

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision under Section 43 Tribunals (Scotland) Act 2014 and Rule 39 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Certificate of Compliance with Letting Agent Enforcement Order in terms of Section 50 of the Housing (Scotland) Act 2014

Property: Flat 3, 5 Horne Terrace, Edinburgh and 1F2, 24 Brunton Terrace, Edinburgh, EH7 5EQ and 2, 94 South Bridge, Edinburgh, EH1 1HN ("the Property")

Chamber Reference: FTS/HPC/LA/20/0697

Parties:

Sam Ensaff, 20 Mountcastle Terrace, Edinburgh, EH8 7SQ ("the Applicant")

and

Albany Lettings, 168 Bruntsfield Place, Edinburgh, EH10 4ER ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member/Chairperson) and Frances Wood (Ordinary Member)

Background:

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") considered an application ("the Application") which had been submitted by the Applicant under section 48 of the Housing (Scotland) Act 2014 that the Respondent had failed to comply with the Letting Agent Code of Practice as set out in the Letting Agent Code of Practice (Scotland) Regulations 2016.
2. Following a Hearing held on 7 October 2020, the Tribunal issued a Decision dated 7 October 2020 in terms of which the Tribunal found the Respondent had failed to comply with the Letting Agent Code of Practice and granted a Letting Agent Enforcement Order ("LAEO") against the Respondent for payment to the Applicant

in the sum of £486.40.

3. The Tribunal issued the LAEO on 7 October 2020 in the following terms:

“Within 4 weeks of the communication to the Respondents of this Letting Agent Enforcement Order, the Respondents shall:

Make payment to the Applicant in the sum of FOUR HUNDRED AND EIGHTY-SIX POUNDS AND FORTY PENCE (£486.40) STERLING.”

4. The LAEO was issued to the Respondents by email dated 12 October 2020. The period for compliance with the LAEO expired on 9 November 2020.
5. By email dated 11 November 2020 the Tribunal administration wrote to both parties seeking their views on whether or not the required actions under the LAEO had been carried out. The parties were required to confirm their views to the Tribunal by 25 November 2020. No response was received from either party.
6. The Tribunal considered that the period for compliance with the LAEO expired on 9 November 2020 and no confirmation had been provided to the Tribunal by either party that any steps had been taken by the Respondent to comply with the terms of the LAEO. The Tribunal accordingly found that the Respondent had not complied with the LAEO and that the failure must be notified to the Scottish Ministers. The Tribunal issued a Decision of Non-Compliance on 16 December 2020 and which was intimated to parties on 17 December 2020.

Application for Review:

7. On 22 December 2020 the Respondent emailed the Tribunal administration advising that they had complied with the LAEO and had replied to the Tribunal in writing to confirm that they had done so, following the communication from the Tribunal of 11 November 2020. Nothing had been received by the Tribunal. No evidence of this response having been sent was provided by the Respondent. They advised that this had been sent by first class post, as opposed to either email or registered post for which proof of service could have been produced. The Respondent submitted a further response form on 24 December 2020 together with a bank statement showing that payment of £486.40 had been made to the Respondent on 11 November 2020.

Findings

8. The Tribunal considered matters in terms of the provisions of Section 43 of the Tribunals (Scotland) Act 2014 and Rule 39 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
9. Rule 39 states as follows:

39.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in rule

37(3)(b) to (j)(b), where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the Tribunals Act must—

(a) be made in writing and copied to the other parties;

(b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and

(c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and inform the parties of the reasons for refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal must notify the parties in writing—

(a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and

(b) may at the discretion of the First-tier Tribunal, set out the First-tier Tribunal's provisional views on the application.

(5) In accordance with rule 18, the decision may be reviewed without a hearing.

Decision

10. The Tribunal considered the Respondent's request for a review of their Decision dated 16 December 2020. It had been submitted timeously, being within 14 days of the date of the Decision. The bank statement provided by the Respondent showed that payment had been made to the Respondent on 11 November 2020. This payment was not made within the timescale provided for in the LAEO. This payment was made two days after the deadline set by the Tribunal, and had been made on the date that the Tribunal emailed the Respondent seeking confirmation as to whether or not the LAEO had been complied with.
11. Whilst the Tribunal is satisfied that the payment has been made to the Applicant by the Respondent, it was not done in accordance with the timescale set down by the Tribunal and accordingly the terms of the LAEO were not fully complied with.
12. Notwithstanding the failure to comply with the timescale for payment set down in the LAEO, the Tribunal has to consider under the terms of Rule 39 whether it is necessary in the interests of justice to review the Decision of 16 December 2020 which determined that the Respondent had failed to comply with the LAEO.
13. The Tribunal finds it unsatisfactory that the Respondent failed to comply with the timescale for payment set down in the LAEO and appeared only to make the payment once prompted to do so by further communication by the Tribunal. The

Tribunal considers that they were entitled to come to the Decision that they did of 16 December 2020. However, it is clear that payment has indeed been made, albeit late and not in accordance with the terms of the LAEO. Accordingly, and in the absence of any representations having been made by the Applicant on the matter, the Tribunal considers it reasonable under the circumstances to revoke the Decision of 16 December 2020 and it hereby issues this Certificate of Compliance.

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.

Legal Member/Chairperson

11 January 2021