



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014 and the First Tier Tribunal for Scotland Procedure Regulations 2017 Rule 26

Chamber Ref: FTS/HPC/LA/21/2131

Parties:

Mrs Clare Thomson “the Applicants”

Belvoir Falkirk (the letting agent and “the Respondent”)

Tribunal Members:

Jan Todd, Chairing and Legal Member and Tony Cain, Ordinary Member

Decision

There is no failure to comply with the Letting Agent Code of Practice

Background

1. This was an application by the Applicants for compensation for alleged breaches of the Letting Agent Code of Practice, all in terms of Section 48 of the Housing Scotland Act 2014.
2. Section 48 of the Act states (so far as relevant to this application)
3. “Applications to the First Tier Tribunal to enforce the 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 ...in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant
 - (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
 - (10) (b) a landlord include a former landlord
- 4. The Applicants let the subjects of let namely 57Longdales Avenue, Falkirk to Mr Ryan Smith and Ms Stephanie MacDonald from around 28th February 2019 to 31st July 2021. The Respondents, Belvoir Falkirk Lettings were the letting agents
- 5. The Applicant complains of alleged breaches by the Respondent of the following paragraphs of the Code of Practice namely Section 7. The Applicant has not specified which paragraphs from paragraph 107 to 116 she felt were breached but does state it is in relation to poor communications for over a year on various issues.
- 6. Communication issues are set out under paragraphs 107 -111 inclusive.
- 7. The Applicant is seeking compensation firstly of
 - 1. a full refund of management fees Belvoir took from September 2020 to July 2021
 - 2. A call out fee and 2 hours fees for Glenda (Bayne a friend of the Applicant) removing all the rubbish from the flat down 3 flights of stairs
 - 3. Cleaning fees and costs for replacement mirror/ toilet seat
 - 4. Compensation costs for unnecessary stress caused by Belvoir Falkirk for the last year.
- 8. The annual management fee charged by the Respondent to the Applicant is £725.79 being the sum paid to the Respondents for managing the Property .

9. The Applicant sent a Letting Agent pre -notification letter to the Respondents setting out her complaints on 19th August 2021. The Respondents replied in detail to that letter attaching comments to each paragraph by e-mail response on 10th September 2021. (See below under each complaint for the details). The Applicant acknowledged this and wrote back advising that they had not addressed her claim for compensation and advising that she would be raising her action with the First Tier Tribunal for Scotland. A further response was provide by Ms Jacqueline Shields the assistant branch manager of the Respondents on 22nd September 2021 offering an apology if the Applicant felt she had not had the highest level of service and apologising for the invoice situation with the new kitchen not being resolved effectively and the lack of communication regarding the storage of the kitchen. In addition the Respondent offered to pay £250 as a goodwill gesture.
10. The Applicants then lodged their application alleging a breach of the Code of Practice on September 2021 together with a copy of the pre notification letter, copy of the Respondents response, and numerous e-mails between the Landlord and the Letting Agent.
11. Prior to the Hearing, the Applicant advised the Tribunal by letter dated 19th October 2021 that she would be unable to attend the Hearing fixed for 8th November giving detailed reasons for this, including that she lived in Australia and the time difference would not work for her to call in. The Tribunal clarified if she wished to ask for a postponement but the Applicant advised she wished the hearing to proceed in her absence. The Tribunal noted that she had lodged a large number of e-mails and had made written submissions and agreed it would be appropriate to proceed in her absence taking account of the written evidence. The E-mails and written submissions are referred to for their terms.
12. The Tribunal also received and had regard to the detailed written representations from the Respondent including response to the notification letter, copy e-mails regarding the kitchen, the tenant leaving and the removal of rubbish.
13. In addition both parties lodged additional and lengthy documentation after the Tribunal issued a direction after noting the Applicant had indicated she would not be able to attend the teleconference hearing at 10am on 17th November because she is resident in Australia, that the time difference would not facilitate her joining the call and that she was content to allow the hearing to proceed with her position being set out in the documentation she had lodged.
14. The Additional information that was lodged comprised:-
 - (1) An e-mail from the applicant dated 19th October containing additional representations
 - (2) 3 further e-mails from the Applicant dated 5th and 8th November containing copy e-mails and representations in response to the Tribunal's direction
 - (3) Written representations from the Respondent dated 28th October
 - (4) 2 further e-mails from the Respondent dated 11th November in response to the Direction containing over 160 pages and comprising various e-mails between the parties and the respondent and the tenants.

The First Hearing on 17th November 2021

- 15.** The hearing commenced at 10am on 17th November 2021 and was conducted by teleconference in view of the continuing need for social distancing. The Applicant was not present but had indicated that she was happy for the hearing to proceed in her absence.
- 16.** The Respondent was represented by Ms Jacqueline Shields the assistant branch manager with Belvoir Falkirk. Ms Shields advised she had no witnesses to call.
- 17.** The legal member started by outlining the three complaints the Applicant has and then started to ask some questions of Ms Shields. Ms Shields was able to confirm some background information regarding the tenancy i.e. that it commenced on 28th February 2019 and ended when the tenants left on 31st July 2021. She also confirmed the deposit of £565 was lodged with Safe Deposit Scotland. Under questions from the legal member regarding what discussions took place about the installation and purchase of the kitchen in October 2020 Ms Shields advised she was not able to provide any information about this, she advised that most of the conversations or e-mails were conducted by Wendy Walker a colleague and staff member at Belvoir and the Tribunal noted one of the members of Staff acting for Belvoir in the many e-mails lodged.
- 18.** The Tribunal noted that Ms Shields did not have copies of the documentation lodged, that she had not been directly corresponding with the Applicant so did not have personal knowledge of the communication with the Applicant and that neither Wendy Walker or Gillian Inglis both members of staff who are named as the sender or recipients of various e-mails with the Applicant were available today to give evidence. The Tribunal had a short adjournment to discuss how to proceed and agreed it would only be fair and appropriate to adjourn the hearing on 17th November to allow Ms Shields to attend at another date along with both Ms Walker and Ms Inglis as witnesses and that it would not be fair to proceed otherwise.
- 19.** The Tribunal also noted that in view of the relatively large number of papers now lodged both parties would be required to resubmit their representations and copy correspondence that they have lodged in a proper Inventory of Productions, which needs to provide a numbered list of all items they are lodging, with the attached documents paginated (i.e. page numbers on each document for ease of identification). This way the witnesses at any adjourned hearing will have the appropriate documents before them as will the Tribunal.
- 20.** Ms Shields advised that Ms Walker was leaving the firm and may not be able to attend as a witness. That was confirmed after the hearing was adjourned but she confirmed Ms Inglis would attend. The Applicant again confirmed she was content that the hearing should proceed in her absence given her written representations.

The Hearing on 27th January 2022

21. This was the continued hearing from 17th November 2021 and Ms Shields the assistant branch manager of Belvoir Falkirk once again represented the Respondents and advised that Ms Wendy Walker had left the Respondents and so was not able to attend the hearing. Ms Shields advised that the Tenants in this lease moved in on 28th February 2019 and moved out on 31st July 2021. She confirmed that the Respondents had represented the Applicant who was a landlord who lived abroad in Australia, for 8 years and had always enjoyed a good relationship with her. Ms Shields advised that the Respondent provided a fully managed service which included accompanied viewings, obtaining tenant references, preparing inventories, carrying out inspections and dealing with any issues by reporting them to the landlord and responding accordingly. She confirmed the monthly fee was £62.26 and this was deducted from the monthly rent and was then sent to the landlord. Ms Shields advised that she helped with complaints, check outs and the return of deposits and when necessary would help with viewings. She confirmed that it was Ms Wendy Walker and Ms Gillian Inglis that had the most contact with the Applicant.
22. The Tribunal went through each of the 3 main complaints with Ms Shields and asked for her response.

The first complaint by the Applicant

23. The first complaint regarded the proposed installation of a new kitchen which the Applicant had instructed and the Respondent had obtained quotes for one of which the Applicant accepted and arranged a transfer of funds to pay for this. The Applicant alleged

(1) "In September (2020) I instructed Belvoir to arrange for a new kitchen installation for the flat at 57 Longdales Ave. As per e-mail communication that will be attached to my case I sent the full balance advised by Belvoir to have the kitchen installed by their contractor. 2/3 weeks without update I then messaged Wendy again for an update and was advised that the tenant and contractor had decided to wait until January to install the kitchen? Advice to me the purchaser would be nice. I requested my funds to be returned at this point as the quote I agreed to was the purchase and full installation of a new kitchen. Months pass and in January Wendy informs that the contractor she instructed has requested the balance he paid for the kitchen to be paid to him as due to Covid he could not install it. At this point I am advised that Wendy the tenant and the contractor had agreed to store the kitchen in the spare bedroom of the flat without any acknowledgement or agreement from me the owner. I would not have agreed to this, what if there had been a fire/tenant broke some of the units who would be liable? I said if I was to pay for the kitchen I would need a receipt, a reasonable request you would think as I said my request was always for the purchase and install of the kitchen for the full quote, not the delivery of some units into the spare room of my flat! The contractor instructed by Belvoir was unable to provide a receipt, unusual as most tradesmen need that for tax purposes. After a few months of emails between myself and Belvoir I finally got agreement for the contractor to

remove the kitchen from the flat as I was not going to use a tradesman who could not provide a basic receipt.”

24. Wendy Walker responded to this complaint on behalf of Belvoir saying “The contractor bought the kitchen in the sale to save you money on the purchase of the kitchen. When the kitchen was purchased the Scottish Government announced that we were going back into lockdown and that contractors were not allowed to carry out any work unless it was an emergency. You then asked me to go to the property where I could check the kitchen and take photos, which I did and forward them over to you for your records. I was caught between yourself and the contractor in regards to payment and the invoice as the invoices that received from the contractor were confusing and we asked him to provide one itemised invoice which would make it clearer to understand.”
25. As Ms Shields could not provide much information about the agreement to purchase and install a kitchen Ms Gillian Inglis was invited to comment as the Respondent’s witness.
26. Ms Inglis advised that the kitchen was organised by Wendy Walker, after the landlord had asked for a quote and one was obtained and confirmed by the landlord on 14th October. She confirmed the Applicant sent payment for the kitchen on 15th October. Ms Ingles advised that she was not aware of why the kitchen was not fitted in October but confirmed that she worked on the finances for the Respondent and confirmed that the funds for the kitchen, namely £4885, were returned to the Applicant on 28th October 2020.
27. Ms Inglis confirmed that she was aware that Wendy had asked the contractor for a receipt but contractor handed in some receipts but these were for the purchase of the kitchen units rather than his invoice for the purchase and fitting of the kitchen.
28. She then advised that the kitchen was never fitted as the original kitchen was still in the Property when the tenancy ended but she could not advise why or when any fitting was postponed or when it was taken away but she did know it eventually was taken away and the money was never repaid to Belvoir by the Applicant. The Tribunal noted that the e-mails between the Applicant and Wendy Walker were quite detailed about the instruction to purchase and fit the kitchen, the decision to delay the fitting to January and then various e-mails regarding the subsequent delay and eventual instruction to cancel the kitchen.
29. The e-mails are referred to for their terms and include but are not limited to the following :-
 - (1) Two between the parties on 14th October confirming instructions to proceed
 - (2) 5 e-mails between the parties on 15th October regarding the purchase and asking for money
 - (3) Confirmation on 16th October money is in the account
 - (4) 17th October Applicant mentions she needs receipt for tax purposes
 - (5) 23rd October Applicant asks for update on kitchen
 - (6) 23rd October Respondent replies advising work has not started yet as contractor is working on another job

- (7) 27th October Respondent advises tenant and contractor are asking if kitchen could be fitted in January, the kitchen is on order and this suits both of them
- (8) 26th October 19.17 Applicant replies saying “ that is fine and can you transfer the funds back and I will transfer in January.”
- (9) 14th December Applicant asks if there is a date for instalment in January.
- (10) 17th December the Respondent relies and advises its booked for 25th January
- (11) 4th January 2021 Applicant asks if there will be a delay due to lockdown
- (12) 6th January Respondent replies advising that there will be due to lockdown and the contractor will put it off until beginning of February and see what the restrictions are then. Will get back to Applicant at the end of the month.
- (13) 6th January the Applicant responds saying thanks for the update.
- (14) On 13th January more e-mails regarding the contractor asking for payment as he has bought the kitchen and it is in flat. Applicant asking why the kitchen is in the flat and why the tenant won't let him in.
- (15) 14th January landlord is not happy no agreement for this and she asks for a receipt.
- (16) 11th February the Respondents send a receipt and says the contractor is again asking for money.
- (17) 12th February Applicant replies saying not happy with the receipt and not white units querying the amount.
- (18) 12th February e-mail from Respondent saying she had tried to call the applicant to discuss.
- (19) 13th February further e-mail from Applicant who is dissatisfied
- (20) 15th February further e-mail from Respondent attempting to explain the situation
- (21) 17th February e-mail from Applicant and response from Respondent
- (22) 18th 19th and 20th further e-mails between the parties where the Respondent clarifies the invoice is for the units only because the contractor has paid for these but not fitted it due to the restrictions on contractors carrying out work. The Applicant advising this is not a detailed invoice and not sufficient for tax purposes.
- (23) Varies e-mails in March 2021 asking for update and when the work can be done and replies advising this won't be able to start until the end of April due to restrictions. Further requests for a receipt to which the Respondents advise on 29th March that they have gone direct to the sellers of the kitchen for a receipt, looking for another contractor to do the fitting and contacting the tenants about a date.

The Second Complaint:-

30. The Applicant confirms in her letter of complaint that she decided after what she calls “the fiasco relating to the new kitchen”, to give notice to her tenants and that “we were no longer going to rent the property through Belvoir and in fact I had planned to have my mother move into the flat. I gave the required 3 months’ notice to mid-July as per e-mails attached. After a month the tenant changed the move out date to June which I agreed and accepted. I had planned to replace the kitchen before my Mum moved in so I had arranged my own tradespeople to work on the flat when the tenant moved out in mid-June. I repeatedly asked Belvoir to confirm when the tenant was moving out Wendy provided no update. On the day the tenant was due to move out my friend Glenda who was due to take the keys over was informed the tenant was not moving out and was going to move out 16th July.” the landlord then complains of having to rearrange the tradespeople and losing £200 deposit and a new tenancy for her Mum at short notice. “16th July comes and goes and again on the day they are due to move Belvoir advises they will be staying until the end of July. They couldn’t provide any proof the tenant was indeed moving at the end of July either but thankfully the tenant did move finally on this date.”

- (1) The response from Ms Wendy Walker states “ the tenant had asked if they could extend the tenancy for a few days longer due to them waiting on an entry date for the property they had purchased which you disagreed to. When I called the tenant to say I would be at the Property to carry out the check out in case they wanted to attend they informed they were not intending to move as they had nowhere else to go. Gillian then contacted the tenants and yourself to keep you updated. The tenants were chasing their solicitor for a date so that they could confirm the move out.”
- (2) 10. Ms Inglis advised that she had dealt with correspondence regarding serving notice onto the tenants and that when she was asked to serve notice on 9th April 2021 she replied to the landlord asking why she was serving notice and explaining to the landlord that if the tenants did not move out on a given date that they would have to apply for an eviction order but also the tenants could leave earlier if they give notice.
- (3) 11. On 12th April she advised she received a reply advising that the Landlord’s mother would be moving in so she called the tenant to advise them and arranged and served the notice to leave. The Notice to Leave advised the tenant had to leave by 15th July 2021.
- (4) Ms Inglis confirmed that the tenant advised on 20th May 2021 they had found another property and advised that they would be leaving on 20th June. She confirmed that they advised the landlord and arranged for keys to be handed over on 21st June. On 26th May she advised the tenant asked for an extension of the date to leave as the legal process wasn’t going well for their new property, and they wanted to delay moving until July 16th but the landlord refused. She confirmed they advised the tenant on same day 27th May that the landlord had refused and confirmed that they did not hear anything from tenant until 20th June when they discovered they were not going to move out. Wendy called them and found out they had not moved, Ms Inglis confirmed

that Ms Walker notified Claire (the applicant) that they had not moved out as they had nowhere to go but we would keep in touch. Ms Inglis advised the Applicant was very frustrated and angry as she had booked contractors but she confirmed that she did explain that short of applying to the tribunal there was not much else she could do. Ms Inglis advised that she spoke to the Applicant on the phone a couple of times and e-mailed her. She confirmed the landlord was still not happy and threatened to go to lawyers to evict them as they were squatting.

- (5) 12. Ms Inglis then advised the tenants updated them at beginning July that their mortgage was approved and they hoped to move out by 16th July 2021 and we advised the landlord of this. Ms Inglis then confirmed she was in touch with the tenants once or twice a week leaving voicemails if she did not get an answer and when the tenants advised on 13th July that they would not be able to move out she advised the Applicant of this on the same day that it would be the end of July now. Ms Inglis concluded by saying that the tenants did move out on 31st July and handed the keys back on Monday 2nd August. That she liaised with the landlord about the date they were likely to move out and when the keys were to be handed over and they agreed her friend Glenda would take the keys.

(6) The Third Complaint:-

31. The Applicant narrates her third complaint or issue with the Respondents is in regard to the removal of rubbish at the Property and the cleaning of it. The letter of complaint states: - "1.5 weeks after the tenant moves out and Belvoir have still not arranged for the rubbish removal/cleaning new toilet seat and bathroom mirror for the flat as documented on the check-out report attached. I emailed and requested it be dealt with as a matter of urgency as my friend Glenda had been at the flat daily and was getting very little response from Wendy attached. On Wednesday 11th August Wendy requested my friend Glenda remove all the rubbish from the flat and put it outside down 3 flights of stairs as the person she had arranged to remove would only do so from outside. Belvoir should have been responsible to remove the rubbish from my flat not Glenda. Glenda kindly removed the rubbish downstairs and messaged Wendy a picture of where the rubbish had been left, she requested an urgent pick up as the weather was bad the following days. Wendy advised someone would pick up Thursday or Saturday. Monday Glenda was again at the flat and the rubbish was still there. Glenda messaged Wendy. By Wednesday it was still there and the factor e-mailed me the owner as multiple residents had complained. I advised the factor Belvoir were 100% responsible. To date 19th August the cleaning has still not been arranged as the cleaner that Belvoir has provided details for would only do key pick up/ drop off from Belvoir. You will appreciate after the last year with Belvoir all keys have been taken from Belvoir never to be returned! So Glenda has had to arrange another cleaner also.

32. The Response from Wendy Walker states *“We were arranging the items to be picked up however the person we normally use was busy and couldn’t collect this for 3 weeks. I then contacted a few other people however they were busy again and couldn’t pick items up for several weeks. I managed to find someone to pick the items up however the items had to be put outside as you would not leave us a key for access and they could not give us a time. I spoke to Glenda about this and she agreed to put the items down stairs which we were grateful for her help.*

- (1) *Unfortunately the person got notified by track and trace to say that he had been in contact with someone that tested positive for Covid and he then had to self-isolate, he went for a test after a few days and it was negative so he had to catch up on all the work he had missed.*
- (2) *The cleaning company contacted Glenda to arrange access with her she advised them that she is only available on the Friday as she worked on the weekend, the cleaning company only had the Saturday due to work commitments and Glenda advised that she was not allowed to hand over keys. This did not work with the cleaning company who have a busy schedule and cannot commit to exact times as some of their jobs may run over. Glenda advised she would find another company to carry out the works.”*

33. Re the communications about this the Applicant has lodged on 8th November 2021 a timeline from Ms Bayne of her involvement with the Respondents.

34. She confirms that on

- (1) 2nd August she met Ms Wendy Walker at the property and obtained the keys for the Property, that she noted the property had been left in reasonable condition but it needed a full clean and there were some items needing replaced such as a broken toilet seat which was not attached to the main body of the toilet., a mirror and some light shades/bulbs. She then advised she found many more items in the loft and
- (2) That she removed these items on 4th August putting them in the living room with the other items left in the flat.
- (3) On 5th August Ms Bayne receives a phone call from Ms Walker advising the tenant has given her a mailbox key and requesting access to the Property. Ms Bayne confirms she e-mailed to say she has been instructed “by Claire not to give access. She (Ms Walker) responded with contact details for a cleaning company to contact them directly however I wanted to have the rubbish removed before arranging a cleaner”
- (4) On 10th August Ms Bayne calls the cleaning company and leaves a message.
- (5) 11th August Ms Bayne notes she spoke to Ms Walker on the phone about removal of rubbish and is advised that the original person they had contacted was not available and she had to organise another company and she asked for the rubbish to be moved outside which she and her husband did the next day. Ms Bayne also confirms she spoke with Jacquie at XL cleaning who states she wanted to collect the keys

from Belvoir to carry out a clean and return them there when finished. Ms Bayne advised this was not allowed and she required to be present for the clean to allow access. She notes the cleaning company was not happy with this and a suitable date could not be agreed.

- (6) 12th August Ms Bayne receives an e-mail from Ms Walker stating the person collecting the rubbish would be there either Friday or Saturday (which would be 13th or 14th August) but on arriving at the Property on 16th it still was not removed. She notes she e-mails MS Walker and Ms Inglis who are both on leave. Also notes she asked for a different cleaning company but then arranges to do it herself in consultation with the landlord.
 - (7) 18th and 19th August notes complaints received from other residents about the rubbish outside and on
 - (8) 20th August the rubbish is removed.
35. At the hearing and in response to questions regarding what happened after the tenants moved out Ms Shields confirmed that the check-out was arranged and carried out by Ms Walker on 2nd August 2021; that Wendy noted some minor things to be carried out namely cleaning, clearing some stuff, a shade missing a mirror and some light bulbs and Ms Shields said as far as a I am aware Ms Walker claimed for these items.
36. Ms Shields advised that they had received a quote for cleaning of £100 but that they were advised Ms Bayne would speak to the cleaning company about access but when she did so she understood that Ms Bayne had advised that she needed to be present when they were cleaning and the company said they were busy but would be happy to take the key do the cleaning and hand it back. Ms Shields said this was not permitted by the landlord. Glenda and the landlord then advised Ms Bayne would then do the cleaning and so the Respondents did not try to get another cleaning company to do it.
37. Ms Shields explained that the sum of £70 was claimed from the deposit and this represented £60 for cleaning and £10 for a replacement mirror which was broken. In terms of the toilet seat she advised that there was a spare toilet seat in the property so this was fitted. The £70 was then returned to the Applicant.
38. With respect to the Applicant's comments and complaints that the letting Agent should have brought down the items from the loft, Ms Shields advised that she did not believe the loft had been inventoried at the start of the lease and so they did not know whose property it was in the loft i.e. the tenant's or the landlords. She also said there was no access to the loft so Wendy would not have checked this. She advised that if there are items left in the property then they as letting agents would have a cleaner or other contractor remove them. She confirmed that they had obtained a quote of £90 for a contractor to remove items left in the property but that he could not carry out the work as he was isolating due to Covid. She confirmed that they asked to have keys to the Property to allow someone to attend and collect the items but were advised Glenda had all the keys and they were not allowed to have them. She confirmed the surplus items were then moved outside by Glenda on 11th August but the items were not uplifted until 17th August. Ms Shields advised

- that the contractors were really busy at this time and they struggled to get anyone to carry out this work. It was finally removed on 20th August for £50.
39. She confirmed after that all documentation was given to the Applicant and that was the end of their involvement in the Property.
40. The Tribunal also had before it the letter from the Respondents Ms Shields to the Applicant in relation to all the complaints where she states:-

- (1) *Dear Claire,*
- (2) *Firstly I would like to apologise that you feel you haven't received the high level of customer service we aim to deliver to all our clients. I would also like to apologise that not all of your points were addressed in our previous reply.*
- (3) *I acknowledge the situation with the kitchen was not handled in the best way. While some of this was out of our control especially the delay in fitting the kitchen caused by the country going back into lockdown, I apologise that the invoice situation was not resolved more effectively for you and for the lack of communication regarding the purchase and storage of the kitchen.*
- (4) *Whilst I understand your frustration at the delay to your tenant not being able to move out, this was out of our control. We had no prior communication from your tenants to advise that they would be needing to stay longer after their initial request for an extension. Had we been aware of this we certainly would have let you know so that you could have changed these plans earlier. We did keep in touch with the tenants and informed you of any information we had. I do understand that this made a significant change to your plans and this was very unfortunate, but this was due to a delay with the tenant's purchase of a new home meaning they did not have anywhere to go.*
- (5) *With regards to the cleaning and clearing we are finding that many of our contractors are busier than usual at the moment and some jobs are taking longer than we usually expect. This also isn't helped when a contractor has to isolate which has happened on a few occasions. I'm sorry that a mutually suitable date couldn't be found for our cleaners to attend when Glenda was available however they are all busy at the moment and we couldn't supply a key for access.*
- (6) *I apologise for the added stress this has caused you and Glenda."*
- (7) *Ms Shields goes on to add that she does not agree that a refund of the full management fee is warranted as the Respondents still carried out all maintenance required, arranged and collected all rent and dealt with the service of notice and check out. She advised that they had claimed for the costs of cleaning and clearing the property from the tenant's deposit and this had been forwarded to the Applicant minus the costs incurred by the Respondent. She finishes by adding "Again I apologise that you have found our service less than satisfactory recently and this is certainly not how we wanted this working relationship to end. I would be happy to offer an amount of £250 as a good will gesture in full and final settlement of the matter. I do hope we can conclude on this basis."*

41. FINDINGS IN FACT

42. The Respondents are relevant letting agents for the property the Applicants rents out.
43. The Respondents have on the whole managed the property appropriately and their communications with the Applicant have been mostly appropriate.
44. The Applicant did agree to the request by the tenant to delay the installation to January 2021.
45. The Respondents did fail to advise or seek permission for the contractor to store the kitchen units in the Property although the tenant agreed to this.
46. The Respondent has apologised for this failure and for any additional stress this has caused the Applicant.
47. Installation was delayed due to the restrictions on tradesmen working in homes in January – April 2021.
48. The Respondents served Notice to Leave at the Applicant's request asking the tenants to leave by 15th July 2021
49. The Respondents advised the Applicant that if the Respondent failed to move out on the due date they could not take possession without going to the Tribunal.
50. The Tenants then advised they would leave on 20th June. This was agreed by the landlord but the Tenant did not move out on that date.
51. The Respondent kept the Applicant fully informed about the Tenant's notice and subsequent information from the tenant advising of delays to their intention to move.
52. The Respondent contacted the tenant on a regular basis in the weeks before their actual departure and updated the landlord.
53. The Respondent offered to take the keys and arrange for the removal of rubbish from the inside of the property after the tenants left on 31st July 2021.
54. The Applicant refused to allow the Respondent to have the keys or to allow the cleaners to attend at a time suitable to them without her friend being present.
55. The Applicant's friend cleaned the property and removed items from the property and left them outside.
56. The Respondents arranged to have someone uplift the rubbish from the outside but the contractor failed to attend due to Covid issues.
57. The Respondents had difficulty finding and arranging another contractor due to lack of availability of contractors in August 2021.
58. The Respondent did maintain adequate communication with the Applicant regarding the removal of rubbish.
59. The Respondent has reclaimed for the Applicant sums from the deposit representing £60 for cleaning and £10 for a replacement mirror and £70 has been sent to the Applicant.
60. The Respondent has made an apology for any lack of communication about the kitchen being stored in the Property in January 2021 and any failure in communication; they have also offered compensation which has been refused.

Reasons for the Decision

The Claim

61. The Applicant claim is the Respondents breached the Letting Agent Code of conduct by “poor communications for over a year on a various issues.” The issues highlighted in her pre action letter and subsequent correspondence are the failure keep her adequately advised re the proposals for the installation of a new kitchen, failure around the tenant not moving out at the date advised by them or the original date in the notice to leave and failure to remove rubbish from the flat or have it picked up from outside promptly, failure to arrange for it to be cleaned within 1.5 weeks of the tenant moving out.

62. The Letting Agent Code of Practice

63. **Section 7** deals with Communications and Resolving Complaints and states:-

64. Rule 107 You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act.

65. Rule 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.

66. Rule 109 You must provide landlords and tenants with your contact details including a current telephone number.

67. Rule 110 You must make landlords and tenants aware of the code and given them a copy on request electronically if you prefer.

68. Rule 111 you must not communicate with landlords or tenants in any way that is abusive intimidating or threatening.

69. Rule 112 refers to Complaints resolution and states

70. 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 must go through with reasonable timescales linked to those set out in your agreed terms of business.

71. The Applicant has not referred to any particular rule number in her application but generally to a failure in communication so the Tribunal considered Rules 107 to 111 inclusive and also looked at how the complaints were handled.

72. With regard to Rules 107 and 109 the Tribunal notes that the Respondents details including address, contact number and e-mail are contained on all correspondence as is their letting agent number so finds there to be no failure of these rules.
73. The Applicant has been able to apply for a breach of the code and therefore there appears to be no lack of knowledge of the existence of the code. Her complaints appear to relate to communication in relation to the conduct of the tenancy so the Tribunal finds there to be no breach of this Rule.
74. The Tribunal received a large volume of copy e-mails from both parties and in those there is no indication that the Respondent has communicated in an abusive, threatening or intimidating manner so the Tribunal find there to be no breach of this Rule.
75. The Tribunal therefore considered in detail whether or not there was a failure of the Respondent to respond to enquiries and complaints within reasonable timescales or a failure to deal with these as fully and quickly as possible.
76. The Tribunal found the Respondent's two witnesses to be entirely credible and honest and reliable witnesses and accepted that they spoke honestly as to what they had been involved with.
77. The Tribunal found that the communication between the Applicant and the Respondent has been conducted on the whole appropriately.
78. With regard to the instruction to obtain a quote for purchase and installation of a new kitchen the Tribunal notes from the e-mails supplied by the Applicant which are referred to for their terms that this instruction was made in October 2020 and the Respondents supplied a quote on 14th October 2020 and the applicant responded on the same day accepting the quote. The Respondents reply on 15th October confirming they will proceed to instruct this and requesting payment of the money from the Applicant to arrange this. There are several e-mails regarding this on 15th October and money is transferred by the Applicant on 16th October. On 17th October the Applicant confirms she needs a receipt for tax purposes On 23rd October the Applicant asks for progress and the Respondent replies the same date that work has not started yet because the contractor is working on another job. On 27th October 2020 the Respondent writes in an e-mail to the Applicant "*Is it okay that the kitchen is fitted in January as this suits both tenant and contractor?*" The Applicant replies saying "*Hi Wendy Sure that's fine. Could you transfer the funds back and I will transfer in January? Thanks Claire*".
79. From the oral evidence of Ms Inglis, she advised the funds were transferred back to the Applicant in October 2020 and they were never re-transferred as the kitchen was never installed.
80. There is another example of e-mails in October 2020 between the Applicant and Respondent where the Respondent asks the Applicant if the tenants are permitted to change the vinyl in the bathroom and the Respondent agrees and asks if the tenants are still okay for a new kitchen in January and the Applicant replies on the same day saying "yes it was them that suggested it to the fitter".
81. In January the Tribunal has seen a series of e-mails between the parties starting on 4th January where the Applicant asks if there is likely to be a delay due to lockdown and the Respondent replies that it is likely and they will revert to the Applicant in February to see what the restrictions are then. The

Applicant says “Brilliant thanks for the update.” The Respondent then advises on 13th January that the contractor has purchased the kitchen, that it is in the second bedroom at the flat and he is asking if the landlord would pay him for the kitchen as he is out of pocket and the tenants are not sure when they will be able to get it fitted. The Applicant responds saying she did not know the kitchen was stored in the flat and asking why the tenants cannot let him in to fit it. Ms Walker then replies advising the Applicant that by law tradesmen are only allowed to go into properties for emergencies and as the tenant is a nurse working in hospital she is concerned about people coming into the flat. She goes on to say” the kitchen was bought back then as it was on sale and the contractor and tenant agreed to put it in the bedroom so that it was stored properly. As soon as restrictions are relaxed we will arrange to have it fitted as quickly as we can”.

82. There follows further e-mails where the Applicant expresses her dissatisfaction at the fact the kitchen is stored without her consent in the flat and Ms Walker acknowledges that the agreement to do this was made between the contractor the tenant and herself after discussing it. There are further e-mails in February regarding the receipt the contractor provides which is not satisfactory to the Applicant as it appears to first of all be an estimate, then a receipt for the kitchen units but not for the installation which the Applicant points out she is paying for and that she needs an invoice for the full works. The Tribunal notes there does appear to be a response from Ms Walker to most of the Applicant’s e-mails and in March the Applicant asks for progress and the Respondent advises restrictions will not be lifted until April. Ultimately the kitchen is not installed and the contractor is not paid.
83. Neither Ms Shields nor Ms Inglis could provide much further detail to the circumstances set out in the Applicant’s submissions and the e-mails produced and Ms Walker was not available as a witness to clarify any details. It is clear that the Applicant did originally agree to the change of date of the fitting of the kitchen to January; that she did not know and did not agree to the kitchen being stored in the Property and that concerned her. By April there was still correspondence showing the parties were trying to arrange for the kitchen to be fitted and the contractor had provided an invoice but for the units only not the fitting as this had not been carried out. The Applicant was not satisfied with a receipt for the kitchen units only and eventually the kitchen was removed and no money was paid to the contractor.
84. The Tribunal notes that the Respondents have accepted and apologised for their failures to handle the situation regarding the kitchen satisfactorily. The letter from Ms Shields dated 22nd September 021 in response to the Applicant’s complaint about the kitchen states “
- (1) *Dear Claire,*
 - (2) *Firstly I would like to apologise that you feel you haven’t received the high level of customer service we aim to deliver to all our clients. I would also like to apologise that not all of your points were addressed in our previous reply.*
 - (3) *I acknowledge the situation with the kitchen was not handled in the best way. While some of this was out of our control especially the delay in fitting the kitchen caused by the country going back into lockdown, I apologise that the invoice situation was not resolved more effectively*

for you and for the lack of communication regarding the purchase and storage of the kitchen.

She finishes by adding "Again I apologise that you have found our service less than satisfactory recently and this is certainly not how we wanted this working relationship to end. I would be happy to offer an amount of £250 as a good will gesture in full and final settlement of the matter. I do hope we can conclude on this basis."

85. The Tribunal notes the Applicant did not pay for the kitchen and that it was never installed and that the delays in installation were mainly due to the pandemic and restrictions. Given the Respondents have admitted their failures in regard to the handling of the communication of the installation of the kitchen and in particular not advising the landlord that it was being stored in the Property and have apologised for this and offered some compensation, the Tribunal agrees this matter has been appropriately dealt with and there is no continuing breach and therefore no need for an enforcement order or compensation.
86. With regard to the complaint that the Respondent has breached Section 7 in relation to the tenants giving notice and failing to leave the property either on the date they initially gave or the date notified on the Notice to Leave again the Tribunal found from all the evidence presented that the Respondent has advised the Applicant appropriately. In particular the Tribunal accepts that the Respondent has advised the Applicant that if the tenants do not leave at the due date the Applicant would require to seek an order for eviction to have them removed. The e-mails show that the tenants complained of being harassed by the landlord and wish only to deal with the Letting Agent. The e-mails also show that the Respondents did chase up the tenants for information about their date of removal and advised the Applicant. This was confirmed by Ms Inglis evidence. The Tribunal finds there has been no breach of the Code in respect of this matter. The fact the tenants did not leave when they had said they would, and failed to leave on the date given in the Notice to Leave is not the fault of the letting agent and the letting agent does appear to have advised the Applicant as and when they were aware the tenant was not moving or when the tenant advised they would not be able to move due to issues with their mortgage etc. The fact the Applicant arranged contractors to come in on the original date the tenant advised they would move is unfortunate as until the tenant does remove from the Property a Landlord cannot be sure they will remove on that date however any loss sustained by that is not the fault or the result of a breach of the letting agent code of conduct. The Tribunal finds there to be no breach in regard to this complaint.
87. With regard to the third complaint that the respondent failed to remove rubbish from the loft in the Property, failed to arrange for a cleaner and failed to arrange for the removal of rubbish outside the Property in a timely manner the Tribunal notes that the Respondents were not allowed to retain a key or keys to the property after the tenants left. The Applicant admits this in her own letter of complaint. Her friend Ms Bayne confirms in her written statement that she did the cleaning but she has not submitted an invoice although it is noted and shown in the statement provided by the Respondent and confirmed by the Applicant that £70 was claimed from the deposit held and remitted back to

the applicant. The respondent has confirmed that £60 of this was for cleaning. As there is no invoice to show what Ms Bayne was charging for cleaning and given that the Applicant refused to allow the Respondents to retain a set of keys to facilitate professional cleaners attending the property at a time convenient to them the Tribunal is satisfied that the Applicant has been recompensed for her friend's work in cleaning the property.

88. Re the communications about this the Applicant has lodged as set out above from Ms Bayne, a timeline of her involvement with the Respondents. The Respondents also lodged copies of several e-mails that show emails from the Applicant to Ms Walker and the responses including:- at 22.06 the Applicant advising on 3rd August 2021 that there is more rubbish in the loft space, that this needs to be removed along with the rest of the rubbish before the cleaners come; that a bulb needs replaced in the loft space and bathroom mirror is missing as well as the toilet seat not matching the rest of the bathroom suite. The Applicant asks when "can you get a quote for all the work please? This week?" Ms Walker responds at 6.12pm on 4th August "Good morning Claire. The tenants handed the letter box key in yesterday I have left a message with Glenda to arrange for it to be collected or meet to give her the key. I will try my best to get quotes this week and get the work done as soon as possible. As we don't check the loft I might not be able to get the items removed but I will see what I can do." The Applicant responds a few minutes later to confirm that she understands the loft is part of the flat and the tenants should be responsible for the removal of rubbish. The Applicant e-mails again on 5th August at 9.40pm, to acknowledge that Wendy has contacted Ms Bayne and asking for access. She says can you get quotes and contact numbers for the work that needs done and I will get Glenda to arrange Please transfer money to my account for tax purposes for quotes and Glenda will get them into the flat at a time that works for her." Ms Walker responds on 9th August advising that as the money is held by the Deposit Company it can't be transferred until claimed back from the Deposit Company. She goes on to say "I sent Glenda the cleaners number to contact them for access so we can get a price and the work carried out so I know what I need to claim I also need to access to see how much rubbish needs to be taken away so I know what size of van we will need for to collect it all. This is why I asked to hold a key until all the work was carried out so we do need access. There follows further e-mails between the parties and Ms Walker and Ms Bayne regarding the removal of rubbish and confirmation that Ms Bayne will be cleaning the property. The Respondents has provided an e-mail showing they asked for a quote from a contractor at 9.34 am on 9th August. On 11th August Ms Walker confirms that she has spoken to Glenda and that she has the cleaner's number and for access to collect the rubbish and that the shades and light bulbs are in the office to be delivered and the toilet seat is in the flat.
89. The Respondents have also lodged e-mails to show that Ms Bayne advised the rubbish had not been removed on 16th August, that Ms Walker responded the next day to say she is sorry to hear that and will chase this up. On 18th August the Respondents are made aware that the rubbish has not been removed by the factor for the Property Mr Main of Ross and Liddell who wrote on 18th August at 10.30 am advising other residents were complaining of rubbish lying outside. Ms Walker replies at 10.34 to confirm "We have

arranged for uplift for these items unfortunately the person that has to pick them up is self-isolating and has been for a test which he is hoping to get the results today. If the test is clear they should be picked up no later than tomorrow if not I will arrange someone else to collect them.” The Applicant e-mails later that day to ask Ms Walker to confirm this will be done as soon as possible. Ms Walker replies at 8.51 on 19th August to update both the Applicant and factor that she has been told the items will be removed on 19th August by the contractor appointed and if it doesn't she has arranged someone else to do it. On 20th August Ms Bayne advises the rubbish is still there and Ms Walker responds on the same day to say that she has been guaranteed it will be uplifted and if not she will check and remove it herself. At 11.13 on 20th August it is confirmed it has been uplifted.

90. The e-mails lodged show that the Respondent has responded timeously and in detail to all of the Applicants enquiries. The delay in the removal of rubbish has been explained and was supported by the oral testimony of Ms Shields and Ms Inglis that this was because of difficulties in getting contractors and then the contractor they did hire having to self -isolate and causing further delay in removing the items. It is noted that Ms Walker responded to both the Applicant and Ms Bayne and then subsequently to the factors in trying to deal with this issue. The fact the rubbish had to be left outside is purely because the Applicant did not wish the Respondents to hold a key and any contractor and the cleaning company were not able to agree a suitable time with Ms Bayne.
91. The Respondent arranged for a replacement mirror, the removal of rubbish and new shades and lights. The sum of £129 was successfully claimed from Safe Deposit Scotland and £70 returned to the Applicant with the remainder reimbursing the Respondent for their outgoings.
92. The Tribunal finds there is no breach of the code in relation to this complaint.
93. The Respondent have apologised for any failure in communication to the landlord which the Tribunal finds only occurred in respect of the storage and invoice for the kitchen. As an apology has been made the Tribunal is satisfied that any breach of the code has therefore been remedied and is no longer a matter outstanding.

Decision

The Application is refused.

In terms of Section 46 of the Tribunals (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.

Legal Member

21st February 2022