Housing and Property Chamber
First-tier Tribunal for Scotland

Decision on tenant's application :

Housing (Scotland) Act 2014, Section 48(6)

Chamber Ref: FTS/HPC/LA/18/1720

The Parties:-

Lucinda Willis, Flat 18, Caird House, 4 Scrymgeour Place, Dundee DD3 6TU ("the Applicant")

Rent Flats Dundee Limited, (company number SC578355) having a place of business at 214 Blackness Road, Dundee, DD1 5PL ("the Respondents")

Tribunal Members:-

David Bartos - Chairperson, Legal member
Helen Barclay - Ordinary member

DECISION

1. The Respondents have failed to comply with sections 124, 125, 17, 18, 43, 45, and 112 of the Letting Agent Code of Practice.

2. The Respondents have otherwise not failed to comply with the Letting Agent Code of Practice as alleged in the application.

Introduction

3. In this decision the Housing (Scotland) Act 2014 is referred to as "the 2014 Act"; the Letting Agent Code of Practice is referred to as "the Code"; and the rules in the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules".

4. By application received on 12 July 2018, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") for a decision that the Respondents had failed to comply with the Code. The application alleged breaches of a number of sections of the Code.

Findings of Fact

5. Having considered all the evidence, the Tribunal found the following facts to be established:-

(a) In or about February 2018 the Respondents received instructions from owners of the dwellinghouse at 60 Seafield Road, Dundee ("the Property") to let the property. They received the instructions in the course of their business. They proceeded to find tenants for the Property in the course of their business.

(b) The Applicant was a student. She applied to become joint tenant of the Property together with five other co-tenants. She signed and delivered an application form to the Respondents dated 26 February 2018. Following the delivery of the form she paid her share of the overall deposit as required in the application form. That share was £ 383.33.

(c) By lease dated 18 March and 3 April both 2018 the Respondents, acting on behalf of the owners let the property to the Applicant and five other tenants. In terms of clause 11 of "Private Residential Tenancy Agreement" ("the lease") the Applicant and her co-tenants were obliged to pay a deposit amounting to in total £ 2,300 at or prior to the date of entry. The date of entry under the lease was 26 July 2018. A deposit in that total had been paid by the tenants at or about the time that they submitted their application forms to the Respondents. The Respondents took that deposit in settlement of the tenants' obligation under clause 11. Until they remitted it to the depositary company they held it in terms of clause 11.

(d) By e-mail to the Respondents dated 8 May 2018 the Applicant stated that she would be unable to pay the rent and unable to take up occupancy under the lease. By e-mail dated 9 May 2018 the Respondents informed the Applicant that she would remain liable for the rent payments until a substitute co-tenant was obtained who was acceptable for the other co-tenants and the landlords. They did not mention anything about charging for work caused through the finding of a substitute co-tenant.

(e) Between 9 May and 22 June 2018 the Applicant provided names of potential substitute co-tenants to the Respondents. The Respondents arranged seven viewings for such potential tenants. They incurred costs in arranging and being present at such viewings. The costs are reasonably estimated to be £ 20 per hour with the time taken up by the Respondents' staff for each viewing being about 45 minutes. There was no advertising for substitute tenants carried out by the Respondents.

(f) By 22 June 2018 the Respondents had received a deposit from a substitute co-tenant. By e-mail dated 25 June 2018 the Respondents informed the Applicant that they would be returning her deposit but deducting the sum of £ 150 from her deposit of £ 383.34 stating that this

was to cover extra administration work caused by the the Applicant "pulling out" of the lease.

(g) Following this the Applicant complained by e-mail to the Respondents that no such basis for deduction had been mentioned previously and that it amounted to an unlawful charging of a premium. On 26 June the Applicant indicated that if there was no full refund of the deposit she would apply to the Tribunal for a letting agent enforcement order. By e-mail of the same date the Respondents rejected the Applicant's complaint. No complaints procedure was notified to the Applicant. The Applicant suffered stress and inconvenience as a result of not being informed of the intention to charge her for work caused by her wish to renounce her interest in the lease.

(h) By the date of entry the Respondents had arranged for a fresh lease of the Property to be signed by the new co-tenant and the Applicant's previous co-tenants. The cost of preparing that document is unknown.

(i) The Respondents have returned to the Applicant her share of the aggregate deposit apart from the £ 150.

Procedure and Preliminary Matters

6. On or about 25 July 2018 the Applicant lodged further documentation in support of her application.

7. On or about 17 August 2018 Alan Strain, a legal member of the Housing and Property Chamber of the First-tier Tribunal for Scotland with delegated powers of the Chamber President referred the application to the present Tribunal for its determination. This was notified to the parties by letters from the Tribunal's clerk dated 23 August 2018 which also invited the parties to make written representations to the Tribunal and to lodge supporting documents known as productions. The letter to the Respondents enclosed the productions and written evidence lodged by the Applicant up to that time.

8. The Tribunal issued a direction to parties extending the time for making written representations to 1 October 2018 and requiring the Respondents to provide to the Tribunal a statement with further information including an indication of any duties under the lease said to have been broken by the Applicant and any breakdown of losses caused by any such breach. The Applicant submitted written submissions by e-mail dated 1 October 2018. There were no written representations or statement from the Respondents by that date.

9. By e-mail dated 9 October 2018 the Respondents made written representations to the Tribunal which were copied to the Applicant. These were accompanied by documents which they sought to lodge as productions. There was no list or notification of witnesses from either party.

The Hearing

10. A hearing was fixed to take place at Dundee Carers Centre, Seagate House, 132 to 134 Seagate, Dundee on 15 October 2018 at 10.00 a.m. The date and times were intimated to the Applicant and the Respondents by the said letters of 23 August 2018.

11. At the hearing the Respondents were represented by their director Mr Shazad Latif. There was no appearance by the Applicant. Nor was there any notification to the Tribunal's office by the Applicant that she intended to attend but for whatever reason was prevented from doing so. Being satisfied that due notice of the hearing had been given to the Applicant the Tribunal proceeded with the hearing in her absence.

12. The Tribunal raised with the Mr Latif that the documents lodged on 9 October 2018 had been lodged one day late contrary to Rule 22(1)(a). On having Rule 22(1)(a) and in particular Rule 22(2) brought to his attention Mr Latif told the Tribunal that he been suffering from two kidney stones which had caused him considerable difficulties. On 8 October he had been for an MRI scan. He asked that the documents be allowed to be lodged late. The Tribunal found that his explanation amounted to reasonable excuse and allowed the material lodged on 9 October to be lodged late under Rule 22(2).

Evidence

13. The evidence before the Tribunal consisted of:-

- The application form
- Applicant's timeline of evidence
- Applicant's statement of evidence
- Applicant's note of key dates
- Copy Private Residential Tenancy Agreement dated 19 March 2018 and subsequent date
- Copy e-mails between the Applicant and the Respondents dated 25 and 26 June 2018 (produced by the Applicant)
- Copy notification letter from Applicant to Respondents with recorded delivery delivery note dated 2 July 2018
- Copy e-mails between the Applicant and the Respondents dated 24 and 26 April, 2 May, 3 May, 5 May, 8 May, 9 May, and 5, 8, 12, 14, 15, 22, 25, 26 and 27 all June 2018 (produced by the Respondents)
- Copy Respondents' Tenancy Terms and Application Form dated 26 February 2018 signed by the Applicant
- The oral evidence of Shazad Latif

The Hearing

14. The Tribunal found that the Mr Latif gave oral evidence in a candid manner. His oral evidence understandably overlapped with his submissions, and is summarised in the reasoning below. The Tribunal was prepared to accept his evidence as to the viewings and approximate cost. He expressed a genuine concern to be able to comply with the Code and accepted that on certain occasions there had been non-compliance.

Charging a Premium

15. The Applicant complained that the Respondents had breached their duty under sections 47 and 48 of the Code. Section 47 requires a letting agent to comply with all relevant legislation on the charging of fees and premiums to tenants and prospective tenants. This includes compliance with section 83 of the Rent (Scotland) Act 1984. Section 48 of the Code has a more detailed duty on the agent. It requires him to comply with section 82 of the Rent (Scotland) Act 1984. Both sections 82 and 83 together with section 90 of the Rent (Scotland) Act 1984 have been extended to apply to private residential tenancies under the Private Housing Tenancies (Scotland) Act 2016 that were entered into on or after 1 December 2017 (2016 Act, s.20).

16. Section 90(1) of the 1984 Act (as amended by section 32(3) of the Private Rented Housing (Scotland) Act 2011) defines a "premium" as a "fine, sum or pecuniary consideration, other than the rent, [including] any service or administration fee or charge". Being "sums or pecuniary considerations" the effect of the amendment was to render all deposits "premiums" unless the fell within the exclusion in section 90(3). That excluded from the definition of "premium" a deposit not exceeding two months' rent, returnable at the termination of the tenancy given as security for supplies of gas, electricity or other domestic supplies and for damage to the property or its contents.

17. Section 82 of the 1984 Act provides, among other things :
"(1) Any person who, as a condition of the grant, renewal or continuance of a protected tenancy, requires the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section.
(2) Any person who, in connection with the grant, renewal or continuance of a protected tenancy, receives any premium shall be guilty of an offence under this section."

18. Section 83 of the 1984 Act provides, among other things :
"(1) Subject to the following provisions of this section . . . any person who, as a condition of the assignation of a protected tenancy, requires the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section.
(2) Subject to the following provisions of this section . . . any person who, in connection with the assignation of a protected tenancy, receives any premium shall be guilty of an offence under this section."

19. The Applicant's submission was that in deducting £ 150 as a fee for extra administrative work with regard to her renunciation of her co-tenant's interest the Respondents were breaching the prohibitions in section 82 or 83 of the 1984 Act.

20. The Respondents' position on this matter changed. In his written submission dated 9 October 2018 Mr Latif's position was the £ 150 was due under the Application Form that the Applicant had signed before she had signed the

lease. He relied on the provision in the application form to which the Applicant had agreed and which provided, "After deposit has been paid, if you wish to pull out for any reason, the full deposit will be lost". It was submitted that the Respondents had not sought the full deposit but only £ 150 which was to cover the cost of 7 viewings on behalf of the Applicant, a new tenancy agreement with her replacement and advertisement on her behalf.

21. At the hearing Mr Latif accepted that all of the tenants including the Applicant had signed the lease by no later than 3 April 2018. He also accepted that the aggregate deposit of £ 2,300 for the tenants as a whole which had been paid under their application forms was, from the time of signature of the lease, to be taken as having been made under clause 11 of the lease. He accepted that upon signature by all tenants of the lease the deposit was governed by clause 11 rather than by any provision on the application form.

22. Instead of relying on the application form, he submitted that the £ 150 amounted to "reasonable costs" which the landlord was entitled to deduct under clause 11. The relevant part of clause 11 provides:

> "Where it is provided in this Agreement that the Tenant is responsible for a particular cost or to do a particular thing and the Tenant fails to meet that cost, or the Landlord carries out work or performs any other obligation for which the Tenant is responsible, the Landlord can apply for reasonable costs to be deducted from any deposit paid by the Tenant."

He submitted that under clause 7 the Applicant had agreed to occupy the Property as her home and she had failed to do that thing. She was in breach of the lease. Given at the time that the Applicant sought to renounce the lease the date of entry had not yet occurred, the Respondents had not forwarded the deposit to Safe Deposits Scotland. However he submitted that reasonable costs could be deducted if there had been a breach even before the deposit had been forwarded to the depositary company.

23. Mr Latif told the Tribunal that there had been no assignation of the Applicant's interest in the April lease. Instead a new lease had been entered into with the original tenants but with a fresh co-tenant in place of the Applicant. In the six weeks between the Applicant's request to renounce and signature of the new lease there had been 7 viewings. There had been no advertising. He estimated that a viewing would have taken at least 45 minutes and a rate of £ 20 per hour was a reasonable charge for the office time of their member of staff and to cover fuel and parking charges. He had no evidence on the cost of a new lease.

24. He submitted that the £ 150 was not a payment sought as a condition of the grant or renewal of the old lease or the fresh lease. Nor had it been received in connection with such a grant or renewal. The had been no assignation at all. In short there had been no breach of sections 82 or 83 of the 1984 Act and thus no breach of sections 47 and 48 of the Code.

25. The Tribunal accepted that there had been no assignation of the Applicant's interest under the old lease. Thus no breach of section 83 of the 1984 Act or section 47 of the Code had taken place.

26. The position was less clear with regard to section 82 of the 1984 Act. The question under section 82(1) was whether the Respondents had required the payment of £ 150 as a condition of the grant, renewal or continuance of either the new lease. When the Applicant informed the Respondents that she wished to renounce her interest under the lease, the Respondents did not specify that it was a condition of a fresh lease in favour of the existing co-tenants and future co-tenant that £ 150 be paid. Indeed the future co-tenant had already paid her share of the deposit under her application form when the £ 150 was first mentioned. In these circumstances the Tribunal found that the Respondents had not required payment of the £ 150 as a condition of the fresh new lease. There had been no breach of section 82(1) of the 1984 Act.

27. The question under section 82(2) was whether the Respondents had "received" the £ 150 as a sum "in connection with" the grant or renewal of the old or new lease. Starting with the old lease to which the Applicant was a party, the Respondents had received a deposit of £ 2,300 from the tenants under the old lease. Within that deposit was the £ 150. As noted previously all deposits are premiums unless they fall within the statutory exclusion in section 90(3). It was not suggested to the Tribunal that the whole deposit in this case was a premium. Therefore the Tribunal concluded that the £ 150, being part of the whole deposit received under clause 11 of the old lease, was not a premium received by the Respondents in connection with the grant of the old lease. Furthermore given that the Applicant was not a party to the new lease, the old lease cannot be said to have been renewed.

28. Turning to the new lease, had £ 150 been received by the Respondents in connection with the grant of the new lease? It was clear that it had been received as part of the deposit under the old lease. Did its purported deduction mean that it had been "received" in connection with the grant of the new lease ? The Tribunal took the view that the sum could not have been received on more than one occasion. It had been received as part of the deposit under the old lease. It could not be received again in connection with a new lease where the depositor (the Applicant) had not re-allocated it to the new lease. Accordingly in neither case had the Respondents received £ 150 as a "premium" within the statutory definition. There was therefore no breach of section 82(2) of the 1984 Act.

29. In these circumstances the Tribunal concluded that that the Respondents had not breached sections 47 or 48 of the Code.

Repayment of deposit

30. The Applicant complained that the Respondents had breached their duty under sections 124 and 125 of the Code which provide, as follows:

"124. You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken)

125. You must pay or repay client money as soon as there is no longer any need to retain that money. . ."

"Client money" is defined in section 117 of the Code as including money held on behalf of a prospective tenant or tenant.

31. The Applicant's complaint was that the Respondents had not returned the whole of her share of the deposit to which she was entitled on being released from the old lease. She had not given any written agreement to the Respondents retaining £ 150. There was no longer any need for the Respondents to retain the deposit. No work had been undertaken by the landlord entitling retention of the sum.

32. For the Respondents, Mr Latif repeated his submission that the £ 150 fell to be deducted from the deposit as "reasonable costs". The Respondents required to retain that sum under clause 11 to meet the cost of the viewings and the new lease. Although clause 11 excluded "charging for an administration fee" from the deposit, in substance the £ 150 was compensation for the Applicant's breach of the lease in refusing to take up occupation. In agreeing to clause 11 in writing the Applicant had agreed to such a retention and deduction.

33. It appeared to the Tribunal that the starting point was in section 125. Was there a need for the Respondents to retain £ 150 from the Applicant's deposit ? They submitted that the need was to allow deduction of costs resulting from the Applicant's breach of the lease in refusing to take up occupation.

34. Clause 11 of the old lease provided:

> "By law, the deposit amount . . . cannot include any premiums. For example, charging for an administration fee . . .
>
> . . . Where it is provided in this Agreement that the Tenant is responsible for a particular cost or to do any particular thing and the Tenant fails to meet that cost or the Landlord carries out work or performs any other obligation for which the Tenant is responsible, the Landlord can apply for reasonable costs to be deducted from any deposit paid by the Tenant.
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> This would include cases where a tenant has not paid all of the rent payable, any amount in respect of one-off services, or unpaid utility bills . . . or a sum in relation to damage or dilapidations or deficiencies in the premises, fair wear and tear excepted, breakages or cleaning and any interest or other charges or outlays due by the Tenant.".

35. On 9 May 2018 the Respondents wrote to the Applicant following her request to withdraw from the (old) lease. They indicated to her that she would require to find a replacement tenant and would be liable for the rent until that occurred. On 21 May 2018 the Respondents wrote to her indicating that they would require to arrange viewings by interested parties.

36. In their e-mail to the Applicant dated 25 June 2018 at 1.21 p.m. the Respondents wrote:

". . . Also just to confirm that you will be charged £ 150 fee for extra admin work with regards to tenancy changeover as you already sign the contract and you have to pull out from the deal therefore the amount of deposit to be returned to you will be £ 233.34 (Original deposit £ 383.34 - £ 150 = £ 233.34)"

37. The Tribunal noted that while the Applicant was indicating that she would breach the lease at the date of entry (26 July 2018) by not taking entry, she took the initiative in seeking replacement tenants and instructing the Respondents to allow viewings. Interpreting clause 11 so as to make the deposit to comply with section 90(3) of the 1984 Act and prevent it from being an unlawful premium under section 82, clause 11 did not allow deduction for costs caused by a breach of clause 7 in failure to occupy. Equally for the same reasons clause 37 (c) (ix) could not be interpreted to allow such a deduction.

38. The sum of £ 150, even if caused by a breach of clause 7, was not deductible from the deposit and thus there was no need for the Respondents to retain it. There was therefore a breach of section 125 of the Code.

39. For the same reasons the Tribunal found there to have been a breach of section 124 of the Code.

Overarching Standards of Practice

40. The Applicant complained that the Respondents had breached their duties under sections 16 to 20 of the Code.

41. Section 16 required the Respondents to conduct their business in a way that complied with all relevant legislation. She did not specify any specific legislation under this head. Therefore the Tribunal found no breach of section 16.

42. Section 17 required the Respondents to be "honest, open, transparent and fair" in their dealings with landlords and tenants.

43. The Applicant submitted that there has been an absence of openness and transparency in the Respondents' e-mail to her of 9 May 2018 when in connection with her requiring to find a substitute tenant they failed to mention that they would be charging for any viewings that were sought by future candidates. The Respondents accepted that no advance warning of the charges was given.

44. The Applicant also submitted that dishonest information was provided when the Respondents asserted a right to deduct the £ 150. The Respondent's position was that the £ 150 had been claimed in good faith, whether or not it was deductible from the deposit as a matter of law.

45. The Tribunal found that there had been a breach of section 17 as submitted by the Applicant in relation to openness and transparency. It should have been apparent to the Respondents that they might require to arrange viewings of prospective substitute tenants to enable acceptance of the Applicant's request

for renunciation. Consistent with their duty under Section 17 in their e-mail to the Applicant of 9 May 2018 the Respondents should have made clear their charging rates to the Applicant to allow her to decide whether she wished to incur those charges to allow her to escape from the lease.

46. The Tribunal took the view that while the deduction of £ 150 from the deposit was misconceived, the e-mail notification on 25 June 2018 was carried out in good faith on the basis of work done by the Respondents as a result of the Applicant's request to renounce the lease. There was no dishonesty in the notification.

47. Section 18 required the Respondents to provide information in a clear and easily accessible way. The Applicant submitted that this was breached in the same manner as section 17.

48. The Tribunal found that there had been a breach of section 18 of the Code. A breakdown of the administration work for which £ 150 was being charged should have been given by the Respondents in their e-mail notification of 25 June 2018.

49. Section 19 required the Respondents not to provide information that was deliberately or negligently misleading or false. The Applicant submitted that this was breached in the same manner as section 17.

50. The Tribunal found that the information given in the e-mails of 9 May and 25 June from the Respondents while incomplete and lacking clarity was not misleading. It was not false in the sense that it was stating something that was factually untrue. There was no breach of section 19.

51. Section 20 required the Respondents to apply their policies and procedures consistently and reasonably. The Applicant submitted that they had allowed her to become a co-tenant without a viewing but had required viewings from candidates to become her substitute as a co-tenant and advertisement.

52. For the Respondents Mr Latif told the Tribunal that it was in the option of candidates for tenancy whether they wished a viewing. In his experience most potential tenants wished a viewing of a property but this was not essential. It was a matter for the candidate whether the viewing was necessary. In the present case the Applicant had not wished a viewing but her potential substitutes had been given the option of having one. There was no inconsistency or unreasonableness of procedure. He did accept, however that there had been no advertisement.

53. The Tribunal accepted Mr Latif's explanation of the Respondents' procedures regarding viewing. There was no inconsistency in the Respondents' procedures merely because the Applicant had taken the tenancy without a viewing but others had sought viewings. There was no breach of section 20.

Information about Tenancy etc.

54. Section 43 required the Respondents to give "all relevant information about renting the property" including about the deposit. The Applicant submitted that this had been breached in that the Respondents had not communicated information about exactly what could and could not be covered by the deposit.

55. The Respondents' Mr Latif told the Tribunal that the wording in the lease had been taken from the style of Private Residential Tenancy Agreement that had been supplied to them by their solicitors. He understood from the solicitors that the style had been recommended by the Scottish Government. That was acceptable. Any more detail about what breaches could give rise to deductions from the deposit would simply involve the extension of a document that was already many pages long.

56. The relevant wording in clause 11 of the old lease dealing with the deposit has been quoted above. It is indeed the case that that lease followed the Scottish Government's Model Private Residential Tenancy Agreement. It is therefore concerning that it has the statement that it "cannot include any premiums" when a deposit which does not comply with section 90(3) is itself a premium. The Tribunal found that clause 11 did not communicate to her in a clear and unambiguous fashion that the deposit could not cover anything other than the supplies or damage listed in section 90(3), and by implication excluding costs caused by her renunciation (repudiation) of the lease when accepted by the landlord.

57. In this respect the Tribunal found that there was a breach of section 43 of the Code.

58. Section 44 required the Respondents to inform prospective tenants how to apply and, where appropriate, the arrangements for viewing the Property. The Applicant founded on her submission for section 20. That has been dealt with above. The Applicant did not allege that she had not been informed on how to apply or that she had been denied a viewing of the Property. In the circumstances the Tribunal found that there was no breach of section 44 of the Code.

59. Section 45 required the Respondents to make prospective tenants aware of the Code. The Applicant submitted that she had not been made aware of the Code when she applied for the co-tenancy. Mr Latif for the Respondents admitted that she had not been made aware of the Code until after her complaint. In this respect the Tribunal found that there was a breach of section 45 of the Code.

60. Section 46 required the Respondents to not knowingly omit relevant information or evade questions from prospective tenants relating to the letting of the property in line with consumer protection legislation. The Applicant submitted that this had been breached in the same way as sections 17 and 45. Mr Latif for the Respondents repeated his position for sections 17 and 45. The Tribunal found that this section related to the requirements of consumer protection legislation. The Applicant had not

made any reference to consumer protection legislation. There had been no breach of section 46 of the Code.

Complaints Procedure

61. Section 112 required the Respondents to have a clear written complaints procedure stating how a complaint could be made to their business and as a minimum to make it available on request.

62. The Applicant submitted that no complaints procedure had been made available to her. She did not provide evidence of having asked for it. Mr Latif for the Respondents admitted that they did not have a complaints procedure and apologised. In not having a complaints procedure the Tribunal found that the Respondents had breached section 112 of the Code.

63. The Applicant had a further complaint under section 113 of the Code relating to the content of the complaints procedure. Given that there was no procedure at all the Tribunal does not need to consider this complaint.

Other Provisions

64. In her application the Applicant also complained of breaches of sections 105, 106, 110, 113 and 118 of the Code. The application did not provide details of these complaints and they were not mentioned in the Applicant's written submission. In these circumstances the Tribunal took it that the Applicant was not insisting on these complaints and formally rejected them.

Letting Agent Enforcement Order

65. Under section 48(7) of the Housing (Scotland) Act 2014 where a tribunal decides that an agent has failed to comply with the Code it must by letting agent enforcement order ("LAEO") require the agent to take such steps as it considers necessary to rectify the failure. In terms of section 48(8)(b) this can include compensation for loss suffered by an Applicant as a result of the failure to comply.

66. Beginning with the breaches under sections 124 and 125 of the Code, the Tribunal took the view that the Respondents should repay the remainder of the deposit to the Applicant.

67. With regard to the breaches of sections 17 and 18 of the Code the Tribunal took the view that the Respondents should pay reasonable compensation to the Applicant to rectify the inconvenience that she suffered as a result of being unexpectedly presented with a charge for £ 150 without any clear explanation of how the charge was made up. Taking a broad view the Tribunal found payment of £ 75 to be reasonable compensation.

68. With regard to the breach of section 43 of the Code, the Tribunal decided that the Respondents should in their styles for private residential leases omit various ambiguous provisions dealing with the deposit in clauses 11 and

37(c) of the lease and replace these with provisions compliant with section 90(3) of the 1984 Act.

69. With regard to the breach of section 45 of the Code the Tribunal decided that the Respondents should make reference to it in the application forms which they invite prospective tenants to complete.

70. With regard to the breach of section 112 of the Code the Tribunal ordered the Respondents to create a written procedure for complaints about their services.

Rights of Appeal

71. The parties may seek permission to appeal on a point of law against this decision to the Upper Tribunal by means of an application to the First-tier Tribunal made within 30 days beginning with the date when this decision was sent to the party seeking permission. All rights of appeal are under section 46 of the Tribunals (Scotland) Act 2014 and the Scottish Tribunals (Time Limits) Regulations 2016.

Mr David Bartos

Date 8 November 2018

Chairperson