



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 48(1) of the Housing (Scotland) Act 2014 (“the 2014 Act”)

Reference number: FTS/HPC/LA/24/5787

The Parties:

Ms Coral MacRury, 23 Yewlands Crescent, Edinburgh, EH16 6TB (“the Applicant”)

Southside Property Management, 20 Nicolson Street, Edinburgh, EH8 9DH (“the Respondent”)

Re: Property at 161 Howden Hill Drive, Edinburgh, EH16 6YQ

The Tribunal comprised:-

Ms Ruth O’Hare - Legal Member
Mrs Elizabeth Dickson - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Respondent has complied with the Letting Agent Code of Practice (“the Code”), and in particular sections 21, 32(m), 73, 74, 85, 93, 102 and 113 of the Code.

Background

- 1 This is an application for a determination that the Respondent has failed to comply with the Code under section 48(1) of the 2014 Act. The application comprised of the application form and copy correspondence between the Applicant and Respondent, including a copy of notification of complaints to the letting agent.
- 2 In summary, the Applicant’s complaint is that the Respondent failed to ensure that the former tenant of the property at 161 Howden Hill Drive, Edinburgh (“the property”) complied with the tenancy agreement in respect of garden maintenance, leading to a deterioration in the condition of the garden. The Applicant had reported this to the Respondent on numerous occasions, but the Respondent had failed to act. The Applicant had then incurred costs restoring the garden to its original condition following the termination of the tenancy. The Applicant was seeking to recover those costs. The Applicant stated that the

Respondent had breached sections 21, 32(m), 73, 74, 85, 93, 102 and 113 of the Code.

- 3 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 8 May 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules.
- 4 Prior to the CMD, the Tribunal received written representations from the Respondent including a copy of the tenancy agreement, copy correspondence between the parties, copy inspection reports and photographs of the rear garden of the property.
- 5 The CMD took place on 8 May 2025 by teleconference. The Applicant joined the call and was supported by her husband, Mr Michael Maginnis. The Respondent was represented by Ms Emma Ewan and Mrs Leah Dougan. Having heard from the parties, the Tribunal noted that the application was opposed by the Respondent and an evidential hearing would therefore be required. The hearing was scheduled to take place by videoconference on 11 November 2025.
- 6 Following the CMD the Tribunal received additional written representations from the Respondent dated 14 October 2025 which included their terms and conditions, photographs of the garden and email correspondence between the Respondent and the tenants. On 19 and 20 October 2025 the Tribunal received additional correspondence from the Applicant which included photographs of the garden, email correspondence between the Applicant and Respondent, witness statement from Gordon Robson of Robson Garden Maintenance, and invoice from Robson Garden Maintenance.

The hearing

- 7 The hearing took place on 11 November 2025 by videoconference. The Applicant was present and supported by her husband, Mr Maginnis. The Respondent was represented by Ms Ewen, Mrs Leah Dougan and Ms Anna Jones.
- 8 The Tribunal heard evidence from the Applicant and her husband and the Respondent’s witnesses. The following is a summary of the key elements of the evidence and is not a verbatim account.

The Applicant’s evidence

- 9 The Applicant initially raised concerns about the condition of the garden in 2019. The Respondent had to be prompted to raise the issue with the tenant and only followed up when the Applicant brought it up. The Respondent had never given the Applicant the opportunity to employ a gardener. She felt as if she had handed the property to the Respondent to manage on her behalf, and she should not have to continually chase them to get things done. When the property was returned to the Applicant following the end of the tenancy the

garden was in an atrocious state. The Applicant had to instruct a gardener to restore the garden to its original condition as the property was due to be sold. The Applicant referred to the photographs she had produced which shows the condition of the garden in September 2024 when it was handed back to her. The Applicant had previously asked the Respondent for photographs of the garden.

- 10 The Applicant acknowledged that the Respondent had been in contact with the former tenant about the garden, as evidenced by the emails produced. However, the Applicant felt she had to continue to chase the Respondent to do the job she had paid them to do. The Applicant confirmed that she had received the inspection reports produced by the Respondent, which included reference to the garden, and she had raised concerns.
- 11 The Applicant confirmed that she had received the former tenant's deposit back in full, however it did not cover the full costs of the garden restoration. The Applicant was seeking to recover the balance in the sum of £501.84. She referred to the invoice produced.
- 12 In response to questions from the Tribunal, the Applicant accepted that the former tenant was responsible for maintaining the garden. She had not considered a claim against the tenant. The Applicant would have expected the Respondent to advise her of their discussions with the tenant, and the proposed actions, as well as advising her of the option to bring in a gardener. The Applicant did not chase this with them as she had been exceptionally busy at the time with other matters. She feels that the Respondent let the situation slide.
- 13 The Respondent was given the opportunity to cross-examine the Applicant. Mrs Dougan pointed out there had been a conversation between the Applicant and Respondent, in which the Respondent had advised the Applicant of her option to instruct a gardener. Mrs Dougan referred to an email in the Respondent's written representations which confirmed this. The Applicant's response had been that she would think about it and consider increasing the rent to cover the cost. The Applicant stated that she had no recollection of this conversation, nor of the email referred to. Mrs Dougan noted that the tenant had in fact carried out some work to the garden during the tenancy, and the improvement had been acknowledged by the Applicant. The Applicant agreed that the tenant had started to work on the garden but had then stopped again. Mrs Dougan noted that the Respondent had been proactively speaking to the tenant towards the end of the tenancy to ensure he would return the garden in a reasonable condition, and he had committed to this. However, at the end of the tenancy he said that he had run out of time. If the Applicant had instructed a gardener at that point, it would have jeopardised her ability to recover the costs from the tenant. The Applicant stated that she believes the Respondent had a responsibility to ensure the garden was maintained by the tenant and had failed to do so.

The Respondent's evidence

- 14 The Respondent's witnesses spoke to the photographs submitted, which were dated, and evidenced the condition of the garden throughout the tenancy. The photographs had been taken during routine property visits. On average the property was visited twice per year, but there may be additional visits if issues were identified. It was acknowledged that not all of the reports referred to the garden. Previously, this would only be mentioned if it was deemed that the garden required attention. If there was no mention of the garden, it had been considered acceptable by the inspector. The Respondent has since updated their processes to ensure that the reports include comments on all areas of a property, regardless of whether there are any issues.
- 15 The Respondent's witnesses referred to the email correspondence between the Respondent and the tenant, in which the tenant was prompted to carry out garden maintenance. On occasion, the tenant had advised that he would do so but was finding it difficult due to work commitments.
- 16 The Respondent's witnesses referred to the email correspondence produced between the Respondent and the tenant which set the expectations as to how the property should be returned at the end of the tenancy. At no point did the tenant respond refusing to carry out the work or stating that it wasn't his responsibility. On occasion where the garden had become unkempt, the tenant had carried out work, and the Applicant had acknowledged an improvement. Unfortunately, the tenant had not restored the garden at the end of the tenancy despite committing to do so. This had only become apparent at the end of the tenancy. The Respondent had explained to the Applicant that the deposit could be put towards the gardening costs. The Respondent had also asked the tenant to pay the outstanding sums and advised the Applicant of her options in terms of pursuing the costs. This was not something that the Respondent would be liable for.
- 17 The Respondent's position is that all necessary actions were taken to ensure the tenant was aware of his responsibilities under the tenancy agreement, as evidenced by the documents produced. There would have been no other options when the tenancy was coming to an end. The tenant was already subject to a notice to leave, therefore there would be no point in having a discussion with the Applicant about serving notice due to tenancy breaches. The tenant had been sent end of tenancy instructions by the Respondent and was fully aware of how the property should be returned. It was reasonable to assume that he would carry out the necessary works, having done so in the past. There may be a lack of understanding about the service the Respondent was required to provide under the legislation. The Respondent understood the Applicant wanted to get the garden restored. However, the Respondent was not holding any funds at the end of the tenancy. They were not instructed to do so as part of the handover of the property to the Applicant. The Respondent did not believe they should pay for the gardening costs. It was not their fault. It was the responsibility of the tenant.
- 18 The Applicant was given the opportunity to cross-examine the Respondent's

witnesses, with support from her husband. The Applicant queried if there is no mention of an area in an inspection report, how does the Respondent know that it has been checked? The Applicant asked whether the change in processes had been a result of the Applicant's complaint. The Respondent's witnesses explained that it was recognised that there would be a benefit in having a reference point to assess the condition of the property at a point in time. This has been the case for a while. The Respondent updates their forms regularly and there are required fields, such as whether there is a garden.

- 19 The Applicant asked at what point the property manager would visit the property if a situation was ongoing, particularly if a serious issue had been brought to the Respondent's attention. The Respondent's witnesses explained that there had been three visits to the property in 2023. There had been routine visits with photographs, which showed that whilst the garden had deteriorated in the past due to a lack of maintenance, the tenant had taken action to rectify it. It was unclear what difference a visit from the property manager would make. The communication with the tenant did not give the Respondent any concern that they would not complete the work at the end of the tenancy.
- 20 The Applicant asked if a professional gardener had ever been sent to the property. The Respondent's witnesses explained that this would be something the Applicant would instruct them to do, at the Applicant's cost. They would then seek to recover the cost from the tenant. The Respondent would not send a gardener out to the property to tell them if it was being maintained or not. They could see this for themselves. The Respondent's witnesses again referred to the improvement in the garden following work by the tenant. The Respondent had to give the tenant the opportunity to carry out the work themselves. The Applicant stated that the Respondent had not properly followed up with the tenant to check that the work had been completed. The Respondent's witnesses explained that the Respondent did not go out to a property every time they ask a tenant to do something. The routine property visits would pick up any issues. The tenant had told the Respondent that he would sort out the garden. The Respondent does not agree that this wasn't followed up.

Closing submissions

- 21 The Applicant feels that the Respondent did not meet their obligations under the Code, costing her money and stress. She would not normally have cause to complain and has had a good experience with the Respondent in the past, but she feels strongly about this matter. She is seeking an order for payment of the remaining balance of the gardening bill.
- 22 The Respondent denies that they are responsible for the cost of the garden restoration. They met their service standards under the terms of business between the parties. The Respondent acknowledges the costs incurred by the Applicant but she was aware of the risks involved. The Respondent had provided her with advice on how to claim for costs over and above the deposit. The tenant is responsible for the gardening costs. The Applicant can make a claim to the Tribunal against him. There is always a risk that a property will not be returned to a landlord in its original condition. However, the responsibility

lies with the tenant, not the Respondent as letting agent.

Findings in fact

- 23 On 1 July 2016 the Applicant engaged the Respondent to act as letting agent to manage the property on her behalf in accordance with the Respondent's Terms and Conditions of Letting 2016.
- 24 In terms of clause 14 of the Respondent's Terms and Conditions of Lettings the Respondent undertook *"To use our best endeavours to periodically inspect the property generally 1 month after the tenancy commenced and then every 3 to 6 months during the tenancy in order to ensure that the tenants are observing the general conditions of the agreement. The inspection is not a survey or inventory check, it is visual only and, where access cannot be readily obtained, may comprise an external inspection only. The landlord can request copies of the inspection reports otherwise the landlord will only be informed when there is maintenance required."*
- 25 On or around April 2019 the property was let to joint tenants under a private residential tenancy agreement. After one of the joint tenants left the property, a new private residential tenancy agreement was signed with the remaining tenant on 1 September 2023. In terms of clause 30 of the tenancy agreement the tenant agreed to maintain the garden in a reasonable manner.
- 26 On 24 September 2021 the Applicant emailed the Respondent requesting photographs of the garden. On 1 and 11 October 2021 the Respondent emailed the tenant to request said photographs. On 11 October 2021 the tenant provided said photographs and acknowledged the garden required weeding. On 11 October 2021 the Respondent sent the Applicant photographs of the garden of the property.
- 27 On 28 April 2022, the Respondent emailed the Applicant in response to comments received from the Applicant regarding a routine property inspection report. In particular, the Respondent stated *"In general if tenants have a garden to themselves, it's reasonable to expect them to maintain the garden themselves. Or at the very least get someone else in if they aren't keen on gardening"*.
- 28 On 5 May 2022, the Applicant emailed the Respondent stating *"If we get nowhere I'll ask you to send in someone to do the work, and potentially the garden too if it does not get weeded and turned over"*.
- 29 On 30 September 2022 the Respondent emailed the tenant advising them to attend to the garden following comments from the Applicant. The Respondent asked the tenant to carry out weeding and tidy up the gardens. The tenant emailed the Respondent on 24 October 2022 apologising and confirming that he would see to the garden as soon as possible. The Respondent sent a response to the tenant on 25 October 2022 reminding him of his obligations under the tenancy agreement, and the option to bring a gardener in to do the

work.

- 30 On 5 October 2023 the Respondent emailed the tenant reminding him to carry out gardening ahead of the winter season. The tenant responded by email on 25 October 2023 confirming that he had carried out work to the front garden and would arrange to do the back garden as soon as possible.
- 31 The Respondent carried out routine property visits at the property on 24 January 2023, 23 May 2023, 29 November 2023 and 23 May 2024. The inspection on 23 May 2024 showed some improvement to the condition of the garden.
- 32 In June 2024 the Applicant instructed the Respondent to give the tenant a notice to leave on the ground that the Applicant intended to sell the property.
- 33 The tenancy between the Applicant and the tenant terminated on 30 August 2024.
- 34 Prior to the termination of the tenancy the Respondent advised the tenant of his obligations regarding the garden. The tenant advised the Respondent that he would carry out the necessary work to the garden prior to leaving the property. The tenant failed to do so.
- 35 The Applicant incurred costs in restoring the garden to its original condition in the sum of £753.30.

Reasons for decision

- 36 The Tribunal carefully considered all of the evidence from both parties in its determination of the application, both in terms of their documentary evidence and the oral evidence at the hearing.
- 37 Section 48(1) of the 2014 Act provides that “*a tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice*”. In terms of section 48(4) of the 2014 Act, an application cannot be made unless the applicant has notified the letting agent of the breach of the Code in question. The Tribunal had before it the Applicant’s notification to the Respondent dated 17 December 2024 which listed the sections of the Code she believed had been breached, as well as the preceding email correspondence, and was satisfied that this complied with the notification requirements under section 48(4).
- 38 The Tribunal went on to consider the specific sections of the Code cited by the Applicant in the application which she claimed the Respondent had breached.

Section 21 - You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.

- 39 The Tribunal accepted that the former tenant had failed to maintain the garden in accordance with his responsibilities under the tenancy agreement, which resulted in the Applicant incurring costs in restoring the garden to its original condition. The Tribunal considered what would be reasonably expected of a letting agent in such circumstances. The Respondent had carried out regular property inspections in accordance with their Terms and Conditions, with corresponding reports latterly provided to the Applicant, giving the Applicant the opportunity to raise any concerns. The Respondent had also, at an early stage, highlighted the Applicant's right to arrange to have a gardener attend the property. Ultimately, as accepted by the Applicant, the maintenance of the garden was the responsibility of the tenant, and the Tribunal accepted that the Respondent had repeatedly reminded the tenant of this, and his obligations under the tenancy agreement, including the responsibility to return the garden in good condition at the end of the tenancy. The Tribunal considered that this was sufficient to demonstrate reasonable care and skill in the context of a letting agent's activities and therefore found no breach of section 21 of the Code.

Section 32 - Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out:

(m) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure;

- 40 The Tribunal had before it the most recent version of the Respondent's Terms of Business dated 2023/2024 which include a link to the Respondent's complaints procedure containing details of how to apply to the Tribunal. The Tribunal therefore found no breach of this section of the Code.

Section 73 - If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

- 41 The Tribunal had no evidence before it to suggest that the Respondent had acted in conflict with any legal obligations or the private residential tenancy agreement. For the reasons outlined in this decision, the Tribunal found no breach of any other section of the Code narrated in the application.

Section 74 - 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 (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).

- 42 The Tribunal had before it four routine inspection reports, along with additional photographs of the garden dating back to 2019. The Tribunal could understand why the Applicant would have expected the Respondent to highlight what she perceived to be a deterioration in the condition of the garden. However, the

Tribunal could equally understand why the Respondent may have considered that the condition of the garden gave no cause for concern. What the Applicant may have expected of the tenant, compared with the Respondent's view of what would be considered reasonable, would likely differ. The Respondent had latterly during the tenancy provided the Applicant with inspection reports that containing photographs of the garden, providing the Applicant with the opportunity to highlight any concerns she may have.

- 43 The Tribunal had regard to the statement from the Applicant's gardener who opined that the condition of the garden at the end of the tenancy suggested that no maintenance had been carried out for a period of 6 months. However, that did not align with the outcome of the inspection in May 2024 which indicated there had been some improvement in the garden. Furthermore, the Tribunal agreed with the Respondent that if the Applicant had engaged a gardener in the remaining months of the tenancy, when the tenant had committed to carrying out the work, it would have jeopardised the Applicant's right to recover those funds from the tenant.
- 44 The Tribunal therefore considered that the Respondent had taken sufficient action to comply with this section of the Code.

Section 85 - If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing; annual gas safety inspections; Legionella risk assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.

- 45 Section 85 applies to a letting agent's responsibilities in respect of pre-tenancy checks. Given that no issues with pre-tenancy checks had been raised by the Applicant, the Tribunal found no breach of section 85. The Applicant's complaint was focused on the Respondent's actions during and at the end of the tenancy.

Section 93 - If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible.

- 46 The Tribunal interprets the wording of section 93 as applying in situations where the agent has instructed contractors to undertake maintenance, as opposed to ongoing maintenance by a tenant. The Tribunal therefore found no breach of this section of the Code.

Section 102 - If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began.

47 The Tribunal had before it a check-out report which had been conducted by the Respondent at the end of tenancy and included a photographic record of the condition of the property. The Tribunal therefore found no breach of this section of the Code.

Section 113 - The procedure must also set out how you will handle complaints against contractors and third parties; any recourse to the complaints procedures of a professional or membership body you belong to; whether you provide access to alternative dispute resolution services; if you are also subject to another 21 regulatory body (for example the Scottish Legal Complaints Commission); and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.

48 The Respondent's complaints procedure, as accessed via the link from the Terms and Conditions, contains sufficient information about how complaints will be dealt with, as well as detailing the process for applying to the Tribunal. The Tribunal was therefore satisfied that the procedure is generally compliant with section 113 of the Code. Whilst the complaints procedure does not specifically state the right to apply to the Tribunal if the complaint is not processed within a reasonable timescale, the Tribunal considered this to be *de minimis* in its overall consideration of the Respondent's compliance with the Code.

49 The Tribunal therefore found that the Respondent has complied with the Code for the above reasons.

50 The decision of the Tribunal was unanimous.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or determined.