim in terms of rule 27 of the Tribunal Rules as we consider that the applicant has failed to co-operate with the first tier tribunal to such an extent that the first tier tribunal cannot deal with the proceedings justly and fairly.

48. Finally, the tribunal was asked to award expenses against the applicant in this case. The applicant's agent did not provide any submission on this matter and we will issue a direction to allow the applicant to address the tribunal on this matter, if he wishes to do so. On the motion before us in relation to the question of expenses we would draw parties' attention to rule 40 of the tribunal rules which deals with questions of expenses being awarded by the tribunal.

Decision

49. The tribunal refuses to amend the application to bring in a new applicant; and thereafter dismisses the application.

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.

Melanie Barbour

20 May 2025

Legal Member/Chair

Date