



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

Reference number: FTS/HPC/LA/25/4997

The Parties:

Mr Terry Meek, 98 Sir Thomas Elder way, Kirkcaldy, Fife, KY2 6ZS (“the Applicant”)

Strathmore Property Ltd. t/a Martin & Co. Cupar, 27 Bonnygate, Cupar, Fife, KY15 4BU (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) Ann Moore (Ordinary Member)

BACKGROUND

1. The Applicant is the proprietor of the Property at 25 Marjory’s Avenue, Kirkcaldy, Fife.
2. He engaged the services of a limited company by the name of Sinclair Rojas Ltd. to undertake a “tenant find service” with a view to the Property being let.
3. Sinclair Rojas Ltd. traded under the name of Martin and Co (Kirkcaldy).
4. In compliance with the agreement between the Applicant and Sinclair Rojas Ltd. that company marketed the Property for let, identified a tenant and was expected to undertake employment and income checks, previous landlord checks, identification checks, credit checks and other relevant checks to ensure the tenant was a suitable tenant for the Property. Sinclair Rojas Ltd. did, indeed, identify a tenant and the Property was subsequently let to that person.
5. The company Sinclair Rojas Ltd. subsequently transferred certain aspects of its business to a company by the name of Strathmore Property Ltd. trading as Martin and Co (Cupar). It is understood Sinclair Rojas Ltd. ceased trading as the principals of the company retired.

6. By email dated 10th January 2025 Strathmore Property Ltd. communicated with the Applicant. The email correspondence, amongst other things, stated:-
“We are writing to inform you that as from 1 February 2025, the business of Sinclair Rojas Ltd. T/A Martin and Co (Kirkcaldy) has been transferred to Strathmore Property Ltd. T/A Martin and Co (Cupar) due to the retirement of the owners, Iain and Nora Sinclair. Grant Simpson, Managing Director of Martin and Co (Cupar) WILL TAKE OVER THE RESIDENTIAL LETTING AND PROPERTY MANAGEMENT SERVICE FOR ALL EXISTING LANDLORD CLIENTS (emphasis added) and we also offer a full sales service....”
7. The Applicant subsequently corresponded with Strathmore Property Ltd, trading as Martin and Co (Cupar) requesting information relating to the tenant of the Property. The Applicants email, dated 4th August 2025, stated
“I am the landlord of 25 Marjory’s Avenue, Kirkcaldy, KY2 6ZJ and engaged Martin and Co under a tenant find only service to source my current tenant, who moved into my property on 29/11/2024. As part of managing the tenancy and considering rent guarantee insurance, I require a copy of all information obtained during your referencing and application process, including:
 - Tenant application form***
 - Employment and income references***
 - Previous landlord references (if applicable)***
 - Identification (passport, driving licence)***
 - Credit check results or summary***
 - Right to rent/reside checks***
 - Guarantor details (If applicable)******As you sourced the tenant on my behalf, I understand this information was obtained while acting as my agent. Under the Data Protection Act 2018 and UK GDPR you are able to share this information with me as the data controller for the tenancy.”***
8. Strathmore Property Ltd. trading as Martin and Co (Cupar) appear to have been able to recover a standard reference report which was forwarded to the Applicant. In an email to the Applicant dated 13th August 2025 the Respondent stated
“We were not responsible nor involved with the arrangement of the tenancy – that was all done by Kirkcaldy business.”

9. The Applicant responded by email on 14th August 2025. He advised he was ***“...asking for a full copy of everything you currently hold that was collected or generated during the application/referencing for (tenant at 25 Marjory’s Avenue, Kirkcaldy), together with standard data-handling particulars.”***

The email went onto state

“In addition, as a registered letting agent in Scotland you are legally bound by the Letting Agent Code of Practice (Scotland), which requires you to:

- Keep full and accurate records for landlords, including tenant application/referencing material***
- Retain these records for at least 6 years from the end of your engagement or the tenancy***
- Provide landlords with copies of any such information when requested, unless prevented by law.***

At the very least, your branch – or the Kirkcaldy branch prior to transfer – will have obtained a completed tenant application form containing the tenant’s details”

10. The Applicant subsequently presented an application to the Tribunal seeking a Letting Agents Enforcement Order against the Respondent due to their failure to provide the information requested by him. The application suggested the following breaches of the Letting Agent Code of Practice (Scotland) Regulations 2016/133 (“the Code”):-

Overarching Standards of Practice (Section 2)

Paragraphs 24, 26

Engaging Landlords (Section 3)

Paragraphs 28, 29, 30

Lettings (Section 4)

Paragraph 67

Communications and resolving complaints (Section 7)

Paragraphs 105, 106, 107, 108, 112

THE CASE MANAGEMENT DISCUSSION

11. The Applicant participated personally in the Case Management Discussion. The Respondent was represented by Miss A Wooley of Bannatyne Kirkwood France & Co., Solicitors, Glasgow.
12. The Respondent’s agents forwarded written submissions to the Tribunal in advance of the Case Management Discussion. The written submissions, in short, stated that
- the Respondent was not a letting agent for the Applicant and therefore had no responsibility in the matter.

- The Applicant is not and never has been a client of the Respondent.
- They have never provided services to the Applicant in relation to the Property.
- The Applicant was a client of Sinclair Rojas Ltd, company reference number SC152154.
- The Respondent is an entirely different company who purchased the “lettings book” from Sinclair Rojas Ltd. and took over the management of ongoing tenancies that were under management by Sinclair Rojas Ltd. under their “fully managed” service as at and from the date of the transfer.

13. Relevant legislation governing the matter is to be found in the Housing (Scotland) Act 2014 (“the 2014 Act”) which provides as follows:-

48 Applications to First-tier Tribunal to enforce code of practice

(1) 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.

(2) A relevant letting agent is—

- (a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
- (b) in relation to an application by a landlord, a letting agent appointed by the landlord,
- (c) in relation to an application by the Scottish Ministers, any letting agent.

(3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.

(8) A letting agent enforcement order—

- (a) must specify the period within which each step must be taken,
- (b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for

any loss suffered by the applicant as a result of the failure to comply.

(9) References in this section to—

(a) a tenant include—

(i) a person who has entered into an agreement to let a house, and

(ii) a former tenant,

(b) a landlord include a former landlord.

61 Meaning of letting agency work

(1) For the purposes of this Part, “*letting agency work*” means things done by a person in the course of that person's business in response to relevant instructions which are—

(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord's house as a dwelling, or

(b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).

(2) In subsection (1)—

(a) “*relevant instructions*” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and

(b) “*occupancy arrangement*”, “*unconnected person*”, “*relevant person*” and “*use as a dwelling*” are to be construed in accordance with [section 101](#) of the 2004 Act.

(3) The Scottish Ministers may by order—

(a) provide that “*letting agency work*” does not include things done—

(i) on behalf of a specified body, or

(ii) for the purpose of a scheme of a specified description, or

(b) otherwise modify the meaning of “*letting agency work*” for the time being in this section.

(4) A scheme falling within a description specified by the Scottish Ministers under subsection (3)(a)(ii) must be—

(a) operated by a body which does not carry on the scheme for profit, and

(b) for the purpose of assisting persons to enter into leases or occupancy agreements.

Competence of the Application

14. The Tribunal had regard to s48(4) & (5) of the 2014 Act which provide:-

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

15. s48(4) makes it clear that prior to any application to the Tribunal the Applicant needs to inform the letting agent of any alleged breaches of the Code. s48(5) makes it clear that a reasonable period of time should be afforded a letting agent to rectify any alleged breaches. s48(5), of course, only falls to be considered if s48(4) has been complied with. If a letting agent has not received notice of the alleged breaches of the Code – which has 137 paragraphs contained within 8 separate sections – it cannot be expected to rectify any alleged breaches.
16. The Applicant had not notified the Respondent of any alleged breaches of any specific sections or paragraphs of the Code. The only reference to the Code was within the email dated 14th August 2025. That email simply referred to certain duties incumbent upon letting agents. It did not specifically state that the Applicant was in breach of the code nor any specific paragraph of it.
17. The failure of the Applicant to comply with s48(4) was, in fact, drawn to his attention during the application process before the Tribunal. The Applicant forwarded a Letting Agent Code of Practice Notification Letter to the Respondent, said letter being dated 19th December 2025. The application to the Tribunal, however, was on 20th November 2025.
18. The Respondent believed he had resolved any issue in that regard by sending the notification letter after the application had been submitted. He considered that while he had not “done things in the correct order” that should not prevent the application proceeding. He was fortified in that view by the acceptance of the application by the Tribunal.
19. On one view, the application could have been rejected by the Tribunal due to this failure. The acceptance of the application for consideration at a case management discussion, however, does not, of itself, confirm that the application is competent and thereafter immune from legal challenge.
20. Having regard to the failure of the applicant to comply with the mandatory terms of s48(4) of the 2014 Act, the application falls to be dismissed.

Is the Respondent a Relevant Letting Agent

21. The Tribunal considered the application with regard to s48 and s61 of the 2014 Act and whether the Respondent was, indeed, a letting agent acting on behalf of the Applicant.
22. The Tribunal noted, firstly, that the letting agent instructed by the Applicant was Sinclair Rojas Ltd. T/A Martin and Co. (Kirkcaldy). The Respondent in the

application before the Tribunal, however, is Strathmore Property Ltd. T/A Martin and Co (Cupar).

23. While both companies traded under the name of Martin and Co., they are clearly two separate limited companies and two separate legal entities. The fact there was a similarity in trading name (Martin and Co. (Kirkcaldy) and Martin and Co. (Cupar) does not change the fact that the two companies are separate and distinct legal entities.
24. The Applicant accepted that his instructions to use their “tenant find service” were to Sinclair Rojas Ltd. T/A Martin and Co (Kirkcaldy). He had provided no instructions to Strathmore Property Ltd. T/A Martin and Co. (Cupar). He was basing his application before the Tribunal, however, upon the fact that Strathmore Property Ltd. acquired the business of Sinclair Rojas Ltd.
25. The Applicant argued that the correspondence received on 10th January 2025 confirmed that the Respondent was now responsible to him in relation to the concerns and complaints he had. The Tribunal noted, however, that the correspondence dated 10th January 2025 advising of the transfer of business clearly stated that Strathmore Property Ltd. would
“take over the residential letting and property management service for all existing landlord clients”.
At the relevant time, Sinclair Rojas Ltd. were not providing residential letting nor property management services to the Applicant. Their acting on behalf of the Applicant were restricted to finding a tenant and undertaking relevant checks in relation to that tenant. Thereafter, the Applicant managed the Property himself. In those circumstances, when Strathmore Property Ltd. acquired the “lettings book” of Sinclair Rojas Ltd. they did not provide any services to the Applicant.
26. The Applicant accepted that the Respondent did not let the Property nor manage it on an ongoing basis. The Respondent’s involvement with the Applicant was restricted to dealing with his request for the provision of information relating to the tenant and the checks undertaken by Sinclair Rojas Ltd.
27. The Applicant relied upon the fact that the Respondent did, indeed, undertake certain checks on his behalf in relation to available documentation and provide him with a tenant reference document. He considered that meant the Respondent was accepting responsibility and, therefore, were letting agents acting on his behalf. The Tribunal did not accept that proposition. The fact that the Respondent may, as a matter of courtesy, have made certain enquiries in an attempt to assist the Applicant did not mean they were letting agents acting on his behalf and that they owed him duties in terms of the Code.

28. The Tribunal had regard to s48 and s61 of the 2014 Act. Reference is made to s48(2)(b) which defines a relevant letting agent as
“in relation to an application by a landlord, a letting agent appointed by the landlord”.

29. s61 defines letting agency work as

“...things done by a person.... in response to relevant instructions which are

(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement or

(b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease...”

30. The Applicant accepted that he had never appointed the Respondent to do any work on his behalf in relation to the Property. In particular, it was accepted by the Applicant that he had never requested the Respondent to enter into or seek to enter into a lease or occupancy arrangement in relation to any property owned by him, nor did the Respondent manage any property owned by him – it did not collect rent, inspect any property nor make any arrangements for the repair, maintenance, improvement nor insurance of any property owned by him.

31. In the circumstances, having regard to the statutory definition of a “relevant letting agent” and the definition of the letting agency work within the 2014 Act, the Respondent cannot, as a matter of law, be considered to be a letting agent appointed by the Respondent.

32. In the circumstances, the application falls to be dismissed.

DECISION

The Tribunal dismissed 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.

10th July 2026
