



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

**Reference number: FTS/HPC/LA/21/1624**

**Parties:**

**Mr James Scott, Flat 2-1 Merlin Avenue, Edinburgh, EH5 1FR (“the Applicant”)**

**Lowther Homes Ltd., Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the Respondent”)**

Karen Kirk (Legal Member) and David Godfrey (Ordinary Member)

**1. The Hearing**

This Hearing was a Hearing fixed in terms of Section 48(1) of the Housing (Scotland) Act 2014 and concerned an application by the Applicant against the Respondents for failure to comply with the Letting Agency Code of Practice in terms of the Letting Agent Code of Practice (Scotland) Regulations 2016 (the code) at paragraphs 17, 18, 19, 21, 23, 26, 43, 44, 68, 90 and 95. The hearing took place by teleconference due to the covid-19 pandemic.

**2. Attendance**

The Applicant attended personally together with his representative who also resides at the property Richard Chalmers.

The Respondents were not in attendance and they were not represented.

**3. Decision of the Tribunal (in Absence)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having made enquiries as it saw fit for the purposes of determining whether the Letting Agency has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that**

1. **The Respondent failed to comply with the Code of Practice at Paragraphs 26 and 68.**
2. **It was appropriate to order the payment of compensation in respect of those breaches of the code in terms of Section 48 of the 2014 Act by the Respondent to the Applicant for the sum of £500.**

#### **4. Process and Preliminary Matters**

1. The Tribunal had earlier issued directions to the Respondent in the Application. On the 17<sup>th</sup> November 2021 at an earlier Hearing the Tribunal issued the following Directions to the Respondent in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

*The Respondent is required to provide:*

1. *The Inventory and related information at the outset of the tenancy between the parties for the property at Flat 2-1 Merlin Avenue, Edinburgh EH5 1FR.*
2. *All complaint information and responses between the parties for the property at Flat 2-1 Merlin Avenue, Edinburgh EH5 1FR.*
3. *A copy of the Respondent's complaint policy.*
4. *A copy of the Respondent's repairs policy.*
5. *A written response summary to the paragraphs of the Letting Agency Code of Practice referred to in the Application.*
6. *All reports regarding noise and the water pumps supplying the properties at 2-1 Merlin Avenue, Edinburgh EH5 1FR referred to as being instructed by the Respondent at the Hearing dated 17<sup>th</sup> November 2021.*

*The said documentation was to be lodged with the Chamber no later than close of business on 15<sup>th</sup> December 2021.*

The Respondent at the Hearing on 17<sup>th</sup> November 2021 explained that they were instructing a second opinion on the operation of the water pumps to the property and the noise levels in terms of the pumps. It was relevant that this information be available to the Tribunal. In addition further information was considered necessary as detailed

2. The Respondents did not comply with the Directions.
3. On the morning of the Hearing there was no appearance by the Respondent nor had there been any contact from them. The Tribunal explained to the Applicant that if they wished a decision to be reached in absence any decision may be affected by the Respondent's lack of compliance with the Directions issued due to a potential lack of material evidence. The Applicant explained they understood this but wished to proceed with the Hearing and the Tribunal determined it was in the interests of justice and the Overriding objective of the Tribunal to proceed in the absence of the Respondents. The Respondent's had failed to comply with Directions issued and had not appeared at the Hearing.

4. The Applicant lodged with the Tribunal a stage 2 complaint document sent to him by the Respondents which had not been lodged with the Tribunal. The Tribunal allowed same to be lodged late.
5. The Applicant had also lodged their own Noise report instructed since the last Hearing and which had been lodged and intimated on the Respondents.

## **5. Summary of Evidence**

### *The Applicant - Evidence Summary*

1. The Applicant sought to establish in terms of his application that the following paragraphs of the Letting Agency code had been breached, namely paragraphs, 17, 18, 19, 21, 23, 26, 43, 44, 68, 90 and 95.
2. The Applicant set out that he was 69 years of age and Mr Chalmers was 29 years of age, they both work and Mr Chalmers is prescribed medication due to the effect of the issues with the property on his health. The Applicant set out that his overall position was that there were a number of issues at the outset of the tenancy which caused considerable stress in particular the constant noise which they had endured and continue to do so. They submitted that in the bedroom of the property there was constant noise from a water pump servicing the property and the other properties in the building. They had instructed their own report and this had concluded that the noise was borderline acceptability for night time noise. They submitted that they endured the noise 24 hours of the day and they hardly get any sleep in the bedrooms of the property.
3. The Applicant set out they made a complaint to the Respondents on May 7<sup>th</sup> 2021. The Respondents acknowledged the complaint on 7<sup>th</sup> May 2021 confirming that they would reply in 5 working days. The Applicant did not receive a reply. On enquiry the Applicant decided to lodge a stage 2 complaint and sent this to the Respondents on 1<sup>st</sup> June 2021. The Respondents provided a reply on 22<sup>nd</sup> June 2021. In that reply on a communication issue the complaint was upheld but no other areas of the complaint were upheld.
4. The Applicant told the Tribunal that they had moved from another property they had resided in for 7 years in haste due to noise and antisocial behaviour from neighbours. This property was let from a different part of the Wheatley group who also own the Respondents organisation. They said that new neighbours had moved in underneath them and the Applicants endured noise and antisocial behaviour from around December 2020. The Applicants said that these neighbours tried to force their way in to their property to attack them. The Applicant said they had been unable to seek help from their landlords but they were then offered this new tenancy at the property that had become available. They moved with little notice having electronically signed the tenancy. The Applicant told the Tribunal that when they got to the property the previous tenant was in the process of moving her belongings out and there was no inventory provided or prior viewing available. The Applicant said that they had asked

to view the property but there was no option due to covid and they could not get photographs. The property they said in their view was not as the Respondent's described.

*Paragraph 17*

5. The Applicant set out that they consider that the Respondents breached this paragraph of the Code as the Respondents failed to tell them the condition of the property. The Respondents told the Applicant that the property was in a good condition and had no problems. The Applicant disputed this. They said that the property had no blinds or curtains or anywhere to hang them. The property had no heating, broken lights, a broken dishwasher, the washing machine was broken and all the extractor fans were also broken. The Applicant said the Respondent did not inform them the property was a mid-market property and their council tax band changed doubling their council tax liability. The main issue however was the noise emanating from the water pump in the communal area below the flat.
6. The Applicant said that a Mr Scott from the Respondents told them that the property was in good order but when they spoke to the previous tenant no one had checked the property and the Applicant wrote down 12 complaints about the property when they obtained the keys.

*Paragraph 18*

7. The Applicant explained they had not been told about the increased council tax liability or the condition of the property and there had been no inventory carried out.

*Paragraph 19*

8. The Applicant said that they were told the property was in a good condition when this was not the case. The extractor fans they said were not working at the time and work was carried out to repair them. The Applicant said there were 3 visits for repairs to get them working and that as there were no windows only patio doors they are necessary. The Applicants said there had been 6 visits by engineers to fix underfloor heating, who said 'we don't do underfloor heating' and we had 3 visits for extractor fans.

*Paragraph 21*

9. The Applicant submitted that the underfloor heating to the property only worked in the hallway and living room, with both bedrooms not having heating. The Applicant said the Respondents failed in terms of this paragraph as they did not provide a fully functional home.

*Paragraph 23*

10. The Applicant submitted that the contractors did not know what they were doing in terms of skill regarding the underfloor heating. They further submitted that contractors were still sent out even though the repair was cancelled due to the Applicant's self isolating.

*Paragraph 26*

11. The Applicant's position was that the Respondents did not respond to their complaint in May 2021 after saying they would do so in terms of their policy in 5 working days. The Applicants in the absence of a reply submitted a stage 2 complaint. A reply to the stage 2 complaint was received and a copy was provided to the Tribunal. .

*Paragraph 43*

12. The Applicant submitted that the Respondent did not give them all relevant information about renting the property. The Applicants said they were not told the council tax band or the fact that the white goods were not working.

*Paragraph 44*

13. The Applicant submitted that they were not able to view the property and that this was contrary to the code. They told the Tribunal that if they had been able to see the property then they would have heard noise from the downstairs pump immediately and would not have taken the property.

*Paragraph 68*

14. The Applicant considered that the Respondent's breached this paragraph as they were responsible for the check in process and did not complete an inventory or take steps to do so.

*Paragraph 90*

15. The Applicant's evidence was that the Respondents did not deal with the repairs promptly. In particular the noise from the water pump having regard to the nature and urgency of the repairs as they had to instruct a report and report the repairs that were present at the outset.

*Paragraph 92*

16. The Applicant submitted that the Respondents did not give reasonable notice of when access was required. They submitted that the Respondents did not tell them contractors were coming out at the start of May 2021. The Applicant said that when they were isolating due to Covid on another occasion they informed the Respondents and they also sent another contractor out without notifying the tenants first.

**17. Submissions**

*For the Applicant*

The Applicant made submissions that the Respondents had on numerous occasions in his view breached the Letting Agency Code. He said the Respondents failed to deal with and investigate the noise from the water pump. The Applicant considered that the Respondents failed to communicate in regards their initial complaint and they

were not told material information regarding council tax banding. The Applicant said the property was not in good condition and that overall in reference to their report which they commissioned they were having to deal with constant noise which was borderline and they said unbearable.

The Applicant said that they take turns sleeping in the living room as they both work and require to do so to ensure they can sleep given the level of noise in the bedrooms. The Applicant's position was that Mr Chalmers was mentally destroyed by the failings of the Respondent, who they submitted failed to protect them and as a result medication had been prescribed.

## **7. Findings in Fact and Law**

### *Tenancy Commencement*

1. On 15<sup>th</sup> April 2021 the Applicant entered into a Private Residential Tenancy for the Property. He did so alongside the Joint Tenant Richard Chalmers. The PRT was signed remotely. The Tenants previously resided at Flat 4/6 Moredun Park Green, Edinburgh (the previous property) for on or around 7 years.
2. The Applicant and Mr Chalmers's tenancy at the previous property was with a landlord who is part of the same group as the Respondents. The applicant and Mr Chalmers from on or around December 2020 had endured anti-social behaviour and noise from a new neighbour who moved in below them at the previous property. One of the new neighbours entered the previous property and the Applicant and Mr Chalmers considered this was to attack them. The Applicant and Mr Chalmers called the police and sought help from the landlord.
3. The Respondents as part of the same group as the landlord for the previous property in haste offered the Applicant and Mr Chalmers a PRT for the property. The Applicant and Mr Chalmers signed the PRT remotely on 15<sup>th</sup> April 2021 and moved in the same day or close to the same day that they had been offered the PRT. They required to move out urgently.

### *The Property*

4. The Respondents were told they could not view the property due to covid but they were told it was in good condition. They had no inventory and on arriving to moved into the property found that the previous tenant was still moving out.
5. The Applicant and Mr Chalmers did not consider the property was in good condition. They noted a constant noise which could be heard particularly in the bedrooms, the dishwasher and washing machine to be broken, the extractor fans to not be working and the underfloor heating in many of the rooms was not working. They came to realise that the council tax banding for this flat was higher and their liability increased in cost compared to the previous property.

6. The Applicant and Mr Chalmers both work and find it difficult to sleep in the bedrooms of the property due to the constant noise from the water pump.. They submitted a complaint to the Respondents on 7<sup>th</sup> May 2021. This was acknowledged but the Respondents did not further contact the Applicant as they had stated in their acknowledgement.
7. After receiving no response the Applicant and Mr Chalmers submitted a stage 2 complaint on 1<sup>st</sup> June 2021. This was replied to on 22<sup>nd</sup> June by the Respondents.

*The Code*

*Paragraph 17*

8. The Respondents did not reach paragraph 17 of the code. Whilst the Respondents could have provided a more accurate picture of the property with the benefit of more time the reality was that the Respondents sought to have the Applicant and Mr Chalmers move in to the property urgently during the pandemic restrictions. The Applicant and Mr Chalmers benefited from the urgent move as they were in a difficult situation at the previous property. Whilst the Applicant and Mr Chalmers did not agree the property was in a good condition even if this could be established on the evidence provided which was insufficient to do so the Tribunal considered this would not mean that the Respondent's had not been honest, open, transparent and fair.

The Applicant contends that the Respondent did not inform him of the increased Council Tax liability however the lease clearly states that the Tenant is responsible for payment of Council tax and the applicant could and should have investigated the Council Tax banding which is publicly available prior to entering into the tenancy.

The Applicant also contends that the Respondent stated that the property was in good condition however as the Applicant was keen to move into the property as soon as it became available, the Respondent did not have the opportunity to inspect the property between tenancies and there is no evidence to suggest that the previous tenant had notified any outstanding issues to the Respondent.

*Paragraph 18*

9. The Respondent's did not breach paragraph 18 of the code. The PRT signed by the Applicant and Mr Chalmers narrated the liability for council tax and the obligations relevant.

*Paragraph 19*

10. The Respondent's did not breach paragraph 19. The Tribunal was not provided with any evidence in which there could be a finding of the Respondent's providing deliberately or negligently misleading or false information.

*Paragraph 21*

11. The Respondents did not breach paragraph 21 of the code based on the evidence provided. They carried out their services with reasonable skill and care. The Respondents explained to the Applicant that the property was in good condition. The Applicant averred that the Respondents did not provide a fully functional property. Whilst remedial works appear to have been required at the outset this did not breach a reasonable standard and skill and care on the basis they were needed. The services provided by the Respondent may have been affected by the pandemic.

*Paragraph 23*

12. The Respondents did not breach paragraph 23. The Tribunal was not provided with any evidence in which there could be a finding that the Respondent's did not ensure all staff and any subcontractors were aware of the code and the relevant legal requirements.

*Paragraph 26*

13. The Respondents breached paragraph 26 of the code. They failed to comply with their own email stating their procedure was to provide a response within 5 working days. The Applicant had to then sent another complaint to seek a response which the Respondent's did then reply to.

*Paragraph 43*

14. The Respondents did not breach paragraph 43. There was no obligation that the Respondents provide details of the level of council tax or the band instead the PRT entered into by the Applicant confirmed the liability for council tax and the Applicant and Mr Chalmers were aware of the locality and the address. The Tribunal did not consider that the level of tax liability was something that was relevant to this part of the code.

*Paragraph 44*

15. The Respondents did not breach paragraph 44. The pandemic was provided by the Respondents as the reason for the fact the Applicant could not view the property before they commenced the Tenancy. They accepted this and the paragraph narrates the arrangements and how to apply for a viewing rather than an obligation that one should take place.
16. Paragraph 68
17. The Respondents did breach paragraph 68. Contrary to the situation regarding the viewing there appeared no discussion or arrangements to consider an inventory. This places the responsibility on the Applicant and Mr Chalmers regarding communicating the condition of the property at the outset and meant that it was more difficult at the commencement of the tenancy than it should have been had thought been given by the Respondent's to their obligations on the commencement of the tenancy.

*Paragraph 90.*

18. The Respondents did not breach paragraph 90. The Respondents on the evidence instructed the Factor to investigate the noise from the pump and advised the applicant that the Factor did not accept that there was an issue with the noise and this was intimated to the Applicant in a letter of 7<sup>th</sup> May 2021. We are not sure what more the Letting Agent could do here. The report obtained by the Applicant does not show that anything further or more urgent action was indicated.

*Paragraph 95.*

19. The Respondents did not breach paragraph 95. There was no evidence regarding any contractor or third party not having the necessary qualifications provided to the Tribunal.

## **8. Reasons for Decision**

The Tribunal had the benefit of written evidence in the form of what appeared to be email communications between parties during the relevant time period, as well as copy complaint correspondence and a noise report instructed by the Applicant. The Tribunal also had the benefit of written representations lodged by the applicant together with the oral evidence of the Applicant and Mr Chalmers. The Applicant and Mr Chalmers provided their evidence together. The Tribunal determined that the Applicant and Mr Chalmers were credible and gave honest evidence which at times was not straight forward possibility due to their lack of knowledge of the code and the Tribunal process. The Tribunal assisted them in so far as they could to obtain the necessary evidence to determine the Application given the non-appearance and

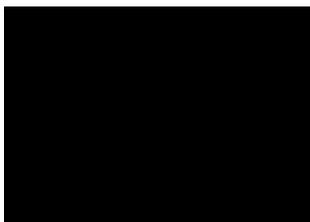
compliance of the Respondents. The Tribunal was concerned that the Respondents as a professional organisation had appeared previously and confirmed they were taking steps regarding the property which they then did not do and neither did they appear at the Hearing or comply with the Directions issued by the Tribunal.

The Tribunal noted that from the outset however that much of the evidence that was provided by the Applicant and Mr Chalmers was not entirely relevant to a number of the paragraphs of the code they averred that the Respondent's breached. In many respects there was a lack of evidence and relevance in terms of the Application generally. The Tribunal also considered that whilst matters at the outset were not ideal it appeared that the Respondents were doing what they thought best to protect the safety of the Applicant and Mr Chalmers at a time when covid restrictions were in place. The Applicant instructed their own noise report but this did not conclude that there was a breach in regulations although the noise was just below the level which is considered acceptable. Nevertheless the Respondents did not provide a complaint response as they ought to and as they specified they would, they did not make any arrangements for an inventory. The breaches of the code caused inconvenience and difficulty for the Applicant and Mr Chalmers, who endured significant distress and much of that could have been avoided or minimised had the Respondents complied fully with the code as well as engaged with the Respondents better and the Tribunal process.

Accordingly the Tribunal considers in their discretion having regard to all the factors in this case consider it is appropriate that the Respondent's make payment of the sum of £500 to the Applicant in terms of S48 of the Housing (Scotland) Act 2014.

### **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.**



26/1/22

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**Legal Member**

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**Date**

