



Decision with Written Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014.

Reference number: FTS/HPC/LA/20/1765

The Parties:

Mr Luke Humberstone, 2/1 65 Causeyside Street, Paisley, PA1 1YT (“the Applicant”)

1st Lets, 2 Calder Street, Glasgow, G42 7RT (“the Respondent”)

1. Tribunal Members:

Karen Kirk (Legal Member) and Helen Barclay (Ordinary Member)

2. The Hearing

This Hearing was a Hearing fixed in terms of Section 48(1) of the Housing (Scotland) Act 2014 and concerned an application by the Applicant against the Respondent for failure to comply with the Letting Agency Code of Practice at paragraphs 17 and 19 of the Code. The hearing took place by teleconference due to the covid-19 pandemic.

3. Attendance

The applicant attended personally.

Joanne Simpson attended for the Respondent.

4. Decision of the Tribunal.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having made enquiries as it saw fit for the purposes of determining whether the Letting Agency has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that

- 1. The Respondent failed to comply with the Code of Practice at Paragraphs 17 and 19, and**

- 2. It was appropriate to order the payment of compensation in respect of those breaches of the code in terms of Section 48 of the 2014 Act by the Respondent to the Applicant for the sum of £200.**

5. Process and Preliminary Matters

1. Hearing on 2nd December 2020

The Hearing heard evidence on 2nd December and the Hearing was adjourned to allow the Respondent to lodge further copy email information she referred to in evidence with the Tribunal. In particular the Hearing Note of the 2nd December 2020, held to be part of this process noted the Respondent referred to an email sent to 1st Lets drafted from her personal email account which she said was then sent to the Applicant on 28th July 2020 at 11:11. The Respondent undertook to lodge this with the Tribunal and there was no objection to this by either party. The Respondent also undertook to lodge a copy of the original email she said was sent to the Applicant on 17th July 2020 at 4.30pm. There was no objection to this by either party and both parties were sent a copy of the Hearing note.

At the Hearing today the Respondent confirmed she had lodged an email which she said was sent from her personal email account to the 1st Lets account. In it she instructs that the email in dispute is sent to the Applicant and in regards which the Applicant maintains he did not receive. This was sent to the Tribunal on 11th January 2021 and the Tribunal was told that the Respondent had to obtain assistance from an IT expert to find the email in her own personal account from back up. She told the Tribunal she could not provide an original copy of the email she said was sent to the Applicant on 17th July 2020 at 4.30pm because she said it was part of a thread of emails and she cannot get back to the original email as she did not have the facilities.

The Respondent confirmed at this hearing he was going forward with paragraphs 17 and 19 only.

2. Change of Member

The Ordinary Member at the Hearing on 2nd December 2020 could not longer for personal reasons be present to hear the case and as such Helen Barclay was the Ordinary Member for the application. This was explained by the Legal Member to parties and there was no objection.

6. Summary of Evidence

The Applicant

The Applicant set out his evidence for the benefit of the Tribunal and stated that he considered that paragraphs 17 and 19 of the Letting Agency Code of Practice had been breached by the Respondent. He said he believed the letting agency to have

been dishonest and deliberately misleading. The Applicant had reported an infestation to the Respondent by email on 29th June 2020 and he complained to the Respondents further by email on 13th July 2020. The Applicant sought to move to the second stage of the complaints procedure as the Respondents had not replied in the necessary timescales. The Applicant's position was that he then received an email from the Respondents on 28th July 2020. In said email it contained he said a chain of emails which included a forwarded email purporting to be responding to his initial claim timeously. The Applicant's position was that this email of 17th July 2020 sent at 4.30pm had never been sent to him. He said the reason for believing that it was not sent to him was that he had not received it but that the addresses were unlike any of the other forwarded emails underlined in blue. He told the Tribunal this in his view showed that that particular email heading showing it was sent and to whom had been hand typed and had not been sent to him. The Respondent said further that when entering an email address for a word document as soon as you complete it then it automatically underlines the address and if you click on the underlined words it will take you to the web address and would not appear on a forwarded email address like that.

The Respondent said he had also looked at the email that the Respondent had lodged since the last hearing and he considered that too looked unconventional and may have been a second had typed email. The Respondent said he had many years of experience with email correspondence as he had worked for student associations, universities, colleges and with the Scottish Government in email chains.

The Respondent said whether indeed the Respondent had sent the email she had now lodged from her personal account was he felt beside the point. He said the original email showing that he had been separately sent the email on the 17th July 2020 at 4.30pm had not been lodged by the Respondent despite it being requested at the last hearing and noted as the reason for it being adjourned. He said failure to provide this email and not being able to produce it may in fact be a further breach of the Code of Practice at paragraph 115 although this was not what he was seeking determination about nor what the application concerned.

The Respondent said in any event the email was not sent to him and the Respondent by forwarding the email chain of 28th July 2020 and including the email of 17th July 2020 breached paragraphs 17 and 19 of the code. Given same the Applicant for his time and inconvenience and having to go through the process complaining sought an appropriate award of compensation. The Applicant said that as there are timescales for the complaint process he enacted that in his view the reason why the Respondents mislead him was because the date he should have received the response had passes and it was late. The Applicant said throughout all his other dealings with the Respondents they have been nothing but open and honest. The Applicant said had the Respondent lodged a copy of the sent email he would have withdrawn his application.

Miss Simpson for the Respondents

Miss Simpson in response said that the Respondents had always tried their best in regards to this case overall and that the application concerns one particular email. She said further that she had tried her hardest to answer the questions put to them

and submit any evidence they have including setting out her personal email information lodged since the last hearing.

Miss Simpson referred to Paragraph 17 of the code and said she felt that the Respondents were at no point in time anything other than honest and transparent even during a lockdown and with an increased work load. Miss Simpson said that even when they could not deal with matters as quickly as normal due to the lockdown the Respondents always sent the Applicant a reply as quickly as they could to questions and emails. In doing so Miss Simpson's position was that she always answered honestly.

In regards Paragraph 19 Miss Simpson said in her view the Respondents had not been misleading or negligent whether deliberately or inadvertently and they followed the code of practice and tried to help the tenant throughout at all times.

Miss Simpson said the Respondent as a company tried their very best at all times and on coming back after lockdown while all staff was on furlough Miss Simpson said she had been running the company herself. and I did try my best, tried my hardest we had to go through environmental health. She said that she had dealt with matters for the Applicant and kept him in the loop and didn't try to hide anything from him and complied with their responsibilities.

Miss Simpson said she had drafted the email concerned at home on her personal email account and then had sent it to the 1st Lets account. She said she had sent it through to the company email address and that the company's accountant and director were manning the company email account at the time. Miss Simpson said she had since enquired of both to see who had sent it to the Applicant and she could not be 100% sure she said. She said she had not been able to speak to the director due to him being out the country and she didn't have the answer. She said the director of the company went abroad at beginning of the lockdown and came back intermittently from Pakistan. Miss Simpson said the accountant was available but she had nothing back from them to say they definitely had sent the email forward to the applicant.

7. Submissions

For the Applicant

The Applicant referred to his evidence and said that his position was that if the original email had been provided as being sent on 17th July 2020 then he would not have proceeded but in its absence considers the Application is necessary.

For the Respondent

Miss Simpson said she would rely the evidence and comments she made as submissions.

8. Findings in Fact and Law

1. The Applicant resides at Flat 2.1, 65 Causeyside street, PA1YT and 1st Lets who are the Respondents are a registered letting agency in terms of the

- Housing (Scotland) Act 2014 and manage the Applicant's tenancy.
2. The Applicant experienced an infestation at his home and contacted the Respondent by email on 29th June 2020.
 3. The Applicant emailed the Respondent on 13th July 2020 because he felt no steps had been taken regarding the infestation by the Respondent.
 4. The Applicant made a complaint by email to the Respondent on 17th July 2020 about the lack of progress.
 5. The Respondents had been attempting to contact the letting agency for the property above the Applicant's home to assist with matters without success.
 6. On 28th July 2020 the Respondent sent to the Applicant an email which contained a forwarded email dated 17 July 2020 acknowledging the Applicant's complaint and confirming the Applicant would receive a response to his complaint no later than 3rd August 2020.
 7. The Applicant did not receive the forwarded email of 17th July 2020 on the 17th July 2020.
 8. The Respondents did not send the forwarded email to the Applicant on the 17th July 2020 as suggested by them that they had in their email of 28th July 2020.
 9. The Respondent in suggesting in their email of 28th July 2020 that they had sent the forwarded email originally on 17th July 2020 breached the Letting Agency code of practice. The Respondents breached the following paragraphs of the code:

Paragraph 17 - You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).

Paragraph 19 - You must not provide information that is deliberately or negligently misleading or false.

9. Reasons for Decision

The Tribunal had the benefit of both written evidence in the form of email communication between the parties and extensive oral evidence. The Tribunal determined that the Applicant was credible and reliable in the straightforward and focused way he provided his evidence to the Tribunal. He was focused and had at an earlier hearing accepted that he ought not to proceed in terms of paragraph 112. He referred to the reasons why he felt the forwarded email had not been sent to him previously and why he felt he had been deliberately misled.

Miss Simpson for the Respondent did not provide any evidence of the email concerned being actually sent to the Applicant on the 17th July 2020. She provided an email from her personal email account which she said showed she drafted the email concerned on her personal email and then forwarded to the Respondent's email box to be sent on to the Applicant. In that email she asks for the email to be sent to the Applicant and she said this explained why the forwarded email looked different to the rest. It was not until she had lodged that email before this Hearing that the Tribunal were aware that there was another party who she says acted on her instructions to send the email. She said that either the Respondent's accountant or director sent the email to the Applicant but in answer to the Tribunal's questions she said she could not

be sure which one did so. Miss Simpson said further that she had been able to contact the accountant but she could not be sure it wasn't the director who sent it. Miss Simpson said the director was in Pakistan and in and out the country and she had not been able to contact him. The Tribunal determined that Miss Simpson's evidence was less credible than that of the Applicant who was consistent and straightforward. The Respondent relied on what Miss Simpson had said and sent but it had not been her that had dealt with sending the email on and she could not be sure who had. On a balance of probabilities the Tribunal accepted the evidence of the Applicant that he had not received the email on the 17th July 2020 and that when the purported email was sent to him as a forwarded email on the 28th July 2020 this was an attempt to mislead him. The Tribunal found in favour of the Applicant and also considered the Applicant had been put to time, inconvenience and stress regarding the breach of the code and need to advance an application and considered a reasonable sum in their discretion for this as compensation in terms of S48 of the Housing (Scotland) Act 2014 was £200.

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.

14/01/2021

Legal Member

Date

