

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION:

Housing (Scotland) Act 2014, Section 48(6)
First-tier Tribunal Housing and Property Chamber (Rules of Procedure)
Regulations 2017 ("the 2017 Rules"), Rule 95
The Letting Agent Code of Practice ("the Code of Practice")

Chamber Ref: FTS/HPC/LA/20/1499

Flat 5/3, 503 Stobcross Street, Glasgow, G2 8GL
("the House")

The Parties:-

Mr Allan Hamilton, 7 Bearehill Gardens, Brechin, Angus, DD9 6LW
("the Applicant")
Represented by Mr Jack Hamilton, 7 Bearehill Gardens, Brechin, Angus, DD9 6LW
("the Applicant's Representative")

Infiniti Properties Management Limited, 2G Ingam House, 227 Ingram Street,
Glasgow, G1 1DA
("the Letting Agent")
Represented by Mc Anne McPartlin, Infiniti Properties Management Limited
("the Letting Agent's Representative")

Letting Agent Registration Number: LARN1903063

The Tribunal:-

Gillian Buchanan, Legal Member & Chair
Elizabeth Currie, Ordinary Member

DECISION

1. The Letting Agent has failed to comply with the Code of Practice, in particular:-
 - Section 7, paragraph 111.
2. The Tribunal issued a Letting Agent Enforcement Order ("LAEO") setting out the steps the Letting Agent must take by the date specified in the LAEO; including payment of compensation to the Applicant for his loss occasioned by the Letting Agent's failure.
3. The Tribunal will notify the Scottish Ministers that the Letting Agent has failed to comply with the Code of Practice.
4. The decision of the Tribunal is unanimous.

STATEMENT OF REASONS

Background

5. The Letting Agent carries out letting agency work in Scotland.
6. The Letting Agent has joined the Register of Letting Agents in Scotland with its address listed as 1016 Argyle Street, Glasgow, G3 8LX, LARN1903080.
7. The Code of Practice sets out the standards all those doing letting agency work must meet. The Code of Practice came into force on 31 January 2018. The Letting Agent's duty to comply with the Code of Practice arises from that date.

The Application

8. The Applicant lodged an application with the Tribunal dated 10 July 2020 ("the Application") in terms of section 48 of the Housing (Scotland) Act 2014 ("the 2014 Act" and Rule 95 of the 2017 Rules, to enforce the Code of Practice against the Letting Agent.
9. The complaint in the Application was specified with reference to the following section and paragraph of the Code of Practice, namely: –

Section 7, paragraph 111;

10. The Applicant's reason for considering that there has been a failure to comply with the specified paragraph is that the Letting Agent sent to the Applicant on 7 July 2020 at 18:39 a threatening and intimidating communication, namely an email which contained threatening statements and was intended to intimidate the Applicant.
11. The Applicant therefore sought:-
 - i. An apology from the Letting Agent;
 - ii. Payment of financial compensation; and
 - iii. That the Tribunal remind the Letting Agent of its duties under the Code of Practice so that no tenants are subject to the same behaviour in the future.

12. On 22 July 2020 a legal member of the Tribunal with delegated powers of the Chamber President considered the Application and referred the Application to the Tribunal.

13. A hearing on the Application was fixed for 29 September 2020 to take place by telephone conference.

14. At the telephone conference hearing on 29 September 2020 the Applicant was not present but was represented by his brother, Mr Jack Hamilton. The Letting Agent was represented by Ms Anne McPartlin of the Letting Agent.

Matters not in Dispute

15. The following matters are not in dispute between the parties:-

- i. That the Applicant and Mr Craig Stevenson were tenants of the House in terms of a Private Residential Tenancy Agreement that commenced on 13 September 2018 ("the First Tenancy").
- ii. That a deposit of £825 was paid by the Applicant and Mr Stevenson in respect of the First Tenancy. The deposit was registered with an approved scheme, namely Safe Deposits Scotland ("SDS"), on 1 October 2020.
- iii. That the First Tenancy ended on 30 June 2019.
- iv. That the Applicant and Ms Fiona Elliot were tenants of the House in terms of a Private Residential Tenancy Agreement that commenced on 14 July 2019 ("the Second Tenancy").
- v. That it was agreed between the parties that the deposit paid in respect of the First Tenancy would be transferred to the Second Tenancy.
- vi. That on 8 October 2019 the Letting Agent requested SDS to refund the deposit paid in respect of the First Tenancy.
- vii. That on 30 October 2019 the deposit was received back from SDS into the Letting Agent's bank account.
- viii. That on 5 December 2019 the deposit was registered with SDS by the Letting Agent in respect of the Second Tenancy.

Summary of the Applicant's submissions and evidence

The following submissions were made by the Applicant's Representative on behalf of the Applicant:-

16. The House was first let to the Applicant and Mr Craig Stevenson. Towards the end of the tenancy Mr Stevenson wished to move out of the House and Miss Fiona Elliot wished to move in. Various emails were exchanged. A new tenancy was required in the names of the Applicant that Miss Elliott.
17. Ms Elliott paid her share of the deposit to Mr Stevenson.
18. The deposit paid at the commencement of the First Tenancy was therefore to be transferred to the Second Tenancy. Various documents were exchanged in that connection.
19. The transfer of the deposit was not carried out efficiently. It was October 2019 until the funds were requested by the letting Agent from the Safe Deposits Scotland.
20. There was a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") in relation to the deposit and the Applicant therefore lodged an application to the Tribunal in that connection ("the Deposit Application"). A Case Management Discussion in the Deposit Application took place on 1 August 2020. A further Case Management Discussion is due to take place on 7 October 2020.
21. The landlord and owner of the property is Mr Ian MacKinnon ("the Landlord"). The service copy papers in relation to the Deposit Application prompted the Letting Agent to send the

email of 7 July 2020 timed at 18:39 which, in the Applicant's submission, contravenes paragraph 111 of Section 7 of the Code of Practice.

22. The following aspects of the email communication of 7 July 2020 are in contravention of paragraph 111 of Section 7 of the Code of Practice: –

- i. In paragraph 1 the use of the word “allegedly” is inappropriate.
- ii. In paragraph 3 the use of the word “exploit” is inappropriate - it is the Applicant's right to pursue a claim under the 2011 Regulations.
- iii. In paragraph 4 the capitalisation of the word “NO” is inappropriate as it infers the Letting Agent is shouting at the Applicant.
- iv. In the fifth last paragraph the reference to the case being “fundamentally flawed” is inappropriate as whether a claim is flawed or otherwise is a matter for the Tribunal not for the Letting Agent.
- v. In the third last paragraph the reference to the Letting Agent engaging the best legal team to win the case by implication infers that the Letting Agent will win the case when that is a matter for the Tribunal.
- vi. The reference to legal costs being pursued against the Applicant does not sit well with rule 41 of the 2017 Rules relative to costs.
- vii. In the penultimate paragraph the suggestion that the Applicant drop the case is not a decision for the Letting Agent. The Tribunal had accepted the Deposit Application for determination and similarly the reference to time being wasted is inappropriate.

23. The Deposit Application is against the Landlord. The Applicant is therefore not sure why the Letting Agent was taken aback by the Deposit Application.

24. The Applicant considers the email of 7 July 2020 to constitute scare tactics and the Applicant wishes the Letting Agent reminded of its obligations.

25. In terms of section 48(5) of the 2014 Act the Applicant's email of 8 July 2020 comprises the relevant notice to the Letting Agent to rectify the breach of the Code of Practice. The Letting Agent's response of 8 July 2020 at 16:26 made clear to the Applicant that there would be no attempt to rectify any breach. There was no admission of any breach either.

Summary of the Letting Agent's Submissions & Evidence

The following submissions were made on behalf of the Letting Agent by the Letting Agent's Representative:-

26. Prior to the Deposit Application there had been no previous communications that the Applicant was unhappy with the service being provided by the Letting Agent. Service of the Deposit Application on 7 July 2020 was the first indication received that the Applicant was unhappy with the service.

27. The Letting Agent's Representative accepted that the Letting Agent was tardy in re-registering the deposit once it was received back from Safe Deposits Scotland at the end of the First

- Tenancy. The deposit was re-lodged in connection with the Second Tenancy on 5 December 2019.
28. The email of 7 July 2020 was a response to service of the Deposit Application. The Letting Agent's Representative said she felt the Applicant was trying to exploit the situation and that the claim would be a waste of time.
 29. The Landlord's address is care of the Letting Agent. The Letting Agent has full authority to deal with the Tribunal proceedings on the Landlord's behalf.
 30. The Letting Agent's Representative apologised to the Applicant if the email of 7 July 2020 came across as threatening. She described it as a statement of the Letting Agent's position and did not consider it to be threatening. However, if the Applicant felt it was so then she apologised for that. Throughout all she did was assist the Applicant with the tenancies.
 31. In relation to the particular criticisms of the email of 7 July 2020: –
 - i. That relative to paragraph 1 the use of the word "allegedly" was to reflect the fact that the Letting Agent had never received a new deposit relative to the Second Tenancy and that the deposit was to be transferred from the First Tenancy.
 - ii. With regard to paragraph 3 and the use of the word "exploit", the Letting Agent's Representative explained that the deposit was registered for the second time on 5 December 2019. SDS issued an email to the effect that the deposit had been received but that it was lodged late. SDS did not have the full facts and intimated to the tenants that a claim could be made for payment of three times the deposit. This was the catalyst for the Deposit Application. The Applicant was not financially inconvenienced at all.
 - iii. The capitalisation of "NO" in the fourth paragraph was to underline the fact that no new deposit was paid. The Letting Agent's Representative was not shouting at the Applicant.
 32. The Letting Agent's Representative did not believe that she acted incorrectly and that the Deposit Application was flawed as she could not register a deposit that she has not received.
 33. At the time of receiving service of the Deposit Application it was the intention to engage legal services and the Letting Agent genuinely thought the case would be won. Tribunal cases take up a lot of staff time. In fact no legal agents have been employed.
 34. The Letting Agent's Representative emphasised that she was shocked at receipt of the paperwork in the Deposit Application as at no time had there been any prior notification.
 35. The Letting Agent's Representative indicated that the Letting Agent is a small business. She deals with accounts and tenancies. However, as changes of tenancy arrangements are more complex she tends to deal with those too.
 36. There had been no response from Ms Elliot to the email of 7 July 2020 which was also sent to her.

Further Submissions for the Applicant

In response to the submissions for the Letting Agent, the Applicant's Representative further stated:-

37. That the emails from SDS were not the catalyst for the tribunal applications. He explained that there were other emails exchanged and that the Applicant had previously made known that he was concerned about the deposit. There were numerous calls too.
38. The Applicant waited until the Second Tenancy had ended before pursuing a claim under the deposit regulations.
39. In terms of the effect of the email of 7 July 2020, the Applicant's Representative stated that the Applicant made a couple of panicked at telephone calls to family members, including the Applicant's Representative, as he genuinely felt threatened. He was concerned that he might be out of pocket for making the Deposit Application under the 2011 Regulations which are there to protect tenants. He was concerned that an award of expenses might be made against him. He called both his mother and father too. The Applicant only felt reassured after the Applicant's Representative called in a few favour favours in the legal community and comfort was given. It was around three days from receipt of the email of 7 July 2020 when that reassurance was passed on to the Applicant.

Findings of Fact

40. The Applicant and Mr Craig Stevenson were tenants of the House in terms of a Private Residential Tenancy Agreement that commenced on 13 September 2018 ("the First Tenancy").
41. A deposit of £825 was paid by the Applicant and Mr Stevenson in respect of the First Tenancy.
42. The deposit was registered with an approved scheme, namely Safe Deposits Scotland ("SDS"), on 1 October 2020.
43. The First Tenancy ended on 30 June 2019.
44. The Applicant and Ms Fiona Elliot were tenants of the House in terms of a Private Residential Tenancy Agreement that commenced on 14 July 2019 ("the Second Tenancy").
45. It was agreed between the parties that the deposit paid in respect of the First Tenancy would be transferred to the Second Tenancy.
46. On 8 October 2019 the Letting Agent requested SDS to refund the deposit paid in respect of the First Tenancy.
47. On 30 October 2019 the deposit was received back from SDS into the Letting Agent's bank account.
48. On 5 December 2019 the deposit was registered with SDS by the Letting Agent in respect of the Second Tenancy.
49. The Applicant submitted to the Tribunal the Deposit Application which is in the course of being determined.

50. The Deposit Application was served on the Landlord care of the Letting Agent on 7 July 2020.
51. On receipt of the Deposit Application, on 7 July 2020 at 18:39 the Letting Agent sent an email to the Applicant and Ms Fiona Elliot (Appendix A to the application).
52. By email dated 8 July 2020 timed at 16:17 the Applicant per the Applicant's Representative gave notice to the Letting Agent in terms of Section 48(4) of the 2014 Act (Appendix B to the application).
53. By email dated 8 July 2020 timed at 16:26 the Letting Agent acknowledged the Applicant's Representative's email referred to in paragraph 52 above.
54. The Letting Agent's email of 7 July 2020 was intimidating and threatening in that it stated:-
- i. *"It appears to me that you seem to be trying to exploit this situation."*
 - ii. *"Please note that if needed we will engage the best legal team and vehemently defend this case and win. We intend to pursue you and Fiona for any legal costs incurred."*
55. The Letting Agent's email of 7 July 2020 caused the Applicant some distress over a very short period of time, namely 3 days.
56. The Letting Agent has apologised to the Applicant for any distress caused by the terms of the email of 7 July 2020 – firstly, in writing in the Letting Agent's submissions to the Tribunal on 18 September 2020 and secondly, at the hearing before the Tribunal on 29 September 2020.

The Code of Practice

57. The Tribunal finds that the Letting Agent is in breach of Section 7, paragraph 111 of the Code of Practice in that the Letting Agent communicated with the Applicant, a former tenant, in a manner that was intimidating and threatening.

Decision

58. As the Tribunal has decided that the Letting Agent has failed to comply with the Code of Practice, the Tribunal is required to make a Letting Agent Enforcement Order ("LAEO") in terms of Section 48(7) of the 2014 Act. The LAEO requires the Letting Agent to take the steps the Tribunal considers necessary to rectify the failures within the specified period.
59. The Tribunal considers that it is appropriate for the Letting Agent to pay compensation to the Applicant for distress caused.
60. The Tribunal therefore orders the Letting Agent to pay to the Applicant £250 in respect of the distress suffered by the Applicant.
61. The Letting Agent is ordered to pay the foregoing sums to the Applicant within 14 days.

Reasons for Decision

62. The Tribunal's decision turns upon the terms of the Letting Agent's email to the Applicant and Ms Fiona Elliot dated 7 July 2020 timed at 18:39.

63. The Applicant complains that in paragraph 1 of the email the use of the word "allegedly" is inappropriate. The Tribunal is satisfied that the use of the word and its position within inverted commas simply denotes that the Letting Agent takes issue with the Applicant's Deposit Application which proceeds on the basis that the deposit was registered late. The Tribunal does not accept that word and the manner in which it is used to be abusive, intimidating or threatening and therefore there is no breach of paragraph 111 of Section 7 of the Code of Practice.
64. The Applicant complains that in paragraph 3 of the email the use of the word "exploit" is inappropriate. The Applicant maintains it is his right to pursue a claim under the 2011 Regulations. The Tribunal considers the wording of paragraph 3 is intimidating and threatening. To suggest that a person is exploiting another person is a serious matter and in breach of paragraph 11 of Section 7 of the Code of Practice.
65. The Applicant complains that in paragraph 4 the capitalisation of the word "NO" is inappropriate as it infers the Letting Agent is shouting at the Applicant. The Tribunal does not agree. The capitalisation of one word is designed to give emphasis only and is not abusive, intimidating or threatening. Therefore there is no breach of paragraph 111 of Section 7 of the Code of Practice in that connection.
66. The Applicant complains that in the fifth last paragraph of the email the reference to the case being "fundamentally flawed" is inappropriate as whether a claim is flawed or otherwise is a matter for the Tribunal not for the Letting Agent. The Tribunal does not consider the wording of the fifth last paragraph of the email to be abusive, intimidating or threatening. The sentence in question simply states the Letting Agent's position with regard the Deposit Application. Therefore there is no breach of paragraph 111 of Section 7 of the Code of Practice in that connection.
67. The Applicant complains that in the third last paragraph of the email the reference to the Letting Agent engaging the best legal team to win the case by implication infers that the Letting Agent will win the case when that is a matter for the Tribunal. He also complains that the reference to legal costs being pursued against the Applicant does not sit well with rule 41 of the 2017 Rules relative to costs. The Tribunal considers the entire wording of the third last paragraph of the email is intimidating and threatening and is therefore in breach of paragraph 111 of Section 7 of the Code of Practice. The words are designed to make the Applicant think again about pursuing the Deposit Application and are written in an effort to persuade him to withdraw or otherwise drop that application threatening a liability in legal costs if the Applicant persists.
68. The Applicant complains that in the penultimate paragraph of the email the suggestion that the Applicant drop the case is not a decision for the Letting Agent. The Tribunal had accepted the Deposit Application for determination and similarly the reference to time being wasted is inappropriate. The Tribunal does not consider the words used in the penultimate paragraph to be abusive, intimidating or threatening and therefore does not accept there to be a breach of paragraph 111 of section 7 of the Code of Practice.
69. The Tribunal accepts that the Applicant's Representative's email to the Letting Agent dated 8 July 2020 timed at 16:17 gave notice to the Letting Agent in terms of Section 48(4) of the 2014 Act.
70. The Tribunal also accepts that the Letting Agent's email dated 8 July 2020 timed at 16:26 acknowledged the Applicant's Representative's email referred to in paragraph 69 above and,

by implication, the words used made it clear that no breach of the Code of Practice was accepted and therefore no rectification likely under Section 48(5) of the 2014 Act.

71. The Tribunal accepted that the words used in the Letting Agent's email of 7 July 2020 in so far as in breach of paragraph 111 of section 7 of the Code of Practice would cause the Applicant some distress over a short period of around 3 days. Whilst the Applicant did not give evidence to the Tribunal the Letting Agent's Representative did not challenge the Applicant's Representative's statements in that connection and, on the balance of probabilities, the Tribunal considered some distress would have resulted from the words used. The Tribunal was satisfied that it was appropriate that a compensatory payment be made by the Letting Agent to the Applicant to reflect the position.
72. The Tribunal was satisfied that the Letting Agent had apologised to the Applicant both in the written submissions made to the Tribunal dated 18 September 2020 and orally at the hearing before the Tribunal. No further apology was considered by the Tribunal to be necessary in the circumstances.
73. The Tribunal did not consider any other steps necessary by the Letting Agent to remedy its breach of the Code of Practice.

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.

Signed

Gillian Buchanan 
Legal Member

Date:
12 October 2020