



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/24/2567

Re: Property at 3/1, 385 Sauchiehall Street, Glasgow, G2 3HU

The Parties:

Ms Janka Deák, 3/1, 385 Sauchiehall Street, Glasgow, G2 3HU (“the Applicant”)

Let Us, 2/2, 190 West George Street, Glasgow, G2 2NR (“the Respondent”)

The Tribunal comprised:-

Ruth O’Hare - Legal Member
Nick Allan - 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 18, 21, 27, 90, 91 and 93 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 email correspondence between the Applicant and Respondent, including a copy of the notification of complaint to the letting agent dated 28 May 2024.
- 2 In summary, the Applicant’s complaint is that the Respondent had delayed extensively in carrying out service requests related to a communal sewage leak, had failed to inform tenants about said sewage leak and a timescale for planned actions, and had refused to carry out cleaning following said sewage leak.
- 3 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 19 September 2024. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules.

The CMD

- 4 The Case Management Discussion took place on 19 September 2024 by teleconference. The Applicant was on the call. The Respondent was represented by Mr Angus Johnston.
- 5 Mr Johnston advised that the Respondent's position on the application was as follows:-
 - (i) With regard to sections 18, 21 and 27 of the Code the Respondent denied any breach. The evidence the Applicant had submitted demonstrated that the Respondent had complied with the Code, in that they had responded quickly when issues arose. Mr Johnston highlighted the email of 15th April 2024 which referred to a conversation with the Applicant prior to that. The first email the Respondent had received regarding the issue was on Saturday 30th March 2024 and Mr Johnston had responded to the Applicant on the Monday following. On each occasions responses had been provided to the Applicant either that same day or the following morning.
 - (ii) With regard to sections 90, 91 and 93 of the Code Mr Johnston stressed that the Respondent was not the regulated factor for the building and did not collect money from other owners. At first the sewage leak was believed to be a communal issue, however it transpired that the responsibility rested with the commercial unit on the ground floor. The Respondent had attempted to liaise with the owners when the leak occurred but were unable to share the information with the Applicant. They had attempted to engage contractors. However the owner was in the process of selling the commercial unit and did not want to incur further costs. Mr Johnston confirmed that he had attended the building thereafter on several occasions and concluded that further works were not necessary. He advised that new tenants had moved into the building in recent months and had not reported any issues. Mr Johnston stressed that the Respondent had done its best in challenging circumstances. He believed that all correspondence supporting the Respondent's position had been submitted by the Applicant, although he could submit the email of 30th March and his reply on 1st April if need be.
6. Having heard from the parties the Tribunal determined to refer the application to an evidential hearing, as the Respondent disputed they were in breach of the sections of the Code narrated in the complaint. A Direction was issued requiring parties to submit any further documentary evidence or details of witnesses in advance of the hearing.
7. On 18 October 2024 the Tribunal received a response to the Direction from the Applicant which included a full written response to the application, Whatsapp exchanges, email exchanges, and a site map. On 6 November 2024 the Tribunal received a response to the Direction from the Applicant which included a list of witnesses, written submissions, email correspondence between the Applicant and Respondent, email correspondence between Molly Burton and the

Respondent, and photographs of the communal close.

8. A hearing scheduled for 27 May 2025 was postponed due to the lack of availability of the Applicant's witnesses.

The hearing

9. The hearing took place on 2 December 2025 by videoconference. The Applicant joined the call. The Respondent was again represented by Mr Johnston.
10. The following is a summary of the key elements of the evidence and is not a verbatim account. Both parties were given the opportunity to cross-examine the witnesses.

The Applicant's evidence

11. The Applicant gave evidence along with two witnesses, Molly Burton and Teagan Vaughan.
12. The Applicant spoke to the chronology of events, as supported by the email correspondence produced. She referred to an email she had sent to Mr Johnston on 30 March 2024 in which she highlighted the smell in the close. This was the first time the Applicant had mentioned the smell to the Respondent. She had previously thought it was a passing issue. Mr Johnston had responded on 1 April 2024 to confirm that it appeared to be coming from a blocked drain belonging to a commercial property. The Applicant had then reached out again to the Respondent by email on 13 April 2024 when she noticed sewage had leaked under the communal back door. It was not passable and the occupants could not access the bin area. They had to use an alternate route. The Applicant only used the back door to take her bins out. The Applicant received an email from the Respondent on 15 April 2024 which addressed other tenancy matters but not the sewage issue. The Applicant and her flatmates were frustrated. There was no clear explanation as to what was happening. The Applicant felt her concerns were not being taken seriously. She sent a further email to the Respondent on 15 April 2024 expressing her concerns. She then received a response from Mr Johnston on 19 April 2024. He had proposed dates for a meeting. She had responded with alternatives but he did not reply. The Applicant then made a formal complaint to the Respondent on 28 May 2024. She received a response on 29 May 2024 stating that the Respondent would not be taking any further action, following which she decided to apply to the Tribunal.
13. The Applicant was confused about the responsibilities of the Respondent. She thought they were the factor for the building. As the letting agent for all of the properties in the block, she believed they could action any communal repairs and attend to communal issues. It had become clear to her during the Tribunal proceedings that the Respondent was not the factor. It had not been explained to her previously. The Applicant felt she had been stuck in a miscommunication loop.
14. Miss Burton confirmed the Applicant's chronology of events. The situation had

been extremely unpleasant and there was no communication from the Respondent. She and her flatmates felt ignored, however in response to cross-examination from Mr Johnston she accepted that could be a subjective view as the Respondent had been generally responsive to emails.

15. Miss Vaughan also noticed the smell in the communal area which was quite distressing. She was not involved in the email correspondence with the Respondent. She understood the Respondent was not providing any updates on the situation. She had later heard that the Respondent was not the factor for the building, which was not her understanding. She did not know why the Respondent could attend to some jobs in the building but not others. She gave examples of electrical repairs in the communal close and stair cleaning. Miss Vaughan believed she would have been capable of contacting the Respondent herself at any point but didn't feel this was necessary as the Applicant was in touch with them. During cross-examination both Miss Vaughan and the Applicant confirmed that they had received in person training from Mr Johnston at the start of the tenancy, which included a tenancy handbook containing confirmation that there was no factor for the building.

The Respondent's evidence

16. Mr Johnston gave evidence on behalf of the Respondent. He reiterated that there is no factor for the building. He had met with the Applicant and her flatmates on 19 September 2023 and had delivered a 40 minute training session. It was designed to make their tenancy as fluid and easy as possible. The training included a handbook which confirmed there was no factor. The Respondent is not a registered factor and has no capacity for managing communal issues. The Respondent manages six flats in the block for three different landlords. There are also four commercial units. Mr Johnston only has a relationship with one of the commercial units due to some previous issues with vermin. The Respondent can only instruct work and recover the costs of doing so where they have unanimous approval from all three landlords.
17. Mr Johnston outlined the chronology of events arising from the sewage leak. On 29 March 2024 he was advised of a blocked drain to the rear of the building. One of his colleagues attended immediately to assess the problem. Mr Johnston confirmed that the Respondent consists of himself and one employee. His colleague then contacted Scottish Water who attended that same afternoon and confirmed that the drain was private and belonged to one of the commercial units. Mr Johnston had been in touch with the tenant of the commercial unit, seeking regular updates on the work. On 17 April 2024 Mr Johnston had attended the property following correspondence from the Applicant and found the blockage had been cleared. He had taken some bin bags around to the bin store via the alternate route. There was a sticky residue on the floor that was unpleasant. The Respondent did not have permission from all three landlords in the block to carry out any specialist cleaning and was unlikely to obtain this as one landlord was in the process of selling their property. Mr Johnston had attempted to obtain quotes for cleaning from a contractor in any event but was unsuccessful. Mr Johnston returned to the property on 10 May 2024 and found the residue had dried and some had been swept away by communal stair cleaners. The corridor was being

used by the occupants and he received no further complaints from the Applicant until 28 May 2024.

18. Mr Johnston explained that he had received no correspondence from Environmental Health requiring any further action to be taken. He has received no complaints from any other residents in the block. Mr Johnston pointed out that when the Applicant had sent the first email on 31 March 2024 he was already dealing with the issue. He believes that the Respondent has been clear and transparent with the Applicant. He explained that many of her emails had received a response the same day. He had also left voicemails for her but had received no reply. If she had been willing to speak to him he could have provided further clarification on the limits to the Respondent's authority and the distinction between letting agent and factor.

Closing submissions

19. The Applicant accepts that the Respondent is not the factor of the building. She feels there have been issues around clear and accessible communication and dispersal of information. The Respondent failed to volunteer crucial information. The whole complaint has hedged on a misunderstanding, with the information being made available after the complaint was lodged. The Applicant confirmed that she does not really answer her phone. She did not want future residents to experience the same level of confusion.
20. Mr Johnston confirmed that he was satisfied all of the Respondent's evidence had been presented clearly. He had answered all of the questions the Applicant had presented to him. The question of whether the Respondent could have been more transparent was a subjective one. He would have been willing to provide more information on request. The only issue arose from the Applicant's email of 19 April 2024. Mr Johnston was however certain he would have tried to contact the Applicant by phone. The Respondent had been more than timely in responding to communication. Mr Johnston reiterated that if the Applicant had contacted Environmental Health, they had clearly determined no action was required.

Findings in fact

21. The Applicant was the tenant of the property at 3/1, 385 Sauchiehall Street, Glasgow, G2 3HU. The Respondent is the letting agent for the property.
22. The property forms part of a building containing six flats. The Respondent manages all of the properties in the building on behalf of three landlords.
23. The Respondent has authority to arrange communal maintenance and repairs in the building where permission is secured from all three landlords.
24. The Respondent is not the registered factor for the building.
25. On 29 March 2024, the Respondent was made aware of a blocked drain to the

rear of the building. An employee of the Respondent attended the building that day to assess the issue. She arranged for Scottish Water to attend who confirmed the drain was private to a commercial unit. The Respondent then contacted the commercial unit who confirmed they would arrange to have the drain unblocked. The Respondent chased the commercial unit for updates on 8 April 2024 and 15 April 2024.

26. On 31 March 2024 the Applicant emailed the Respondent regarding another matter and mentioned the smell of sewage in the building. On 1 April 2024 the Respondent emailed the Applicant explaining the nature of the issue and confirmed that the commercial unit were trying to resolve the issue.
27. The blocked drain led to a sewage leak which blocked access to the communal bin area via the back door of the building. The bin area could be accessed via an alternative route.
28. On 13 April 2024 the Applicant emailed the Respondent to advise that the sewage had leaked through the back door and had left a residue. On 15 April 2024 the Applicant received a response from the Respondent on other tenancy issues. The Applicant emailed the Respondent that same day raising concerns about the sewage leak.
29. On 15 April 2024 the Respondent attempted to contact the Applicant by telephone and left a voicemail. On 19 April 2024 the Respondent followed up with an email responding to the Applicant's email of 15 April 2024.
30. On 17 April 2024 the Respondent received confirmation from the commercial unit that the blocked sewer had been resolved.
31. On 19 April 2024 the Applicant sent a further email to the Respondent regarding the sewage leak. The Respondent replied to the Applicant on 20 April 2024 proposing a meeting to discuss the issue. The Applicant replied that same day with alternative dates for a meeting.
32. On 28 May 2024 the Applicant submitted a complaint to the Respondent. The Applicant received a response to her complaint on 29 May 2024.

Reasons for decision

33. The Tribunal carefully considered all of the oral and documentary evidence in reaching its decision on the application.
34. In terms of the events arising from the sewage leak which are the focus of this application, it appeared that much of the evidence was not in dispute, such as the chronology of correspondence between the parties. The primary issue for the Tribunal to determine was whether the Respondent's actions in dealing with the matter amounted to compliance with the sections of the Code narrated in the application.

35. The Tribunal considered each section of the Code cited by the Applicant which she claimed the Respondent had breached.

Section 18 - You must provide information in a clear and easily accessible way.

36. Having considered the correspondence between the parties in this case, the Tribunal was satisfied that the Respondent had generally provided clear and concise information to the Applicant when requested. Whilst it was clear that there was a misunderstanding on the part of the Applicant as to the nature of the Respondent's role, the Tribunal did not find that this was due to any fault on the part of the Respondent. The Respondent had sought to clarify this with the Applicant once it became clear that it was an issue. The Applicant had otherwise been provided with clear information about the blocked sewage pipe and the actions being taken to remedy it. Accordingly the Tribunal was not persuaded that there had been any breach of section 18 when looking at the nature of the Respondent's correspondence with the Applicant as a whole.

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

37. The Tribunal found no evidence that the Respondent had acted without reasonable care or skill in dealing with the sewage leak. They had been proactive in contacting the person responsible as soon as they were made aware of the issue and had subsequently sought to take action as far as they were able and within the confines of their authority as a letting agent for properties in the building. The timeframe for the repair was clearly out with the Respondent's control. The Tribunal accepted that the Applicant and her flatmates were of the view that further action was required in terms of specialist cleaning. However, ultimately there was no evidence to support this other than the Applicant's opinion. The Tribunal accepted Mr Johnston's evidence that no further complaints had been made following his visit to the property on 10 May, other than the complaint from the Applicant, and no interventions from Environmental Health. The Tribunal also accepted that the need for specialist cleaning was ultimately a decision for the three owners of the building, not the Respondent. The Tribunal therefore found no breach of section 21.

Section 27 - You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.

38. The Tribunal accepted that the Respondent became aware of the blocked drain on 29 March 2024 and subsequently informed the Applicant by email on 1 April 2024 in response to her email of 30 March 2024. The Tribunal took into account the fact that the Applicant's email was received on the weekend, therefore a response the following day was not unreasonable. The Tribunal found no fault in the fact that there were then no further updates until 19 April 2024 on the basis that there was clearly nothing to update from the Respondent's perspective. The Respondent had been in contact with the commercial unit responsible for the

leak and did not receive confirmation that the matter had been resolved until 17 April 2024. The Tribunal could therefore understand why the issue was not addressed in the Respondent's email to the Applicant on 15 April 2025. The Tribunal therefore found no breach of section 27.

Section 90 - Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

Section 91 - You must inform the tenant of the action you intend to take on the repair and its likely timescale.

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.

39. The Tribunal found no breach of these sections of the Code. The repair to the blocked drain was the responsibility of a neighbouring commercial owner. It was not the responsibility of the Respondent, nor any of the landlords they act for. The Tribunal concluded therefore that it was not a repair that would have been subject to the Respondent's own written procedures and any timescales for the repair would have been out with their control. The Respondent cannot therefore be found to have breached sections 90, 91 or 93 of the Code.
40. Accordingly, for the reasons outlined above the Tribunal found that the Respondent has complied with the Code. Whilst the Tribunal accepts that this would have been a particularly unpleasant situation for the Applicant, the Respondent appears to have been proactive in addressing the matter insofar as they have been able and the Tribunal can find no fault on their part.
41. 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.

12 January 2026

Legal Member/Chair

Date