Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 48 of the Housing (Scotland) Act 2014 ("the Act") and Rule 36 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Rules")

Chamber Ref: FTS/HPC/LA/19/3383

Re: Property at Flat 2/1.27 Daisy Street, Glasgow G42 8JN ("the Property")

Parties:

Mr Zumurd Hussain Raja, residing at Flat 1/2, 46, Albert Road, Glasgow G42 8DN, per his wife and agent Ms Nazreen Akhtar, Naz Home Services, 32, Osprey Avenue, Chatham, Kent ME5 7HY ("the applicant")

Allied Homes Ltd, 266, Allison Street, Crosshil, Glasgow G42 8RT ("the respondents")

Tribunal Members:

David Preston (Legal Member); Ms Elizabeth Williams (Ordinary Member)

Decision

The tribunal finds that the respondents have failed to comply with paragraph 111 of the Letting Agent Code of Practice ("the Code") and determines to issue a Letting Agent Enforcement Order ("LAEO").

Background:

1. By application dated 16 October 2019 under Rule 108 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") the applicant applied to the Tribunal for a determination that the respondents had failed to comply with paragraphs 108, 111, 112, 119, 120 and 121 of the code.

2. By Notice of Acceptance dated 7 November 2019 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for determination by the First-tier Tribunal and appointed the case to a Case Management Discussion ("CMD").

3. Intimation of the hearing was sent to the parties by letter dated 14 November 2019.

4. Along with the application the applicants submitted copy emails and text messages between July and September 2019.

5. The respondents submitted representations along with: copy correspondence between the parties; emails between the parties; copy complaints procedure; inventory documents; emails from staff members of the respondents; letters from respondents to applicants dated 26 October 2018 and 9 January 2019 regarding the inventory.

6. The application referred to the deposit not having been lodged with an approved scheme, but the tribunal did not consider these complaints in respect of which a separate application had been lodged under reference FCTS/HPC/PR/19/3364 and which is being dealt with separately. It is inappropriate for those elements of the application to be included.

7. Following the hearing the respondents were asked to provide a report from CLC Maintenance Ltd as well as copy logs of telephone calls from the applicant during the tenancy. These were supplied by the respondents and copied to the applicant for comments. The applicant responded by letter dated 24 January 2020. The applicant complained that the respondent had been 'allowed' to submit additional paperwork and felt that this had given them an unfair advantage. The paperwork provided consisted of that which was required by the tribunal following the hearing. that had been sent to the applicant to allow him to make representations in order that no advantage might be given to either party. Thereafter by email dated 3 February 2020 the respondents responded to the applicant's representations, which were responded to again by the applicant by email dated 13 February 2020 and by the respondent again by a further email of the same date. The tribunal considered all these representations in coming to its decision.

Hearing:

8. A hearing took place at Glasgow Tribunal Centre, 20, York Street, Glasgow G2 8GT on 18 December 2019. The applicant attended along with his representative, Ms Nazreen Akhtar and Ms Susan Hanlin attended on behalf of the respondents.

9. It was a matter of agreement between the parties that the Private Residential Tenancy Agreement had commenced on 15 October 2018 and the applicant had vacated the property in July 2019.

Summary of evidence

10. Ms Akhtar said that there had been a number of issues which had arisen in the property and that these had not been dealt with satisfactorily by the respondents. These were as detailed in the letter dated 13 August 2019. During the tenancy either she or Mr Raja had reported the problems either in person or by phone. She complained that Ms Hanlin had not dealt with these calls in a professional manner and had been threatening and abusive to them.

11. She complained that the boiler had required a number of repairs. She said that 4 or 5 engineers had been telling them different stories about the problems. The pressure had kept falling and she had been told to top up the boiler which she was not happy about. There had been leaks in the system as well and they had been

accused of damaging the pipes, although it was discovered that the system needed a new part. She complained that they had difficulties with the central heating and hot water over a period of about one month between October and November 2018.

12. Ms Hanlin had responded to the applicant's complaints by letter dated 14 August 2019. She said that there had been intermittent problems with the boiler. The respondents' maintenance man had attended and topped up the boiler when the problem was reported but when the problem persisted, they had instructed CLC Maintenance Ltd who had attended and found that the expansion vessel which was obtained and fitted. They had also reported that a pipe in the bathroom had been knocked, which was repaired. The report from CLC Maintenance Ltd confirmed the respondent's position.

13. Ms Akhtar said that she had complained about the bed springs but the respondents had refused to do anything about it and had said that if they got a new bed they would need to store the existing on in the flat, which, she said, was not possible in view of the size of the flat. She had complained about bed bugs but nothing had been done. She said that there were also items belong to the landlord (weights and tiles) left in the flat which the respondents refused to do anything about. The microwave dish had been missing and the respondents had refused to replace it. They had told her to get a new microwave but to keep the existing one in the flat. She had complained that there were no blinds or window coverings in the flat and replacements had been provided.

14. Ms Hanlin said that she had spoken to Mr Raja about the bed. She said that when Mr Raja had taken the tenancy it had been as a single occupant. She had not been made aware that he had a partner who was to live there. Two beds had been provided and it appeared to her that the applicant wanted it to be replaced with a double bed, which she had said they would have to provide themselves. She denied that any complaint had been made about bed bugs as she was fully aware of the implications of any such infestation and immediate action would have been taken to fumigate the property had it been raised. This complaint had only been raised at a later date. She said that she would normally expect a tenant to replace the microwave plate and accepted that nothing had been done about the landlord's weights and tiles, although the tiles were surplus from a previous job. She said that the tenants had not insisted on their removal during the tenancy. She accepted that it had been raised with her during an inspection visit which had been undertaken in December 2018. At that inspection the condensation issues had been discussed and information was provided to the tenant about adequate ventilation. A follow up visit had been arranged for February 2019.

15. Ms Akhtar complained that the manner in which Ms Hanlin had dealt with her was unacceptable throughout and in particular she referred to the email from Ms Hanlin dated 12 September 2019 which she said was intimidating by demanding a forwarding address and questioning these addresses.

16. Ms Hanlin accepted that she had made a mistake about the deposit and said that the applicant's complaints all seemed to have been raised after it had been suggested that £147 be deducted from the deposit of a sum to cover missing items

and minor damage. She accepted that some of the issues had been raised during the tenancy, which had been dealt with appropriately and no complaints about the way they had been handled had been raised.

17. Ms Akhtar said that she had not been provided with a copy of the respondent's complaints procedure as required by Rule 112 of the Code. Ms Hanlin denied that any request for a copy of the complaints procedure had been made and referred to the fact that no such complaints had been raised during the tenancy.

Additional Submissions:

18. The respondent submitted the call logs and a report from the CLC, the central heating engineers, which had been requested which showed rough notes of calls received by the respondents dated: 3 notes dated 16 and/or 17 October; 22 October; 6 November; and 14 November all 2018. It was not clear which notes related to calls with the applicant or calls with contractors. The CLC report showed visits and repairs having been attended to on 22, 23, 24, October and 6 and 7 November 2018.

19. In the email of 24 January 2020 in response to the call logs and CLC report the applicant contended that the notes demonstrated that he had made complaints to the respondents during the tenancy despite the respondents' denials at the hearing that any complaints had been made. He also complained that he had been given differing reports from CLC and the respondents about the issues with the central heating.

20. The tribunal noted that the further emails of 3 and 13 February from the parties simply re-stated the previous submissions and evidence from the documentation and evidence heard and added nothing to the tribunal's deliberations.

Findings in Fact

21. The tenancy subsisted from 15 October 2018 until July 2019.

22. At the start of the tenancy the applicant raised a number of issues regarding the central heating, some items of furniture and appliances in the flat.

23. The respondents generally dealt with those issues in an acceptable manner. They instructed heating engineers who attended and carried out repairs to the boiler and radiators. They responded to the complaints, although the outcomes may not have entirely satisfied the applicant.

24. After the end of the tenancy the respondents proposed a deduction of £147 from the tenant's deposit. The respondents discovered that they had failed to lodge the deposit with an approved scheme and offered to waive the deduction. They refunded the deposit in full to the applicant. This issue was the subject of a separate application to the Tribunal under reference PR/19/3364.

25. After the proposed deduction was intimated to the tenant, he raised a number of complaints about the actions of the respondents during the tenancy. Whilst the applicant had made complaints about issues in relation to the tenancy during its currency, he did not raise complaints about the respondents' behaviour or conduct under the Code until after he had left the property.

26. The respondents sent a number of emails to the applicant after the end of the tenancy which the tribunal found were in breach of paragraph 111of the Code.

Reasons for Decision:

27. The tribunal carefully considered the evidence presented to it both in writing and orally.

28. The application relates to the respondents' compliance with paragraphs 108, 111 and 112 of the Code:

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.*

29. The tribunal does not find that the respondents were in breach of this paragraph as alleged. It was satisfied that in general terms the issues were resolved in reasonable timescales based on the evidence of Ms Hanlin, the CLC report and the lack of any emails from the tenants during the tenancy. The tribunal also had regard to the emails from Claudine McMutrie and Michelle Proctor dated 26 November and 3 December 2019 (Respondents' Production C16). The central heating problems were attended to appropriately and replacement blinds were provided. The tribunal noted the copy inventory (Respondents' Production C14) which was signed by the tenants in 2019, some months after taking possession, and which made no mention of any of the issues raised in the application which would be expected if the issues were not being handled satisfactorily. Other matters were discussed at the inspection in December 2018 and the respondents were entitled to regard them as concluded, apart from the issue of the landlord's weights and tiles which could have been removed. However, the tribunal does not consider this failing to amount to a breach of the Code.

30. The applicant's letter of 13 August 2019 refers to verbal communications throughout the tenancy of which no evidence was produced. The respondents denied the allegations of threats and intimidation during these discussions. The tribunal noted the emails from Claudine McMutrie and Michelle Proctor which supported Ms Hanlin's position that such calls or discussions had not taken place. If matters had not been handled by the respondents to the applicant's satisfaction, having seen emails from the applicant and heard their oral evidence, the tribunal considers that the applicant would have recorded his complaints in correspondence or emails throughout the tenancy.

31. The tribunal noted that the inventory, which had been provided at the start of the tenancy was not signed by the applicant until an indeterminate date, sometime in 2019, which was at least two months after the commencement, contains no comments about the condition of the bed

111. *You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.*

32. The tribunal finds that the tone of a number of the emails from the respondents are intimidating in nature.

33. The tribunal noted the following emails:

1 August 2019 at 10.22:

> *"...we have not received a reply from you and believe it would be in your best interests to discuss this even if you are dealing with this via Citizen's Advice as you previously suggested...".*

1 August 2019 at 14.41:

> *"...Going forward we will examine every other aspect of your tenancy to see that we have all been complying with the law both tenant and landlord and look into your references, deposit protection from your previous property which is now listed as your current property..."*

12 September 2019:

> *"...Tenants, especially those on residence permits should be able to give accurate information as to their permanent addresses not only for council tax but for registration purposes and if they are not where they say they are there is usually a reason.*
> *You have admitted to having the address at ******as a correspondence address so what is your current address where you are actually living as it is encumbent on us to give the correct information to the authorities for council tax purposes etc when our tenants move on..."*

34. The tribunal finds that these emails are intimidatory in their nature. They imply that the respondents may take various matters forward if they persist in their application to the tribunal in respect of the tenancy deposit failure.

112. *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 May go through with reasonable timescales linked to those set out in your agreed terms of business.*

35. The tribunal was satisfied that the respondents had a written complaints procedure which complied with the terms of the Code. It accepted the evidence of Ms Hanlin

and the emails from her staff that no request had been made for a copy of the complaints procedure during the tenancy.

36. It was accepted by the parties that the reference in the application to Paragraphs 119, 120 and 121 of the Code relate to the issue of the tenancy deposit and were not considered by the tribunal as forming part of this application.

Letting Agent Enforcement Order:

37. Having decided that the respondents have failed to comply with the Code, it is required by section 48(7) of the Act make a LAEO to require the respondents to take such steps as it considers necessary to rectify the failure. Section 48(8) requires that such an order may provide that the respondents must pay to the applicant such compensation as it considers appropriate far any loss suffered by the applicant as a result of the failure to comply.

38. The tribunal considered the terms of the LAEO to be made. it did not consider that there were any steps which could reasonably be taken to rectify the failure but did consider that an award of compensation for the inconvenience and stress caused to the applicant by the nature and tone of the respondents' correspondence as detailed above in the sum of £500 would be appropriate.

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.

Chairman 24 February 2020