Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/22/0174

Re: Flat 0/2, 55 Avenuepark Street, Glasgow, G20 8LN ("the Property")

Parties:

Dr Allan Beveridge, 30 Athollbank Drive, Perth, PH1 1NF ("the Applicant")

Rannoch Property, 95 West Regent Street, Glasgow, G2 2BA ("the Respondent")

Tribunal Member:

Nairn Young (Legal Member) and Mary Lyden (Ordinary Member)

Background

1. This is an application for a determination, in terms of s.48 of the Housing (Scotland) Act 2014 ('the Act'), that the Respondent failed to comply with the Letting Agent Code of Practice ('the Code') in its management of the Property on behalf of the Applicant. It called for an in-person hearing on 8 September 2022. At the hearing, the Applicant appeared and presented his case himself. The Respondent was represented by Ms Jacqui Lamb, assisted by Mr Gareth Russell.

2. The relevant legislation governing the making and determination of applications of this type is contained in s.48 of the Act. That states (so far as is relevant):

"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—

…

(b) in relation to an application by a landlord, a letting agent appointed by the landlord,

…

(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."

3. There was no dispute in this case that the Applicant was a landlord, in relation to whom the Respondent was a relevant letting agent; that the application set out the reasons for the alleged failures under the paragraphs of the Code set out below, under 'Discussion'; and that the Applicant had notified the Respondent of the alleged breaches. With two exceptions, noted below, the Tribunal agreed that the Respondent had been so notified. The Tribunal was satisfied that the Respondent had been given a reasonable time to rectify any breach that had been notified, given that the events complained about cover a period from around October 2020 to the middle of 2021. The application was made in January 2022.

4. The parties' cases proceeded almost entirely on the foundation of documentary evidence and, consequently, the relevant areas of dispute between them were largely limited to interpretation of the facts as agreed, rather than in determining what occurred. The 'findings in fact' are therefore principally a setting out of the facts that the Tribunal considered relevant to its decision, with some inferences based on those facts. It has been necessary to quote some of the correspondence and at some length. Where that is done, the text is reproduced as written, including any errors: with the exception of any necessary commentary, which appears in square brackets.

Findings in Fact

5. The Applicant retained the Respondent to manage the Property on 25 November 2014, at which point it was not tenanted.

6. One of the terms of the agency agreement signed by the Applicant was: "Rannoch Lettings will continue to let my/ our property until notice to terminate this agreement is

given which will be no less than 3 months prior to the earliest date any existing tenancy agreement can be terminated."

7. The Respondent installed tenants who remained in the Property from 9 December 2014 to 24 May 2016.

8. On 28 May 2016, a second set of tenants were installed in the Property by the Respondent.

9. Over the weekend of 3 & 4 October 2020, the Property suffered water ingress from the flat directly above into the bathroom.

10. The Respondent arranged for an electrician to check and restore the electrics in the bathroom following the water ingress and received notification that all was ok on 20 October 2020.

11. On 6 October 2020, the Respondent emailed the Applicant to tell him that it wished to claim on the buildings insurance for the damage via the factors, but that, "This may need your authority to do so."

12. The Applicant responded on the same day saying that he had encountered something similar some years previously and, "I contacted [the factors] and they allowed me to make a claim against the buildings insurance. … I assume they will handle this in a similar way."

13. On 30 October 2020, the Applicant sent an email to the Respondent asking whether the Property had a carbon monoxide alarm and a valid legionella certificate, as he had been asked to confirm this information in the course of renewing his landlord registration.

14. In the same email, the Applicant queried whether the management fee had been reduced, as it appeared to him that it had.

15. On 2 November 2020, water started leaking into the Property from the bathroom ceiling again.

16. On the same day, the tenants contacted the Respondent and the owner of the upstairs flat directly, to report the further leak, by WhatsApp.

17. The Respondent contacted the property factors, who informed it that they had contacted the owner of the upstairs flat and that she had arranged for a plumber to visit.

18. The Respondent passed this information on to the tenants.

19. On 3 November 2020, the tenants contacted the Respondent again by WhatsApp to report that the leak continued.

20. The Respondent contacted the owner of the upstairs flat to ask what was happening.

21. A plumber attended the upstairs property on 4 November 2020 and fixed the leak.

22. On 6 November 2020, the Applicant sent a follow-up email, the Respondent not having replied by that date to the email of 30 October 2020.

23. The Respondent did not see the emails of 30 October or 6 November 2020, due to a problem with the junk mail settings on its computer system.

24. On 9 November 2020, the tenants contacted the Respondent by WhatsApp to report that water was coming into the bathroom from a different part of the ceiling.

25. The Respondent contacted the upstairs owner but was told by her to contact the building insurers.

26. The Respondent contacted a contractor who stated that the situation may take 8-10 weeks to stabilise as the ceiling dried out.

27. The Respondent reported this to the tenants who stated that they were satisfied with the approach proposed.

28. On 18 November 2020, the Applicant sent a third email, there still having been no response from the Respondent to the email of 30 October 2020.

29. The same day, the Respondent contacted the Applicant over the phone to apologise for not having responded to the preceding emails.

30. That phone call was followed up by an email on the same date, which repeated the apology and stated (so far as is relevant to this case):

> "The gas safety and LRA [legionella risk assessment] was done on 1st June this year, I assume the LRA is with the Gas safety as this has to be done by the boiler engineer. I have attached the certificate.
>
> On another note, I am still trying to sort the leak that is affecting the property. The repair has been done but again the water came through.
>
> I have contacted [the factors] and the upstairs owner as the electrics where affected but I have had no correspondence re buildings insurance from them.
>
> I will keep at it, I know insurance companies are really difficult to deal with due to furloughed staff etc.
>
> If you have details of the buildings insurance I could have a look and see if there is any way I can speed up the process.
>
> The tenants are fine and apart from water damage there is minimal disruption.
>
> I will keep you in the loop."

31. The gas safety inspection had already been carried out by HomeServe on 4 Feb 2020; although the date shown for this on the Respondent's computer system was 1 June 2020, since that was the date the certificate had been uploaded to it.

32. On the strength of this email and the exchange of 6 October 2020, the Applicant and the Respondent both wrongly understood that the other was taking responsibility for advancing matters re: the buildings insurance claim.

33. On 19 November 2020, the Applicant replied to the Respondent's email stating that it did not answer the questions asked in the email of 30 October 2020.

34. The Respondent replied within 15 minutes enclosing confirmation there was a carbon monoxide monitor and the legionella risk assessment.

35. The Applicant replied within 5 minutes noting that the question re: the management fee remained unanswered.

36. The Applicant sent a follow-up email on 20 November 2020, not having received a reply to his second email of the previous day, stating: “I sent the email below yesterday. You didn't reply. You have already ignored several emails. Can you at least have the decency to reply.”

37. The Respondent replied within 5 minutes, stating: “I answered yesterday, I have forwarded that reply?”

38. The Applicant did not reply to this email; however there was further correspondence between the Applicant and Respondent on the topic of whether or not a further gas safety inspection had been instructed in June 2020 on 23 and 25 November 2020.

39. Following this exchange, on the evening of 25 November 2020, the Applicant sent an email to the Respondent stating (amongst other things):

> “I now want to ask another estate agent to manage the property. Two estate agents have already expressed an interest in managing the flat. … I no longer want Rannoch to manage the property. I now want to ask another agent to take over the property. To do this they will need various documents from Rannoch (lease, safety certificates etc).”

40. The Respondent responded within 20 minutes stating (amongst other things):

> “If you are unhappy that’s your choice, however we require 3 months notice from you. …
>
> I will accept this email as notice and please feel free to give my details to your new agent. I can then pass on all certification, tenant details and details of the on going bathroom problem.
>
> I will also inform the tenants and pass on contact details of those agents.”

41. The Applicant replied on 1 December 2020, stating (amongst other things):

> "just confirming I want to transfer management of the flat to a new agent … . I will instruct them to contact you. … I don't agree with the 3 month notice period because I am transferring to another agent because the service I have paid for is well below par. However, if you insist on enforcing the 3 month period I will make a formal complaint. I would therefore like the contact details of the person who handles complaints."

42. The Respondent did not reply to this email.

43. The Applicant asked another letting agent to take over management of the Property on 10 December 2020.

44. On the same date, the new agents emailed the Respondent (copying the Applicant in) informing it that they would be taking over management, requesting various documentation, and briefly outlining arrangements for dealing with the tenancy deposit.

45. On 22 December 2020, the Applicant's tenants contacted the Respondent by WhatsApp to inform it that the boiler was leaking.

46. The Respondent instructed a repair via the Applicant's standing boiler repair contract.

47. Having established that the Respondent had not responded to the email of 10 December 2020 yet, the Applicant sent an email on 6 January 2021 to the Respondent, instructing it to transfer the requested documents to the new agents.

48. On 15 January 2021, the Respondent emailed the Applicant to inform him that it had contacted the boiler repair contractor due to the issue with the leak recurring and that they had declared the boiler beyond economic repair.

49. In the same email, the Respondent stated that it would be transferring agency to the new agents on 28 January 2021; and that it would contact the tenants to say that the Applicant would arrange replacement directly and would contact them to discuss.

50. The Applicant responded the same day saying that he had contacted the boiler repair contractor and asking if the Respondent had transferred the documents requested by the new agents.

51. The Respondent in turn responded the same day to say that it had arranged with the new agents to transfer the documents the following week and had delayed doing so to that time, in order to address the issues with the boiler.

52. The delay in transferring documents had also been due to the Respondent waiting for express permission from the tenants to share their details.

53. The Respondent transferred the documents to the new agents by email, copying in the Applicant, on 18 January 2021.

54. The Applicant responded to the Respondent's email of 18 January 2021 transferring the documents on 19 January 2021, as follows:

> "can you tell the tenants to contact HomeServe to book the boiler repair.
>
> Also, you made a very big fuss about the 3 month's notice you require. Why is the transfer now taking place on Jan 28 (this is only 2 months)? I repeatedly asked you to send all relevant documents to [the new agents] asap. You have finally sent the document 10 days before the transfer date (and this is a month before the end of the 3 month notice period). Your behaviour is absolutely reprehensible."

55. The Applicant followed up this email very shortly afterwards with a further one asking for confirmation of details around collection of the rent at the changeover of agents and payment of the management fee.

56. These emails, together or separately, did not constitute intimation of a complaint to the Respondent.

57. The Respondent responded to these emails on the same day, among other things, expressing surprise that the Applicant was apparently unhappy that the changeover was being allowed to proceed sooner than originally set out and informing him that it

would arrange for the boiler repair, as it was not appropriate for the tenants to be asked to do this.

58. The Applicant responded to this email within 15 minutes, among other things, asking for confirmation whether the final rental payment to be paid under the Respondent's management would be susceptible to any deduction of fees from the Respondent; stating that he wished to make a formal complaint; and asking for the details of the person who would handle this.

59. The Respondent answered later that day stating, among other things: "The rent is in advance and I will be there for the tenants until the management ends at the end of February when the rent payments change."

60. The Respondent's email did not provide details of where to make a complaint.

61. The Respondent's email stated that it would deal only with the new agents from that point.

62. The Applicant responded with a further email within 30 minutes, asking again for clarification if the full rental payment for the end of January would be remitted to him, or whether it would be subject to deduction of fees.

63. The Respondent did not answer that email.

64. Also on 19 January 2021, the Applicant phoned the tenants and informed them that the letting agent would be changing and that he was intending to install a new boiler.

65. The tenants told the Applicant that little had been done to repair the damage caused by the water ingress; that they had asked the Respondent to repair the bathroom several times, without avail; that radiators in two rooms had leaked resulting in staining to the carpets, and that this had been reported to the Respondent, again to no avail; and that they were thinking of leaving because of the recent damage to the flat, and because their repeated requests to have repairs carried out were ignored by the Respondent.

66. The tenants had not reported any issue with the carpets to the Respondent.

67. The tenants were deliberately overstating their problems with the flat in order to put pressure on the Applicant to instruct repairs to the boiler, which were required: and the bathroom and carpets, which in fact only amounted to redecoration (see 24 to 27 and 66, above; 70, 76 and 77, below).

68. The Applicant told the tenants he would sort out all of the problems they reported himself; that this would require them to document all of the issues with photographic evidence to allow insurance claims to be made; and that things would change when the new agent took over management of the flat.

69. On 20 January 2021, the Applicant contacted the tenants and asked them in more detail to provide various supporting evidence to allow him to make the insurance claims.

70. Also on 20 January 2021, the new agents visited the Property and confirmed that the only repairs issue requiring to be addressed was the boiler; and that the tenants had indicated that they were still minded to leave the Property.

71. On 21 January 2021, the Applicant sent the tenants an email asking them to send future rent payments to the new agents and asking again for evidence to support the insurance claims he intended to make.

72. The tenants responded later that day with photographs to support the claims in regard to redecoration of the bathroom and replacement of the carpets and a short statement of what had occurred.

73. The Applicant replied on the same day asking the tenants to arrange instalment of the new boiler directly with the boiler engineers and reiterating that he had not been aware of the issues the tenants were having due to not being informed of them by the Respondent.

74. The tenants replied the same day, saying (so far as is relevant):

> "We are satisfied that reparations are now underway and appreciate you doing this as soon as you were made aware. Please understand, we were not upset at you directly, it was more the situation we found ourselves in with no means of recourse outwith the letting agent.

The boiler being replaced is a major relief. It has been repaired quite a lot throughout our tenancy.

We told [the new agents] of the other minor cosmetic things which we thought merited attention and would benefit the flat, which I am sure they have or will share with you.

We have looked after the property as best we could over the 5 years or so we've been here and these recent faults were things which as tenants, were outwith our control. We've never had many issues over the years with the letting agent to be honest other than those which have occurred most recently.

Obviously, now that you are directly aware of the problems and have actioned repairs then it will benefit the flat and future proof it's desirability for both us and any future tenants. We really do appreciate your intentions in resolving things speedily once you found out."

75. At some point between this email and 25 January 2021, the Applicant asked the tenants to get quotes from two contractors and send them directly to the factors dealing with the insurance claim re: the bathroom; and indicated that he intended to raise a complaint with an ombudsman and asked for them to provide a statement to support this.

76. On 25 January 2021, the tenants served notice on the Respondent and on the new agents that they wished to terminate the tenancy on 25 February 2021, stating:

"It has now become an unworkable situation. I no longer know if there is a go between letting agent or if the owner has abandoned using them. I do not want to become embroiled in a dispute between the former letting agent (Rannoch) and the owner of the property. I spoke to the owner initially to speed up necessary repairs to the boiler which he has now decided to replace and for which I am grateful. However, I do not want to be involved anymore in the arrangement of insurance claims or tradesmen as I am only the tenant and I have a full time job to be getting on with and the emails and texts asking me to do things are becoming ever more numerous. The requests via email to phone companies for quotes and supply pictures etc should be handled via the letting

agency from now on. Whichever letting agency that may be is not for me to decide. Also, I will not be supplying any statements for any ombudsman complaint as requested by the owner as I do not feel I have anything to say on such matters. We stayed here for 4 years and 8 months, paid the rent without fail and had minimal need to contact anyone until problems arose in this last couple of months."

77. The tenants' decision to end their tenancy was not caused by any failure on the part of the Respondent to respond to a request for repairs; but by their perception that they were becoming embroiled in an escalating dispute between the Applicant and Respondent that was causing them increasing inconvenience.

78. On 26 January 2021, the new agents called the Applicant, the Respondent and the tenants and agreed, among other things, that the Respondent would continue to manage the property until the tenants vacated it; and that the final rental payment should be made to the Respondent.

79. The Respondent has a Rent Collection and Handling Policy; but this does not set out anywhere how late payment of rent will dealt with by it.

80. The tenants did not pay the final month's rent and told the Respondent to take this from their deposit.

81. The Respondent did not inform the Applicant of this directly; but asked the new agents to pass this information to him, which they did on 8 February 2021.

82. The Applicant did not contact the Respondent about the final month's rental payment until 24 February 2021, where he asked why it had not been paid to him, without reference to the information he had already been given by the new agents.

83. The Respondent replied within 30 minutes saying (among other things):

> "The rent was not paid as you instructed the tenants not to pay Rannoch and gave no instructions otherwise that I am aware of, therefore they have agreed to forfeit their deposit which I cannot trigger until the tenancy ends. I will then disburse direct to you."

84. The Respondent contracted a third party organisation to carry out a final checkout report on the Property on 28 February 2021; and delivered the keys for the Property to the new agents the following day.

85. The checkout report was not sent to the Applicant or the new agents by the third party.

86. The Applicant requested a copy of the checkout report by email from the Respondent on 12 March 2021, but the Respondent did not respond to that request.

87. Later on the same day, the new agents informed the Applicant by email that the tenants were disputing the deduction of the final rental payment from the deposit, on the basis that they claimed they had been told not to pay it by the Applicant directly.

88. Shortly following that email, the Applicant emailed the new agents and the Respondent, among other things, asking for further information about the tenants' claim.

89. The Respondent replied on the same day, among other things, stating that, "any future discussion will be through [the new agents] as they are now your managing agent."

90. The Respondent contacted the new agents by email shortly afterwards to say, among other things, that it had asked for any further queries from the Applicant to be directed to them.

91. On 13 March 2021, the Applicant emailed the Respondent requesting that it contact the approved deposit scheme to instruct that he be included in the dispute resolution process.

92. The Respondent did not contact the deposit scheme and did not reply to this email.

93. On 18 May 2021, the deposit was returned to the Respondent.

94. On 25 June 2021, the Applicant sent a letter to the Respondent intimating a complaint which covered the various areas that are the subject of this application (with the exception of alleged deficiencies in ending the agreement and the rent handling procedure) and stating that he intended to raise the matter with the Tribunal.

95. On 7 July 2021, the Respondent returned the deposit to the Applicant, confirming this by email, but not addressing any of the other aspects of his complaint.

96. On 9 July 2021, the Applicant responded by email, noting the failure to address his complaint and reiterating his intention to raise an application with the Tribunal.

97. On 12 July 2021, the Respondent replied by email stating that it had been taking the time to go through the correspondence; but that, since a potential application to the Tribunal was being intimated, it would now not respond in detail, but await any application to come.

98. The Respondent also informed the Applicant in the same email that it would defend any proceedings and would pursue him formally for the cost of its time if any application proved to be unfounded.

99. The Respondent has a complaints procedure which sets out a process which may run to 5 stages (including appeals and referral to the Tribunal), of which the following is relevant to this case:

> "On receipt of your complaint we will adhere to the following procedure: -
>
> Stage 1
> We will acknowledge receipt of the complaint in writing within 5 working days of receiving it, giving you a named contact who will be dealing with the complaint.
>
> Stage 2
> Your named contact will then investigate your complaint and send a detailed written reply, including their suggestions for resolving the matter, within 10 working days of us receiving your complaint.
>
> There may occasionally be circumstances outwith our control which prevent us from adhering to this timeframe.
>
> These include: -
>
> • when the office is closed for public holidays;

• where adverse weather or sickness has led to staff shortages;
• where we cannot respond in full without the input of a third party (e.g. contractor, landlord, tenant) who is not available;
• where we cannot respond in full without visiting the rental property and the tenant is restricting access;
• where we cannot respond in full without the input of a key member of staff who is not available.

We will contact you if we are unable to respond within this timeframe and let you know when we aim to respond by."

100. The Respondent did not adhere to the terms of this procedure in regard to the complaints made by the Applicant on 19 January or 25 July 2021.

101. The Applicant spent £252 on professional cleaning of the Property and £44 on repair of the ensuite shower, which he would have been able to recover from the deposit, if that had not been exhausted in compensating him for the unpaid final month's rent.

Discussion

102. The Applicant alleges failings on the part of the Respondent in respect of a large number of paragraphs of the Code. The Tribunal's findings in relation to each alleged breach, based on the facts as found above, will be set out in paragraph order as set out in the Code, with the exception that the allegations re: the overarching standards will be addressed last of all. The text of the relevant paragraph will be set out in italics and the numberings in these italicised sections are from the Code ('you' in this context refers to the letting agent):

SECTION 3
Engaging landlords

Before taking instructions
29. In your dealings with potential landlord clients you must:

Conflict of interest
…

f) if you intend to act for clients who have competing interests or your personal interests conflict, or could potentially conflict, inform the clients as soon as you become aware of it;

103. The Tribunal does not consider that there was any breach of this paragraph. The Applicant contended that the statement that, "I will be there for the tenants until the management ends at the end of February when the rent payments change," made by the Respondent showed there was a conflict of interest (see para.59 in the findings of fact). The Respondent stated that this was a correct statement of its role in managing both landlord and tenants' interests.

104. Neither is correct: the statement does not betray a conflict of interest, properly understood. The tenants are not clients and the Respondent has no personal interest that conflicts with the Applicant's. The statement does suggest some lack of clarity as to whom the Respondent is acting for, however. Over and above the duties towards tenants that are in the Code, a wise letting agent may of course also recognise that showing care to a landlord's tenants may be to the benefit of all involved. The Respondent referred to this at the hearing by saying that its job was to, "keep the landlord and tenant in mind." However, the statement complained of did not give the impression that this was what was being referred to; and, rather, suggested that the Respondent considered it had a continuing duty to support the tenants without reference to the Applicant's interests. That was wrong and led at least in part to the Applicant misinterpreting the Respondent's actions in regard to the return of the deposit. Nonetheless, it was not itself a breach of this paragraph of the Code.

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:

Communication and complaints
j) that you are subject to this Code and give your clients a copy on request. This may be provided electronically;

k) how you will communicate (including the use of electronic communication with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;

l) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond;

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;

Conflict of interest
n) a declaration of any conflict or potential conflict of interest;

105. The Applicant's complaint in regard to these paragraphs of the Code was based on a misunderstanding that they imported duties of behaviour in and of themselves, rather than simply referring to the contents of properly drafted terms of business. The terms of business were sent and accepted prior to the coming into force of the Code, so there can be no finding of a breach of these paragraphs in regard to any shortcoming they may have under its terms. The Applicant's allegations in relation to the Respondent's actual behaviour in regard to these points will be addressed below under the relevant paragraphs of the Code that import those standards.

Ending the agreement
37. When either party ends the agreement, you must:

give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed, you must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill.

106. The Applicant considered the first two sentences of this paragraph to have been breached in various ways. In the first instance, he alleged that the Respondent had taken too long to transfer the certificates and other information across to the new agents; and that they had truncated the notice period, without reference to him. The Respondent's position was that it had not been able to transfer the information sooner,

as it did not have the permission of the tenants to do so; and that it had given the Applicant proper notice of its intention to transfer the management of the Property when it discussed how that would be managed with the Applicant's new agents on 26 January 2021 (see para.78, above).

107. The terms of the first and second sentences of paragraph 37 of the Code, as quoted above, stipulate a written confirmation of ceasing to act and concern the correct terms to be included in it. They are therefore, again, not directly concerned with whether or not those terms were in fact honoured, as both parties appear to have believed.

108. It is clear that the Code requires a written confirmation of ceasing to act to be sent and for it to clarify the end date of the agency agreement, any monies owed be or owing to the landlord, and practical arrangements for the return of any property. Nothing of that type was sent in this case. On 25 November 2019, the Applicant sent his notice of termination of the agreement (para.39, above). That should no doubt have been responded to with the written confirmation required by paragraph 37 of the Code, setting out in a considered fashion how and when the relationship would be terminated. Instead, a rushed response was sent in the heat of the moment that lacked any of the requisite information. Even the Respondent's reference to three months notice being required was in fact incorrect, since the terms of business state notice to terminate may only be given, "no less than 3 months prior to the last date any existing tenancy agreement can be legally terminated."

109. It is not clear what that term is intended to mean; but it is not necessary for the Tribunal to consider the matter further, since there was no notification of a breach of these requirements of this paragraph, properly understood, given by the Applicant. His application for an order, so far as directed to alleged failings under these sentences of this paragraph therefore falls foul of s.48(4) of the Act.

SECTION 4
Lettings

Tenancy deposits
66. If you lodge tenancy deposits on a landlord's behalf, you must ensure compliance with the legislation.

110. The Applicant's case for breach of this paragraph rested on his dissatisfaction with the manner in which the Respondent dealt with return of the deposit; not the payment of the deposit into a scheme in terms of the relevant law. That issue is more correctly understood as a potential breach of paragraphs 75 to 79 of Code, dealt with below. Paragraph 66 of the Code concerns proper lodging of a deposit with an approved scheme. There is no suggestion in this case that that was not done.

SECTION 5
Management and maintenance

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.

111. This paragraph of the Code is automatically breached if a breach of another paragraph is found. It will not therefore be considered separately.

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).

112. The Applicant's case was that there was an agreement for regular inspections to be carried out and reports returned as to the state of the Property; and that no reports were sent. There is no provision for such reports in the terms of engagement. Routine inspections were suspended due to covid restrictions. In any event, this paragraph of the Code only requires issues to be raised with tenants and landlords as they are discovered. The Respondent did this in regard to the issues complained of by the Applicant, as covered in more detail below paras.118-124; and there was no breach of this paragraph, therefore.

75. Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.

Rent collection

76. You must have appropriate written procedures and processes in place for collecting and handling rent on the landlord's behalf. These must set out how the late payment of rent will be handled and the legal requirements on tax deductions from rent received on behalf of non-resident or overseas landlords and the subsequent payment and reporting requirements. This should outline the steps you will follow and be clearly, consistently and reasonably applied.

78. You should inform the landlord in writing of the late payment of rent, in line with your written procedures or agreement with the landlord.

79. In managing any rent arrears, you must be able to demonstrate you have taken all reasonable steps to recover any unpaid rent owed to the landlord (see also section 8).

113. The Applicant's case for there having been a breach of these four paragraphs of the Code related to his assertion that the Respondent acted improperly in failing to collect the final rental payment; not informing him that it had been retained by the tenants; and not allowing him to enter the dispute resolution process operated by the approved scheme holding the deposit.

114. The Respondent's position was that there was a breach of the tenancy terms on the part of the tenants in not paying the final month's rent; but that, since they were in the process of leaving the tenancy, there was not in practice anything that could have been done. It checked whether there was any disrepair that could be deducted from the deposit and, on the basis that there was not, considered that the most straightforward and cost-effective way to proceed was to claim the deposit through the approved scheme. When it attempted to do this, it discovered that the tenants were themselves seeking return of the deposit on the basis that they said they had been informed by the Applicant not to pay the final rental payment. If the Applicant had not involved himself in the situation, they would have had no basis to make that assertion. That notwithstanding, the Respondent considered it would still be able to secure the return of the deposit and forwarded all relevant information to the scheme administrator as quickly as possible. It did not involve the Applicant because there was nothing for him to do in the process. There was no breach of the Respondent's Rent Collection and Handling Procedure in any of this.

115. The Tribunal considers that there was a breach of the terms of paragraphs 75 to 79 of the Code by the Respondent. The relevant findings in fact on this part of the application

are set out a paras.79-83 and 87-93, above. It was not appropriate (per paragraph 75 of the Code) or reasonable (per paragraph 79) for the Respondent simply to determine that it would not take any action to recover the final rental payment, without reference to the Applicant. It proceeded on the assumption that the deposit would be recovered in full; but, as the Applicant pointed out, that left him unable to apply the deposit to recover any other expense in regard to cleansing or repairs at the Property following the tenants leaving. At the time the decision was made by the Respondent not to pursue the debt, it could not have known what the current state of the Property was.

116. This situation was made worse by the failure to inform the Applicant in writing of the failure to pay and the approach being taken. That would at least have allowed the Applicant to comment on this and, if he was unhappy, to instruct a different tack to be taken. This failure, as regards informing the Applicant of the missed payment, was a clear breach of paragraph 78 of the Code. It is no defence to suggest that notification was sent to the new agents. They were not managing the Property on the Applicant's behalf at that point, by agreement of all parties, so should not have been relied on to relay the message.

117. The Respondent did take reasonable steps to pursue the claim from the deposit scheme. It was not its fault that the tenants chose to attempt to oppose the return of the deposit (neither was it the fault of the Applicant: see para.71, above). There was no role for the Applicant in the process. However, again, it should have communicated what was happening better to the Applicant. It allowed its annoyance (justified or not) at the Applicant's actions prior to this to infect the tone of the communication it did send; in particular the email sent on 24 February 2021, which seemed to suggest that the tenants were well-founded in their position. These failures to communicate represent reasonable steps that were not taken and contribute to the breach of paragraph 79 of the Code.

118. Finally, it is not possible for the Respondent to assert that it dealt with the matter in terms of its Rent Collection and Handling Procedure, because that procedure does not contain any information about how late payment of rent will be handled. That is itself a breach of the terms of paragraph 76 of the Code. However, it was not a breach that was notified to the Respondent by the Applicant prior to the raising of the application. As a part of this application, it therefore falls foul of s.48(4) of the Act and cannot be the subject any order made.

Carrying out repairs and maintenance

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.

86. You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required, if you provide this service directly on the landlord's behalf. Your procedure should include target timescales for carrying out routine and emergency repairs.

88. You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies.

89. When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

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

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

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.

119. The Applicant's position was that these paragraphs re: repair and maintenance were breached by the Respondent not having repaired the bathroom fully; not addressing

the damage to two carpets caused by leaking radiators; and not responding to the tenants' complaints. His position was largely founded on the discussion that he had with the tenants on 19 January 2021 (para.65, above).

120. The Respondent stated that it had dealt with the bathroom as best it could; but had been told by the contractor that the decorative damage to the bathroom could not be addressed immediately, as it needed time to dry out. By that time, covid restrictions meant that non-essential work could not be done. The tenants had never reported any issue with the carpets. There were no complaints from the tenants that were not responded to. It was not their responsibility to progress the insurance claim in regard to the water ingress; they had offered to support this (para.30, above), but the Applicant had never taken them up on that offer.

121. The Tribunal does not find any breach of paragraphs 85 or 86 of the Code. The Applicant's position on these was based principally on the perceived failing in outcome as regards repairs and maintenance, rather than any positive issue with either the Respondent's systems or records, or policies and procedures. As will shortly be addressed, the Tribunal does not find that the Respondent failed to address any repair or maintenance issue reasonably, so the argument that there is a consequent breach of these paragraphs must also be rejected.

122. As to the question of a breach of paragraphs 88 to 91 of the Code, the Tribunal does not find that there was any such breach. As has been noted, the Applicant's perception of the Respondent's approach to repairs and maintenance was significantly coloured by the conversation he had with the tenants on 19 January 2021. However, the Tribunal considers that there is good reason to conclude that the tenants were overstating the issues they had in order to expedite a repair to the boiler (see paras.64-67, 74 and 76 above). They described the other issues (i.e. aside from the boiler) as, "minor cosmetic," issues in their email of 21 January 2021. That position accords with the description of their reason for contacting the Applicant given in the email of 25 January 2021, terminating the tenancy, and the evidence of the history of referrals they made to the Respondent re: repairs. It also accords with the assessment of the state of the property provided by the new agents (para.70, above).

123. There is no evidence that the Respondent delayed in dealing with repairs when these were notified to it, or did so outside of the terms of business agreed with the Applicant. There is nothing to suggest that it was aware of the staining on the carpets: which was,

in any event, not an issue that required urgent attention. Similarly, the Respondent dealt with the damage to the bathroom as quickly as was possible, given the advice that it should be left to settle for 8 to 10 weeks (received in November 2020) and the restrictions on undertaking work that were in place at the time due to covid. This damage too was, “minor and cosmetic,” so did not require urgent repair.

124. Communications with the tenants on the earlier issues were adequate, as attested to by the tenants themselves (para.74 above). The manner in which the boiler repair was taken forward, and communication around that point was also sufficient (paras.45,46 & 48, above). In the end, arrangements for the repair of the boiler were somewhat overtaken by the increasingly bad-tempered exchanges between the Applicant and Respondent concerning the termination of the agency relationship; but, at least as far as the question of repair to the boiler is concerned, there was no deficiency in the Respondent’s dealing with the matter.

125. The Tribunal considers that there was a breach of the terms of paragraph 93 of the Code, in that, in its email of 18 November 2020, the Respondent did not set out the reason for the delay in redecoration of the bathroom, or the timescale upon which this work would be progressed (para.30, above). (There is no separate breach of paragraph 74 of the Code by the finding of a breach of this paragraph, since the former only requires repairs issues to be raised and recorded. They were in this case.)

SECTION 6
Ending the tenancy

Inventory/check-out
101. Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit unless there is good reason not to. For example, evidence of violent behaviour.

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.

126. The Applicant's case in regard to these paragraphs of the Code was initially that no check-out had been carried out and that the flat was left in a very poor condition, requiring professional cleaning. After raising the application, he was able to obtain a copy of the check-out report online, so the focus moved to the sufficiency of this process.

127. The Respondent indicated that it had asked a third-party organisation to carry out the check-out inspection and produce the report. When this was completed, the Respondent understood it was sent to the Applicant directly by the third party (on 28 February 2021). It was said to be sufficient in its detail.

128. No record of an email sending the report was produced. The Tribunal therefore concluded that the check-out report had not been sent to the Applicant when it was completed. Nonetheless, that is not itself a breach of the terms of paragraphs 101 & 102 of the Code. Issues regarding communication fall to be considered below at para.133.

129. The Tribunal had sight of the report. It was adequate in terms of its thoroughness and the photographic records it used to support its conclusion that there was no extraordinary issue with the condition of the Property, aside from a recommendation that some additional cleaning be required in the bathroom. That accords with the Applicant's point that professional cleaning was required. There was thus no breach of paragraphs 101 and 102 of the Code.

Tenancy deposits
105. Where you manage the tenancy deposit on behalf of a landlord you must take reasonable steps to come to an agreement with the tenant about deposit repayment. Where agreement is reached you must make a claim to the relevant Tenancy Deposit Scheme.

106. In the event of a dispute, the agent and tenant will be required to follow the relevant scheme's rules for disputes.

130. The Applicant's complaint in regard to these paragraphs of the Code founded on his dissatisfaction with the process of recovery of the deposit: i.e. that he was not allowed to join the process on his own behalf .

131. The fact that it was not possible to agree with the tenants what would happen to the deposit was not the fault of the Respondent and there is no basis therefore to suggest that paragraph 105 was not complied with.

132. Neither was there any evidence presented to suggest that the Respondent did not follow the relevant scheme's rules in pursuing the dispute. The communication that was presented with the scheme seemed to suggest that it would be unusual for a landlord to enter into the process on their own behalf, where an agent was nominated to deal with the issue; and that appears to be reflected in the terms of paragraph 106 of the Code. In any event, there was no evidence of a breach of that paragraph.

SECTION 7
Communications and resolving complaints

Communications
108. You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

133. Without wishing to be overly reductive, it could be said that the root cause of the whole dispute between the Applicant and Respondent could be traced back to failings in relation to this paragraph of the Code. The Tribunal was satisfied that it was breached on a number of occasions.

134. The relevant findings in fact above are:

a) Paras.22, 23, 30, 33-40: concerning the Applicant's initial query regarding a carbon monoxide alarm, legionella certificate and the management fee. This was at first not replied to: and then only partially, requiring the Applicant to come back on several occasions to ask for the information that had not been provided. The Respondent's explanation was that the new computer system it was using had incorrectly classified the first two emails as junk. The Tribunal accepted that explanation; but it does not wholly excuse the failure, as the Respondent is required to ensure that its systems for managing correspondence are effective. In any event, it can only explain the failure to respond to the first two emails: not the subsequent failures to provide the information requested.

b) Paras.44 and 47 to 49: concerning the request by the new agents to transfer the necessary information to allow them to take up management of the Property. When the new agents first made contact, the Respondent did not reply until over a month later. There was a suggestion that it was awaiting confirmation from the tenants that their details could be transferred across. The Tribunal did not understand why this permission was said to be necessary; but, even taking that argument at face value, the Code requires an agent to, "to keep those making [enquiries] informed if you need more time to respond." The Respondent did not do that. The issue here is not the time it took to effect transfer; but the failure to communicate about that effectively and ensure that all concerned were kept up-to-date as to what was happening.

c) Paras.85-88: concerning the failure to forward a copy of the check-out report and respond to questions re: the deposit return process. It is not an excuse for not having responded to these enquiries that the Respondent no longer acted for the Applicant: it had carried out, or was in the course of carrying out, these pieces of work for him. Neither is it acceptable for a statement to be made to the effect that the Respondent would only communicate with the new agents, for the same reason.

d) Paras.41, 42, 58-60, 94-100: concerning either enquiries as to how to make a complaint, or specific intimations of a complaint on the part of the Applicant, which were not responded to. This culminated in the Respondent, rather than following its complaints procedure, saying to the Applicant that it would simply not answer his complaint, as he had intimated an intention to apply to the Tribunal if the matter was not resolved. (Note that the circumstances described at paras.54-56 do not contribute to this breach. The Applicant suggested that this was a failure to deal with a complaint; but the Tribunal considered that the terms of this communication did not constitute a complaint, but rather a query or statement.)

The Respondent did not really answer why it had not gone through its complaints procedure at any point during these exchanges. It suggested that there had been a phone conversation with the Applicant at some point in January 2021 during which he became aggressive and that he was told to contact a Mr. Dykes, who would deal with his complaint. There was no evidence presented to support this

assertion and the Applicant denied it. The Respondent's position is undermined by the fact that there is no reference to any phone call in the correspondence. The Tribunal did not therefore find that the phone call took place. In any event, if the Respondent was intending to deviate from its usual procedure on account of inappropriate behaviour, it should, at the very least, have set this out in writing and made clear its reasons for doing so. This in any case does not address why the earlier requests for a person to direct complaints to were ignored.

It is not acceptable to suggest that, because a reference to the Tribunal has been threatened, there is no longer any requirement to address a complaint through the complaints procedure. That procedure is in place precisely to prevent matters from escalating to the point of litigation. It is inexcusable that that opportunity was not taken in this case.

110. You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.

135. It is not clear how the Applicant suggested this paragraph had been breached; and the Tribunal did not find that it had been. There was never any request for the Code made by him.

111. You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.

136. It was suggested by the Applicant that the tone of the email from the Respondent sent on 12 July 2021 (paras.96 and 97, above) was threatening, by referring to potential legal action. The Tribunal does not consider that this was a breach of the Code. The threat of legal action was raised initially by the Applicant (perhaps justifiably) as a means to underline that he was serious about pursuing his complaint. It is acceptable in that context for the Respondent to respond by making clear its position in relation to any potential action, including any further action it might seek to take. That may in a trivial sense be a 'threat'; but the context of the use of the word 'threatening' in the Code indicates that something more menacing than simply informing a party of how one will react to its proposed action is meant.

Complaints resolution

112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.

137. The failings in regard to the Respondent's operation of its complaints procedure are described above. It does have a procedure which is adequate in regard to the specifications of this paragraph of the Code. It was not asked specifically to provide a copy of the procedure by the Applicant. There was therefore no breach of this paragraph.

SECTION 2
Overarching standards of practice

17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).

138. The Applicant alleged that this paragraph was breached by the Respondent failing to inform him of necessary repairs, respond to the tenants' complaints, inform him of the same, and inform him that the tenants had failed to pay the final rental payment. As described above, the Tribunal did not find that the Respondent failed to communicate appropriately in regard to the repairs issues at the Property. While it did find there was a failing in regard to letting the Applicant know that the final rental payment had not been made, it does not consider that that failure was a failure to be, "honest, open, transparent [or] fair." There was no deliberate attempt to conceal this information; simply a failure to pass it on at the appropriate time. There was therefore no breach of this paragraph.

19. You must not provide information that is deliberately or negligently misleading or false.

139. The Applicant's allegation of a breach of this paragraph was again intermingled with his complaints about the handling of the repair of the bathroom. For the reasons set out above, the Tribunal did not find that the Respondent's communication regarding that issue was deficient. The Applicant did also specifically refer to the question of who was to take forward the referral to the buildings insurer. Both parties were left with the impression that the other was doing this (see para.32, above). This was a simple

misunderstanding; and the Tribunal did not consider that the communication giving rise to it could be characterised as, “deliberately or negligently misleading or false.” There was therefore no breach of this paragraph of the Code.

20. You must apply your policies and procedures consistently and reasonably.

140. It follows straightforwardly from the Tribunal’s findings in regard to the Respondent’s failure to follow its complaints procedure that there was also a breach of this paragraph.

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

141. Concerning this paragraph, the Applicant again referred to his perception that there were failings in regard to dealing with repairs and in answering emails. The Tribunal has not found that there were such failings regarding repairs. The failings that there were in terms of communications have been set out above at length. These fall short of being a failure in themselves to carry out services using reasonable care and in a timely way. The communications are not themselves a service, so do not fall under this paragraph.

26. You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.

142. It follows from the Tribunal’s findings regarding failings in dealing with complaints and enquiries under paragraph 108 of the Code that this paragraph was also breached.

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.

143. It follows from the Tribunal’s findings regarding breaches of paragraphs 78 and 93 of the Code that this paragraph was also breached.

28. You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.

144. It follows from the Tribunal's finding regarding there being no breach of paragraph 111 of the Code that there was no breach of this paragraph.

LAEO

145. The legislation is clear that, where the Tribunal finds there to have been a breach of the Code, an LAEO must be made to rectify that breach. That may include an order for payment of compensation.

146. Rectification of the breaches found in this case is not easy. They relate almost entirely either to a failure to communicate or a failure to deal with complaints. The result of those failures was that the relationship broke down irreparably between the parties. That was not entirely the fault of the Respondent; but the Respondent may have been able to avert it, if it had engaged more professionally with the Applicant, taking care to answer his queries promptly, and dealing with his complaint according to its own procedures. The Tribunal therefore considers that it is appropriate that an LAEO make a requirement that it apologises to the Applicant for having failed to comply with the Code. This is the only rectification that can now be achieved.

147. The Applicant lost the opportunity to claim for £296 of work that had to be done following the tenants leaving from the deposit as a result of the Respondent's failure to pursue payment of the final month's rent. The Respondent will be ordered to compensate him for this sum.

148. The Applicant has also been put to considerable inconvenience in having to pursue unanswered correspondence and attempt to get an answer to his complaint. The Tribunal considers that a reasonable estimate of compensation for that would be £1,000.

149. It is reasonable to require these steps to be carried out in no longer than two weeks.

150. The Applicant also asked to be compensated for charges incurred in re-advertising the Property for let and lost rental income, on the basis that he considered the Respondent was responsible for the tenants leaving. The Tribunal has not found that that was the reason for the tenants leaving, so no further award will be made under this head.

151. Finally, the Applicant also sought a refund of the management fees for the final 12 months of the Respondent's management of the Property. The Tribunal does not

consider that such an award is merited. The Respondent did fail to adhere to the Code fully, but it did not fail in regard to any of the fundamental services it was providing in regard to management. Insofar as it did fail to adhere to the Code, these failing are already compensated for in the awards described above.

Decision

152. The Tribunal finds that the Respondent breached the terms of paragraphs 20, 26, 27, 75, 77-79, 93 & 108 of the Code.

153. The Tribunal will make an LAEO requiring the Respondent to apologise to the Applicant for its failure to comply with the Code; and pay him the sum of £1,296 in compensation for expenditure he could otherwise have recovered and inconvenience; all within two weeks of the date of the order.

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.

30 May 2023

Legal Member/Chair **Date**