

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision on an application made under Section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/18/0833

**176 Ferry Road, Monifieth, Angus DD5 4QB
("the Property")**

The Parties:-

**Ms Katherine Whalley, 6 Strathspey Place, Broughty Ferry, Dundee DD5 1QB
("the Applicant")**

**Westburn Services Property Management, 124 King Street, Broughty Ferry,
Dundee DD5 1EW
("the Respondents")**

Tribunal Members:

**Graham Harding (Legal Member)
Gordon Laurie (Ordinary Member)**

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') having made such enquiries as it saw fit for the purposes of determining the application determined that the Tribunal did not have jurisdiction in respect of the Applicant's complaints relating to any alleged breaches of the Letting Agent Code of Practice that predated the coming into force of the said Code of Practice on 31 January 2018 and further determined that in so far as the Tribunal did have jurisdiction in respect of the Applicant's remaining complaint whilst the Respondents had breached Section 6 (105 and 106) of the said Code of Practice it was not necessary in all the circumstances to make a Letting Agent Enforcement Order.

The decision is unanimous

Introduction

In this decision the Housing (Scotland) Act 2014 is referred to as "the 2014 Act"; the Letting Agent Code of Practice is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

The Respondents' duty under section 48(1) of the 2014 Act to comply with the Code arises from the date it came into force namely 31 January 2018.

1. By Application dated 6 April 2018 the Applicant complained to the Tribunal that the Respondents had breached Sections 2, 3, 4, 5, 6, 7 and 8 of the Code.
2. By Notice of Acceptance dated 16 April 2018 a Convenor with delegated powers referred the Application to a Tribunal.
3. By application dated 11 May 2018 the Respondents requested that the hearing assigned for 29 June 2018 be postponed and for the time for lodging written representations to be extended. The hearing was put back to 1 August 2018.
4. Both parties submitted written representations to the Tribunal in advance of the oral hearing which was held on 1 August 2018 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee.

Hearing

5. The hearing was attended by the Applicant and by Mr Jack Ramsay and Mr Kenneth Ramsay on behalf of the Respondents.
6. At the commencement of the hearing the Tribunal indicated that it was of the view that the question of the Tribunal's jurisdiction in respect of certain aspects of the Applicant's complaints required to be addressed by the parties as a preliminary matter. It appeared to the Tribunal that the contract between the parties had, with the exception of the repayment of the deposit to the Applicant, ended prior to the coming into force of the Code on 31 January 2018. The Tribunal asked the Applicant to state the basis on which she believed the Tribunal could deal with her complaints against the Respondents that pre-dated the coming into force of the Code and were not continuing after 31 January 2018.
7. The Applicant explained that she had sought advice from the Landlords Association and they had told her that she could complain to the Tribunal in respect of all of the issues contained in her application. The Applicant did not have any further submissions with regards to jurisdiction and accepted that as the tenants had vacated the property in November 2017 the contract had effectively come to an end with the exception of the repayment to her of the deposit that ought to have been forfeited by the tenant.
8. Mr Kenneth Ramsay for the Respondent advised the Tribunal that he had not given any thought to the issue of the Tribunal's jurisdiction but in his written submissions had simply answered the points made by the Applicant in her complaint. He confirmed however that the contract with the Applicant had effectively ended when the tenant vacated the property in November 2017.
9. Having heard the submissions from both parties the Tribunal concluded that it did not have jurisdiction to determine the Applicant's complaints in respect of

any issues that arose before and were not continuing after 31 January 2018. The Tribunal therefore in terms of Rule 27(1) of the Rules dismissed the Applicant's complaint in respect of the alleged breaches of Sections 2, 3,4, 5, 6 (101 and 104), 7 and 8. The Tribunal then heard submissions from the parties in respect of the Applicant's remaining complaint that the Respondents had breached Section 6 (105 and 106) of the Code and had failed to take reasonable steps to come to an agreement with the tenant about repayment of the deposit and had failed to follow the deposit scheme rules.

Summary of submissions

10. The Applicant explained that in her opinion the deposit should have been retained by the Respondents to cover the damage done to the property by the tenant. Instead the Applicant had been told it was to be retained for loss of rent.
11. The Applicant said that when she met with Mr Kenneth Ramsay in January 2018 she had been told that the deposit was in dispute and that he would follow this up. She said she did not understand why it could be in dispute. The Applicant said she subsequently contacted Safe Deposits on 30 January and was told that the deposit had been repaid to the tenant after the tenant's application had been approved by the Respondents online on 27 December 2017.
12. The Applicant said that in a subsequent email from the Respondents it was confirmed that they would refund the deposit but that this had still been outstanding when the application to the Tribunal was prepared although the deposit had been paid to her bank account less £80.00 due in respect of a plumber's bill on 5 March 2018.
13. The Applicant was of the view that the tenant ought to have been billed for the plumber unblocking a drain as she had lived in the property for 15 years and during that time the drains had never been blocked. The tenant had been in the property for less than a year and the drains had blocked on three occasions. It therefore followed that it must have been something the tenant was doing that was causing the blockages. The Applicant therefore thought the Respondents ought not to have deducted the £80.00 from the deposit.
14. The Applicant was of the view that the Respondents had breached the Code by failing to deal properly with the refund of the deposit.
15. For the Respondents Mr Jack Ramsay accepted that there had been an error on his part and that he had mistakenly authorised the repayment of the deposit to the tenant believing it to be in respect of another property.
16. Mr Kenneth Ramsay said that initially he had thought that there had been a backlog in processing the return of the deposit hence the initial misinformation to the Applicant but that when it became apparent that the Respondents had mistakenly authorised the refund of the deposit to the tenant they had paid the

deposit themselves to the Applicant in full less a deduction of £80.00 in respect of an outstanding plumber's bill for unblocking a drain at the property.

17. Both Mr Jack Ramsay and Mr Kenneth Ramsay said that the Respondents were entitled to deduct the £80.00 from the deposit as the report from the plumber, Bruce Lonie indicated that the cause was several bad joints in the pipework that might cause snagging. The tenant had been told to only put the "three Ps" down the drain.
18. Mr Kenneth Ramsay acknowledged that there had been matters that could have been dealt with better by the Respondents and that as a result they had changed some of their procedures.

The Tribunal make the following findings in fact:

19. The Applicant is the owner of the property.
20. Between January 2017 and December 2017 the Respondents provided letting agent services to the Applicant.
21. On 27 December 2017 the Respondents mistakenly authorised repayment of the tenant's deposit back to the tenant.
22. At the beginning of March 2018 the Respondents paid the deposit to the Applicant from their own funds less £80.00 due in respect of a plumbing bill for unblocking a drain at the property.
23. Although the cause of the blockage may have been due to material put down the drain by the tenant the plumber's report indicated that the cause was faulty pipework. The Respondents were entitled to recover payment from the Applicant.
24. Although the Respondents failed to comply with Section 6 (105 and 106) of the Code, on realising their error the Respondents reimbursed the Applicant from their own funds.

Reasons for Decision

25. As the Code did not come into force until 31 January 2018 and as the services provided by the Respondents other than dealing with the refund of the tenant's deposit had ended prior to that date it was not within the Tribunal's jurisdiction to determine the Applicant's complaints other than the issue surrounding the return of the deposit.
26. The Respondents were clearly to blame for authorising the refund of the deposit to the tenant when there was rent outstanding and where there was potentially liability on the tenant's part for damage caused to the property.

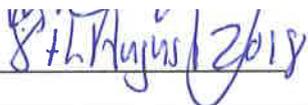
27. By failing to deal with the deposit correctly the Respondents were in breach of Section 6 (105 and 106) of the Code.
28. Given that the Respondents have acknowledged their mistake and paid the Applicant the deposit from their own funds the Tribunal was of the view that in all the circumstances there was no need to make a Letting Agent Enforcement Order.
29. The Respondents were entitled to deduct the £80.00 plumbing bill from the amount refunded to the Applicant as the report from the plumber noted that there were problems with the joints in the pipework.
30. The Tribunal's decision was unanimous.

Appeals

A homeowner or property factor 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.

G Harding

Legal Member and Chair



Date