

Housing and Property Chamber
First-tier Tribunal for Scotland



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

In an Application under section 48 of the Housing (Scotland) Act 2014

By

Mhairi Irvine, 15 Granton Gardens, Edinburgh EH5 1AX (“the Applicant”)

**DJ Alexander Ltd, John Cotton Centre, 10 Sunnyside, Edinburgh EH7 5RA
 (“the Respondent”)**

Re: Property at 15 Granton Gardens, Edinburgh EH5 1AX (“the Property”)

Chamber Ref: FTS/HPC/LA/23/0813

Tribunal Members:

John McHugh (Chairman) and Sandra Brydon (Ordinary (Housing) Member).

DECISION

The Respondent has not failed to comply with the Code.

The decision is unanimous.

We make the following findings in fact:

- 1 In terms of a private residential tenancy agreement dated 6 January 2020 the Applicant and her partner became the Tenants of 15 Granton Gardens, Edinburgh EH5 1AX ("the Property").
- 2 The Respondent operated at the material times as a professional letting agent.
- 3 The Respondent acted as letting agent in respect of the Applicant's tenancy of the Property (initially as Braemore and then post-merger with DJ Alexander under that name).
- 4 The Respondent was under a duty to comply with the Letting Agent Code of Practice contained in the Schedule to The Letting Agent Code of Practice (Scotland) Regulations 2016 from 31 January 2018.
- 5 The original tenancy agreement was prepared by the Landlord's then letting agents, Murray & Currie.
- 6 The tenancy agreement provided that late payment of rent would attract a late payment charge of £60 plus VAT per month.
- 7 The Respondent imposed late payment charges of £72 per month from September 2020 to July 2022, totalling £1610.
- 8 The Respondent attempted to contact the Applicant to discuss her circumstances on multiple occasions.
- 9 The Respondent was prepared to consider changing its approach to the late payment charges if it was in possession of relevant information from the Applicant that she was in financial difficulties.
- 10 In particular, the Respondent emailed the Applicant on multiple occasions in October 2020 offering assistance and asking for financial information. The Applicant did not respond.
- 11 The Applicant first informed the Applicant of her financial difficulties on 15 October 2021. The Applicant did not make any formal request for a reduction in late payment charges nor did she provide detailed financial information.
- 12 On 29 October 2021 the Respondent again requested financial information to enable it to assist. The Applicant did not respond.
- 13 In July 2022, the Respondent wrote off all late payment charges on the account.
- 14 The Applicant has, by her correspondence, including that of 7 March 2023, notified the Respondent of the reasons as to why she considers that the Respondent has breached its obligation to comply with the Code.

Hearing

A hearing took place by telephone conference on 23 August 2023.

The Applicant was represented by Natasha McGourt of Granton Information Centre.
The Respondent was represented by its Dayna Greeney.

No additional witnesses were called.

A Case Management Discussion had previously taken place on 30 May 2023 and the Tribunal had indicated the documents which it required parties to lodge in advance of the hearing.

Introduction

In this decision we refer to the Housing (Scotland) Act 2014 as “the 2014 Act”; the Letting Agent Code of Practice contained in the Schedule to The Letting Agent Code of Practice (Scotland) Regulations 2016 as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the parties.

REASONS FOR DECISION

The Legal Basis of the Complaints

The Code

The Applicant complains of failure to comply with Sections 128 of the Code.

The element of the Code relied upon in the application provides:

“Any charges you impose on late payment must not be unreasonable or excessive.”

The Matters in Dispute

Factual Background

In terms of a private residential tenancy agreement dated 6 January 2020 the Applicant and her partner became the Tenants of the Property.

The Landlord's then letting agents were Murray & Currie.

The tenancy agreement provided as follows:

“In the event the Tenant fails to pay the rent or any part thereof within five days of the date on which it fell due and the Landlord or the Letting Agent requires to issue a reminder or reminders, then the Tenant shall pay £60 plus VAT for each month that the rent is late.”

In addition, the tenancy agreement provides for interest to be payable on late rent at 8%.

On 16 September 2020, the first late payment charge was imposed. The Applicant and her joint tenant remained in substantial arrears thereafter with sporadic payments being made to account. In the period to 27 July 2022, when the last late payment charge was imposed, a total of £1610 had been charged to the account in late payment fees. The late payment charge was applied in two stages – an initial charge of £24 and a further £48 - on each occasion. The Respondent has confirmed that the charge was to cover letters issued, administration and welfare contacts with late paying tenants.

Braemore took over acting as the letting agent in 2020. Braemore subsequently merged with the Respondent.

The Respondent made regular attempts to contact the Applicant over the period September 2020 to July 2022 regarding non-payment of rent. The Applicant would typically not respond.

On 22 October 2020, the Respondent sent to the Applicant an email indicating that they were prepared to consider her financial circumstances in relation to their approach to rent payments. They provided a questionnaire for her to complete to explain the detail of her financial position. She failed to complete and return it. A reminder was issued on 28 October 2020. The Applicant did not respond.

On 15 October 2021, the Respondent emailed the Applicant to indicate that she had failed to make contact with them and that the Landlord was concerned about the persistent arrears. The author of that email indicated that he intended to visit the property to discuss the situation. On the same day, the Applicant responded to advise of her financial difficulties. On 29 October 2021, the Respondent asked for financial information so that it could assist. The Applicant did not respond.

Initially, Braemore and the Respondent operated separate accounting systems after they had merged. These were merged in July 2022. At that point, the Respondent, in accordance with its own policies, wrote off the late payment charges of £1610.

Interest was never charged.

The Applicant considers the imposition of the late payment charge unreasonable. She accepts that a late payment charge may be warranted in principle. Her position is that the charge itself is unreasonably high and that the decision to repeatedly impose it over the period of time in question was unreasonable, having regard to a) the Respondent's knowledge of the Applicant's circumstances and b) the existence of the COVID pandemic.

In relation to the charge itself, the Respondent considers it to be reasonable. The Tribunal is in possession of no evidence that the charge itself is unreasonable in its level. Late payment charges are reasonably common and the levels applied here are not obviously out of keeping with charges of which the Tribunal is aware. Neither party offered any evidence as to comparable rates charged by other letting agents. The level of charge was the subject of parties' agreement by its inclusion in the tenancy agreement. We find the charge to be reasonable in its level.

In relation to the Applicant's circumstances, it is said on behalf of the Applicant that she experienced domestic violence and that it was not easy for her to communicate with the Respondent. She ignored correspondence from the Respondent as it is said that she had failed to appreciate that they were her Landlord's new agent. She engaged with Ms McGourt's organisation in March 2022 and only at this point did she begin to address the situation.

It is also said that the Respondent would have been aware of the Applicant's circumstances because of a submission made in a different Tribunal case in January 2023. However, the arrears had already been written off by that point and were no longer being applied to the account (although that decision seems not to have been communicated to the Applicant at the time), so that does not appear relevant. The Respondent only became aware of some of the Applicant's financial difficulties on 15 October 2021 as she had failed to engage prior to then. We do not find that the imposition of charges prior to that date can be criticised. As regards the continued imposition of late charges from October 2021 to July 2022, there is no evidence that the Applicant ever provided detailed financial information to the Respondent to enable it to consider with the Landlord whether a change of approach would have been appropriate (as the Respondent states it would have done). The Applicant made no such request. We do not consider that the imposition of late charges was unreasonable in this respect.

The Respondent was of course generally aware that the COVID pandemic had adverse financial effects upon many people although it was not in a position to deduce that the Applicant was one such person (assuming for present purposes that this was the case) and so we do not find that the imposition of late payment charges was unreasonable in this respect.

The Applicant has raised an additional point that the Respondent appears to be pursuing the Applicant alone and not her previous joint tenant. We do not consider that this point is of any merit since the Applicant and the joint tenant have joint and several liability in terms of the tenancy agreement. In any event, the Respondent has since July 2022 been pursuing neither Tenant.

Decision

We find there to have been no breach of the Code.

Observation

In case it was not already clear from the papers lodged, we asked, and Ms Greeney confirmed at the hearing, that the late payment charges of £1610 have been written off and will not be pursued against the Applicant.

LETTING AGENT ENFORCEMENT ORDER

As no breach has been established, no Order will be made.

APPEALS

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.

JOHN M MCHUGH

CHAIRMAN

DATE: 24 August 2023