

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

Jane Dyer, The Oak Barn, Ryleys Lane, Alderley Edge, Cheshire SK9 7UX (“the Applicant”)

Donna Hanlon-Clark (otherwise Donna Hanlon), Burnbank Farm, Hamilton ML3 7XP (“the Respondent”)

Re: 10 Weirs Gate, Strathaven ML10 6LD; 20 Weirs Gate, Strathaven ML10 6LD and 22a Dunlop Street, Strathaven ML10 6LA (“the Properties”)

Chamber Ref: FTS/HPC/LA/19/3694

Tribunal Members:

John McHugh (Chairman) and Mary Lyden (Ordinary (Housing) Member).

DECISION

The Respondent has failed to comply with the Code.

The decision is unanimous.

We make the following findings in fact:

- 1 The Applicant is the owner of three properties located in Strathaven: 10 Weirs Gate; 20 Weirs Gate and 22a Dunlop Street ("the Properties").
- 2 The Applicant contracted with the Respondent for the Respondent to act as her letting agent in respect of the Properties.
- 3 The basis of the parties' relationship was set out in an email from the Respondent to the Applicant's husband, Stewart Dyer, dated 15 November 2013.
- 4 That email came from the email address: donna@salesandletsscotland.co.uk.
- 5 That email was signed "*Donna Hanlon-Clark CEMAP, Hemmings Hanlon Clark*" and contained contact details at 10 Main Street, Strathaven and 241 Low Waters Road, Hamilton.
- 6 That email made no mention of the involvement of any limited company.
- 7 Hanlon Clark Lettings Ltd (Company Number SC475658) was incorporated on 22 April 2014.
- 8 That company had until 17 May 2016 been called Sparkling Clean (Scotland) Ltd.
- 9 The Respondent is a director of that company.
- 10 From 2014-2016 emails from the Respondent were signed off "Hemmings Hanlon Clark".
- 11 In 2019, emails from the Respondent were signed off "Hanlon Clark Properties". Other communications from the Respondent bear no trading name at all.
- 12 No communication or document received by the Applicant has ever referred to the existence of a limited company.
- 13 The Respondent acted as letting agent from November 2013 until 22 August 2019 when the arrangement was cancelled by an email sent by the Applicant's husband.
- 14 The Applicant appointed a new agent.
- 15 The Respondent operated at the material times as a professional letting agent in respect of the tenancies of the Properties.
- 16 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.
- 17 The tenants of 22A Dunlop Street had paid a deposit of £350 to the Respondent; the tenants of 10 Weirs Gate provided a tenancy deposit of £550 to the Respondent; and the tenants of 20 Weirs Gate provided a deposit of £575 to the Respondent.

- 18 The Respondent did not place the deposits in an approved tenancy deposit scheme nor has she accounted to the Applicant in respect of them.
- 19 The Applicant has herself paid these amounts in respect of the missing deposits to Safe Deposits Scotland in October 2020.
- 20 The tenant of 20 Weirs Gate paid rent of £1150 to the Respondent in respect of July and August 2019.
- 21 The tenant of 22a Dunlop Street paid rent of £350 to the Respondent in respect of July 2019.
- 22 The Respondent has not accounted to the Applicant in respect of these rent payments.
- 23 The Respondent delayed in passing on to the Applicant certain rents received from tenants.
- 24 The parties' contract provided that rent payments would be forwarded within three working days.
- 25 In particular, rent paid in respect of 10 Weirs Gate received on 12 December 2018 was not paid to the Applicant until 8 April 2019. Rent for the same property received on 1 April 2019 was not paid to the Applicant until 31 July 2019.
- 26 Rent received in respect of 20 Weirs Gate on 11 January 2019 was not paid to the Applicant until 8 April 2019.
- 27 Rent received in respect of 22a Dunlop Street on 4 December 2018 was not paid to the Applicant until 2 April 2019.
- 28 The Applicant requested information from the Respondent during the course of the relationship but the Respondent delayed in responding. In particular, the Applicant's husband asked for the Respondent to supply financial statements by email of 9 March. These were not provided until 26 June 2019.
- 29 The Respondent stopped trading from addresses in Low Road, Hamilton and Main Street, Strathaven in 2018 but continued to use those addresses in email correspondence during 2019. The associated telephone numbers were also no longer used but continued to be used in emails. No change of address or telephone number was intimated to the Applicant.
- 30 The Applicant requested by her husband's email of 22 August 2019 that the Respondent hand over all keys and documentation regarding the Properties to her new agent. The Respondent failed to do so.
- 31 The Applicant has, by her correspondence, including that of 24 September 2019, notified the Respondent of the reasons as to why she considers that the Respondent has breached her obligation to comply with the Code.

Hearing

A hearing took place by telephone conference on 26 October 2020.

The Applicant was represented by her husband, Stewart Dyer.

The Respondent was neither present nor represented at 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 Applicant. No documents had been lodged by the Respondent.

Preliminary Matters

The application had originally been brought against Hanlon Clark Lettings Ltd.

The Respondent sent an email to the Tribunal on 28 January 2020. In that email she stated:

" I am informing you yet again as I have done on many occasions as the director of Hanlon Clark Lettings Limited the company has ceased trading.

Please make me aware what steps I have to take to get this information through to the relevant parties as I have informed on many previous occasions yet this process appears to continue , I would also like to point out again as I have done previously Donna Hanlon is not a sole trader nor a partnership I was a director of a limited company Hanlon Clark Lettings limited which has as I have said before ceased trading"

A hearing took place on 31 January 2020 at which the Applicant was represented by Stewart Dyer. The Respondent was neither present nor represented. At that hearing, the Applicant requested to be allowed to amend the Application so that the identity of the Respondent was amended to be Donna Hanlon or Hanlon-Clark. The Tribunal allowed that amendment and made a Direction dated 3 February 2020 directing the Respondent to make written representations upon the Application including submissions upon the correct identity of the Respondent within 21 days. The Respondent did not respond and there has been no contact with the Tribunal from her.

The Tribunal is of the view that the correct Respondent is Donna Hanlon-Clark (otherwise Donna Hanlon). The Respondent claims that it was Hanlon Clark Lettings Limited which was the letting agent which contracted with the Applicant. The Tribunal rejects this argument for the following reasons: 1 the limited company referred to was incorporated on 22 April 2014 and so could not have been the entity with whom the Applicant contracted in November 2013; 2 none of the documents seen by the Tribunal make any reference to the existence of a limited company, for example no registered office appears, no company registration is provided and the word "Limited" or "Ltd" is never used; 3 the Respondent signs using her own name and never refers to herself as a Director of a limited company.

REASONS FOR DECISION

The Legal Basis of the Complaints

The Code

The Applicant complains of failure to comply with Sections 16-18; 26; 66; 107-109; and 124-125 of the Code.

The elements of the Code relied upon in the application provide:

"...**16.** You must conduct your business in a way that complies with all relevant legislation.

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

18. You must provide information in a clear and easily accessible way...

...**26.** You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement...

... **66.** If you lodge tenancy deposits on a landlord's behalf, you must ensure compliance with the legislation...

...**107.** You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act.

...**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.

109. You must provide landlords and tenants with your contact details including a current telephone number. ...

... **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. Unless agreed otherwise in writing by the client, you should

where feasible credit interest earned on any client account to the appropriate client...."

The Matters in Dispute

Factual Background

The Applicant is the owner of the Properties.

In November 2013, the Applicant engaged the Respondent to act as her letting agent in respect of the Properties.

The Applicant complains of the following matters:

- 1 Rents Received not Paid to the Applicant.
- 2 Deposits provided to the Respondent not placed in a deposit scheme.
- 3 Delay in providing monies and information.
- 4 Failure to provide accurate information.
- 5 Failure to Provide information at Handover.

Rents Received not Paid to the Applicant

The Applicant has produced a bank statement obtained from the tenant of 22a Dunlop Street showing that he paid rent of £350 to the Respondent in respect of July 2020.

The tenant of 20 Weirs Gate was due to have paid rent of £1150 to the Respondent in respect of July and August 2020. The Applicant believes that the tenant did so. The Respondent has produced no information regarding those payments. The tenant paid the September payment to the Applicant's new letting agent

The Respondent has not accounted to the Applicant in respect of the rent payments received by her but has instead retained them.

In the circumstances, we find there to have been a breach of Code sections 17, 124 and 125.

Deposits provided to the Respondent not placed in a deposit scheme

The tenants of 22A Dunlop Street had paid a deposit of £350 to the Respondent.

The tenants of 10 Weirs Gate provided a tenancy deposit of £550 to the Respondent.

The tenants of 20 Weirs Gate provided a deposit of £575 to the Respondent.

It was a legal requirement for the deposits to be placed in an approved tenancy deposit scheme. Despite being requested to do so, the Respondent has provided no information to the Applicant about the whereabouts of the deposits.

The Applicant has herself paid replacement amounts in respect of the missing deposits to Safe Deposits Scotland during October 2020. The Applicant has produced certificates evidencing the payments.

In the circumstances, we find there to have been a breach of Code sections 16, 17 and 66.

Delay in providing monies and information

The Applicant requested information from the Respondent during the course of the relationship but found that the Respondent frequently delayed in responding. In particular, the Applicant's husband asked for the Respondent to supply financial statements by email of 9 March. These statements were not provided until 26 June 2019 when they were sent by email. We consider the delay in providing the statements to have been a breach of Code sections 17, 18, 26 and 108.

Failure to provide accurate information

The Respondent stopped trading from addresses in Low Road, Hamilton and Main Street, Strathaven in 2018 but continued to use those addresses in email correspondence during 2019. The associated telephone numbers were also no longer used but continued to be used in emails. No change of address or telephone number was intimated to the Applicant. The Applicant's husband advises that he only found out about the move from the old addresses and phone numbers when he was unable to make contact. We find this to constitute a breach of Code section 109.

Failure to Provide information at Handover.

By email of 22 August 2020 the Applicant terminated the contract with the Respondent and requested that the Respondent provide safety certificates; tenancy agreements; tenant references; inventories; deposit certificates and keys. None of these were provided and so the Applicant has had to recreate them at a cost estimated at £800 (in addition to replacement of the deposits themselves, noted above). We find this to constitute a breach of Code sections 17; 18; 26; and 108.

Observations

The Respondent has failed to engage in the current process. The failings of the Respondent which have been established in this application are of the utmost seriousness. The attention of those in the Scottish Government responsible for letting agent registration will be drawn to this decision with a view to them giving appropriate consideration to any future application for registration by the Respondent or by any other business with which she is associated.

LETTING AGENT ENFORCEMENT ORDER

In terms of section 48(7) of the 2014 Act we will make a letting agent enforcement order (“LAEO”). The terms of the LAEO are set out in the attached document.

We have a wide discretion as to the terms of the LAEO we may make. In this case, we consider it appropriate to order the Respondent to make a payment to the Applicant of £4000. This reflects the fact that the Applicant has been left without the rent and deposit payments retained by the Respondent. As well as constituting a direct financial cost, this has exposed the Applicant to an ongoing and real risk that a tenant may bring an application under the Tenancy Deposit Schemes (Scotland) Regulations 2011. It also reflects the Respondent's failure to provide information and assistance to the Applicant in the process of handing over to a new letting agent which has caused distress and expense to the Applicant. Mr Dyer advised at the hearing that he had received an email from the Respondent on 2 September 2020 in which the Respondent had apologised for the current situation and had offered to make payments at the rate of £100 per month in satisfaction of the debt. She had made payments totaling £200 so far and the Tribunal has had regard to these payments in arriving at the figure contained in the LAEO.

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: 27 October 2020

