

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision under Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 23017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No 328)) (“the Procedure Rules”) in relation to a request for a review of a decision under 43(2)(b) of the Tribunals (Scotland Act 2014)

In connection with

Chamber File Reference number: FTS/HPC/LA/18/3416

The Parties:-

Mr Roger Cooke, 28 Mountsandel Road, Coleraine, County Londonderry BT52 1JE (“Applicant”)

Factotum (Scotland) Ltd, t/a Factotum, incorporated in Scotland under the Companies Acts (Registered No. 246244), 63 Dublin Street, Edinburgh EH3 6NS (“the Respondent”)

Tribunal members:

Mark Thorley – Legal Member
Ann MacDonald – Ordinary Member

1. **DECISION**

The Tribunal refuses the application for review in terms of Rule 39 (3) of the Procedural Rules. The decision of the Tribunal was unanimous.

2. **BACKGROUND**

- i. On 1 April 2019 the Tribunal found that the letting agent had not complied with the Code of Practice for letting agents as required by the Housing

(Scotland) Act 2014 and determined to issue a Letting Agent Enforcement Order.

- ii. By email dated 24th April 2019 the Landlord applied to the Tribunal to review the decision. The application is timeous. The email set out 10 heads of review. In terms of Rule 39 of the Procedural Rules the Tribunal has to determine whether to grant or refuse the application for review.

3. LANDLORDS REASONS FOR REVIEW

The justification for a Review is that we feel the particular format of the Applicant's submission obscured the relevant sections of the Code of Conduct that were being considered. There were no page numbers; there had to be manually entered on the day of the hearing. In your (un dated) letter, page 3 of the submission we feel the application was not given the due consideration as stated: One would normally expect a submission to start with the relevant codes of conduct under contention with references and supporting documentation following on thereafter. Instead we had no such ordered production and proper referencing, the whole document was impossible to decipher. The Tribunal should have insisted the production was better organised. The resulting document put the Respondent at a disadvantage. Indeed, the Legal Member questioned the Respondent as to whether they had read the list of alleged failures. A moot point as the relevant single page being virtually hidden (on page 217) midway through a total of some 240 pages. This disorder should not have been accepted.

Paragraph 21

- a) The landlords were impossible to get in touch with regarding this as they would not put a figure on what they wanted after I suggested a rental of £2550/£2600. This was clear when they did not confirm until the very last minute if they even wanted the tenants to stay on in the flat.
- b) Roger never actually asked for a statement, just asked if it was required could we give him one. Email attached. *Attachment No 1*

- c) Email responded to on the 15th May 2018 stating they we would not be able to see the state of the property until it was empty. *Attachment No 2*
- d) Image attached showing the flat was advertised on Rightmove. *Attachment No 3*
- e) Pro rata July rent was paid on 17th August.
- f) Everything had been communicated with Duncan at Broughton Property, it is passed between deposit scheme to deposit scheme. As to when Broughton Property received the funds in their deposit scheme I do not know, this would have to be a question for Broughton Property. 12bs deposit was sent to Broughton Property as to why they didn't tell the Cookes that they had received the money and that they were going to lodge it with the deposit scheme they use.

Paragraph 26

The Respondent did reply as stated on that occasion within the stated 14 days. Complaint acknowledged on the 28th September and responded to on the 11/10/2018 @16:40. The applicant read, erroneously, that that would therefore be the response time on every occasion. The tribunal miss directed itself in agreeing with that presumption.

Paragraph 28

The email is only partially quoted; it omits the denial that any foul language was used suggesting that the applicant had 'a skewed precis of our conversation' the text, 'may we wish you peace and prosperity for the future' can surely not be construed as abusive? All the email evidence was courteous throughout our dealings with the applicant.

Paragraph 33

As stated, before we were not given the opportunity to submit this evidence which we do have. Paragraph 32 – Sign request was sent on 13th April 2018

Paragraph 33 – Sign request was sent on the 13th April 2018 *Attachment No 4*

Paragraph 38 – Photo attached of the flat from Rightmove *Attachment No 3*

Paragraph 78

The respondent clearly appealed during the hearing that there was a missing invoice in the applicant's evidence. This invoice, No 87950 of the 12th October 2018, showing

an opening credit of £2,295.00 with the description 'pro rata rent sep rental'. This invoice was being kept back to argue another point and the Tribunal failed to recognise this. All the rents were paid in a timely manner. There were no funds kept back other than for amounts properly due. *Attachment No 5*

Paragraph 108

Complaint acknowledged on the 28th September 2018 and responded to on the 11/10/2018 @16:40. We would protest that we have been effectively disallowed from submitting the evidence of 1,256 histories and numerous phone calls, emails over the period of about one year would clearly demonstrate due diligence. The applicant made repetitive duplicate and regurgitated queries that were repeatedly answered adequately and over many months. *Attachment No 6*

Paragraph 111

See earlier answer

Paragraph 124

See also para 28. The Respondent clearly appealed during the hearing that there was a missing invoice in the applicant's evidence. This invoice, No 87950 of the 12th October 2018, showed an opening credit of £2,295.00 with the description 'pro rata rent sep rental'. The applicant appears to have kept this invoice back to argue another point later in the proceedings and the Tribunal failed to recognise this deliberate omission and ignored the respondent's pleas. All the rents were paid in a timely manner. No money was held, rental from the tenants was often late and so when we had the funds, we would pay them out as soon as possible and within client account rules. See attached statement of payments for all three properties from the date they came on with us.

There were no funds kept back other than for amounts properly due to the agency. *Attachment No 7, 8 & 9.*

Paragraph 127

This decision is not clear. It is listed as a non-compliance but apparently unclear in the decision. We had the parents of the tenants, who were also the guarantors (as agreed by the applicant) unhappy with the conditions which their children were living

in and so the prospect of getting them to pay the rent with the applicant was ignoring their complaints about the condition of the flat made matters very difficult in terms of debt recover.

Decision

1. Already provided to the Applicant on many occasions, but happy to re submit.
2. On line 1. Of the invoice No 87950 it clearly states; '(I) Commission on Rent – £220.32 waived – see item two'. No commission has been charged on that invoice.
3. We would request on what basis the date of 11th May is relevant or determined. Further that on successful review how this might be adjusted.
4. As previously stated, we were never given the opportunity to provide evidence from the inventory that there were four beds and only three replacement mattresses. The other was old and soiled. Even if there were omission from the inventory that might have realised a deduction from the tenant's deposit; the recoverable cost would have entertained fair wear and tear and the landlord would not have been due any betterment that the judgement apparently does. Further there is no evidence provided that the applicant had actually replaced the mattress, or indeed has any intention of doing so. The right-off period for such cheap mattresses might be three years. *Attachment No 10.*

REASONS FOR DECISION

- a) The tribunal acknowledged that there was a significant amount of information provided by the Applicants and that it was not page numbered by the time of the hearing. However contained within the papers was the application to the First Tier Tribunal made by the Applicants and in which the Applicants had set out comprehensively by email to the respondents their "complaint" on 28th September 2018. This was acknowledged by the Respondents by way of email of the same date. Accordingly the Respondents were aware of the complaint being made and had provided a written response to the Tribunal.
- b) Paragraph 21 - The matters to which are referred here by the Respondents were all matters that were subject to evidence both given orally and in documents. The Respondents had the opportunity prior to the hearing to submit any material that they wished to. They were clearly aware of the

significant amount of documentation provided by the Applicants. They were aware of the issues but at the hearing indicated that there were potentially other documents that might have been capable of being produced if they could have been traced

Paragraph 26 – the email referred to by the Respondents was contained within the papers (although in the papers was dated 12th October 2018 at 16:08). The email that has been produced is an internal email sent by Natasha Donnellan to Mr Boisseau which presumably required Mr Boisseau's approval before being sent out. The actual email itself was sent out on 12th October 2018 at 16:08 and does not in any way address any of the complaints put forward by the Applicants and indeed required to be prompted by 2 further emails from the Applicants of 12th October 2018 at 05:35 and also 13:54 attempting to obtain a response to the complaint.

Paragraph 28 – the Tribunal accepted the evidence of the Applicants to which in evidence there appeared to be no denial. The email of 5th September 2018 may only be partially quoted but the part of the sentence that is contained within that is relevant.

Paragraph 33 – the Respondents were advised in advance of the hearing that if they wanted to submit any of the evidence that they were able to do so. It was a matter for them to be prepared for the hearing.

Paragraph 38 – the reference here was to the Respondents' own website and not to Right Moves' listing.

Paragraph 78 – the evidence. The Tribunal accepted the evidence that an outstanding rent payment was met through the deposit that was retained.

Paragraph 108 – at no stage were the Respondents disallowed from submitting evidence. They were advised in advance of the hearing that they were entitled to submit any evidence if they wished to do so. It was a matter for the Respondents to provide any relevant evidence for the Tribunal.

Paragraph 111 – what is said here is that an earlier answer is referred to which is presumably paragraph 28. The Respondents did not appear to dispute anything that was being said by the Applicants in relation to this.

Paragraph 124 – part of the issue in this case was that the Applicants repeatedly sought summaries of accounts for the properties that they let. Evidence was that there was a payment in relation to one of the properties

which had not been passed on to the Applicant. The Respondent was not able to answer this at the hearing.

Paragraph 127 – The Respondents accepted that although they were guarantors in relation to one of the properties that they did not pursue the guarantors for the outstanding rent but instead took the rent from the deposit. No written procedures were provided regarding debt collection. The Tribunal did indicate in its decision that the Tribunal could not determine that the Respondent had failed to comply. Accordingly the Tribunal does review its decision here in relation to a breach and removes paragraph 127 from the breach. This paragraph has been corrected and confirms that that the Tribunal did indicate that the Tribunal could not determine that the Respondents have failed to comply.

M Thorley

Legal meter
19.5.19