Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 46 of the Housing (Scotland) Act 2014 and Paragraphs 90, 91, 93 and 108 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 ("the Regulations")

Chamber Ref: FTS/HPC/LA/18/1283

Parties

Mr Andrew Davies, sometime residing at 1H, 5 Cuparstone Court, Aberdeen AB10 6FB ("the Applicant")

and

Corporate Accommodation Ltd, incorporated under the Companies Act (SC567902), having its Registered Office at Templars House, South Deeside Road, Maryculter, Aberdeen AB12 5GB, and trading as AM-PM Leasing, having a place of business at 441 Union Street, Aberdeen AB11 6DA ("the Respondents")

Tribunal Members: George Clark (Legal Member) and Mrs Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondents had failed to comply with paragraphs 90, 91. 93 and 108 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 and that the Respondents should pay to the Applicant the sum of One Hundred and Fifty Pounds (£150)

Background

The Tribunal received an application from the Applicant on 29 May 2018. The Applicant sought an Order from the Tribunal in respect of the Respondents' failure to comply with the Letting Agent Code of Practice ("the Code of Practice"). The Applicant alleged failure to comply with 42 paragraphs of the Code of Practice and provided the Tribunal with a large volume of supporting documentation. The Respondents did not make any written representations, but the Applicant provided the Tribunal with a copy of an e-mail he had received from them on 31 May 2018, in which they contended that almost all the breaches alleged by the Applicant referred to conduct prior to 31 January 2018, the date on which the Code of Practice came into effect. At the hearing held on 28 August 2018, the Applicant accepted that this was the case and, accordingly, no complaints relating to the period prior to that date were considered by the Tribunal. The remaining complaint which was then considered related to an ingress of water at Flat 1H, 5 Cuparstone Court, Aberdeen ("the property") on 17 April 2018 and the events which followed. These were considered by the Tribunal with reference to the requirements set out in Paragraphs 90, 91, 93 and 108 of the Code of Practice.

The Hearing

A hearing was held at George House, 126 George Street, Edinburgh EH2 4HH on the morning of 28 August 2018. The Applicant, supported by his mother, attended the hearing. The Respondents were neither present nor represented at the hearing.

The Applicant told the Tribunal that he became a tenant of the property on 27 July 2017. In his application and written representations and at the hearing, he stated that, on 17 April 2018, he noticed problems of lack of water pressure in the sinks in the kitchen and bathroom and the toilet. Later that day, the toilet stopped flushing and the cistern stopped filling. At about 8pm, he had telephoned the Respondents, but his call went to a recorded message that the Respondents were closed. The Applicant later that evening telephoned again, this time leaving a message outlining the problems he had encountered, so that the Respondents would know what was happening. He then stayed overnight at a friend's flat, as he had no running water or toilet facilities in the property.

On the morning of 18 April, the Applicant received an e-mail from the Respondents, confirming that his call had been logged. It was a generic e-mail and did not indicate what steps the Respondents were going to take. He called the Respondents later in the day and was told that we would receive an update. That did not happen and he had to stay overnight with another friend.

The Applicant did not receive any communication from the Respondents on 19th April either, but a plumber called him to say that he would call round. The plumber established that there was no water coming in to the taps or cistern and, therefore, checked the water tank in the attic. He told the Applicant that it had been a problem

with the ball-float and that he had re-set it and that the Applicant could head out to work. The plumber then left.

On the way to his car, the Applicant noticed a large volume of water falling from what he presumed was an overflow pipe from the roof level of the property, outside the front door of the block. He telephoned the plumber, who told him it was nothing to worry about, so the Applicant went to work.

When the Applicant returned to the property, just after 8pm, water was still pouring down outside the property and he could hear a fire alarm in the building. When he reached his top floor flat, he was met by some of his neighbours, concerned that the alarm was going off in the Applicant's flat. He had trouble getting into the property, as the door had become swollen, but he then discovered water running through the smoke detector in the hall and the hall light fittings. The carpets were soaked and the water had also come in through the ceiling of the hall cupboard, where the Applicant kept most of his clothes. It had also soaked the dividing wall between the hall cupboard and the bedroom, affecting the wardrobe which was up against the bedroom side of that wall and its contents. It had spread into the living room, affecting the low-level electrics. This had caused the Applicant's electronic equipment to "short".

The Applicant immediately called the plumber, who said that he had not called back to the property, which he had promised to do when the Applicant called him earlier to let him know about the water coming from the overflow. The plumber then came to the property and switched off the water supply to the tank. The Applicant then spent a third night at a friend's flat. He e-mailed the Respondents to tell them everything that had happened and let them know that he would be back at the flat and available from 9am on the following day. He asked them to arrange some form of alternative accommodation.

On Friday 20 April, the Applicant was at the property by 9am. A plumber from Aberdeen Property Leasing, who factor the building of which the property forms part, arrived. He had been contacted by one of the neighbours. The plumber said that the problem related to the Applicant's water tank, so was not an issue for the factors to remedy. At around mid-day, the Applicant left a key with the Respondents, telling them he had nowhere to stay, so was returning to Edinburgh

The Applicant did not receive any updates over the weekend and, on Monday 23rd April, he telephoned the Respondents again. They said that everything was in hand and they would update him, but they failed to do so. In a call with the Applicant's mother that morning, they had said that they were sourcing a dehumidifier. The Applicant then drove back to Aberdeen with family members and cleared his possessions from the property, arriving about 6pm. The only communication he had from the Respondents on that day was from a member of staff who asked him what his plans were for that night and did he need a key. No update on progress was given, but the Respondents did send an e-mail to say they now had access and hoped to have an electrician in the property the following day, which would be day 6 since the original reported incident.

When the Applicant and his family members arrived at the property. Someone was working on the lights and the smoke alarm. He did not introduce himself but, when the Applicant told him about a number of issues he had had with the property, he said he was in fact the landlord, Mr Keith Wright, and that he was there to re-set the electrics. There was a dehumidifier in the property, but it was not plugged in. Mr Wright said that he had only found out about the flood on that day and his attitude was intimidating. He saw the Applicant holding a set of keys and accused him of having lied about an earlier issue relating to keys. As a result of the landlord's aggressive behaviour, the police were called. They advised the Applicant to remove his belongings as he intended to do and not to return and told the landlord not to come back to the property until the Applicant handed in his keys to the Respondents. The Applicant and his family had to obtain accommodation at a Travelodge.

The Applicant returned to the property very briefly the following day, with his ex-girlfriend, who had some belongings to collect. That was his last visit to the property. The Applicant told the Respondents on 23 April that he was leaving the property and not returning. He stopped paying rent as at that date. He produced to the Tribunal a receipt showing the keys were returned to the Respondents on 25 April.

There was no further information provided to the Applicant about the repairs until the Respondents made written representations to the Tribunal, but they did demand payment of rent. The rent had been paid up to 27 April. The Applicant did not make rental payments demanded on 27 April, 27 May and 27 June. The Respondents had retained the Applicant's deposit against unpaid rent. The only option open to the Applicant was to engage a solicitor, which he could not afford to do. The Respondents were seeking 2 rental payments and 2 late payment charges, but they had not communicated with the Applicant since the date of the application to the Tribunal. Safe Deposit Scotland had released the full deposit to the Respondents.

The issue from the Applicant's point of view was the failure of the Respondents to deal with the flood problem promptly and a failure to communicate with him. They had not at any point told him the property was habitable again.

The Applicant told the Tribunal that he had received an insurance payment in relation to damage to clothing and personal effects and the cost of the accommodation at a Travelodge.

The Applicant showed the Tribunal video material showing water flowing down the outside wall of the block and, timed at 20.11 hours on 19 April 2018, a second video showed the front wall of the block clearly soaked with water, the staining on the wall being several feet wide. A further video showed water pouring through the smoke detector in the hallway of the property into a basin on the carpet beneath. The Applicant told the Tribunal that the water had then penetrated through the wall of the hall cupboard and into the living room.

The Applicant then left the hearing and the Tribunal considered all the evidence, written, visual and oral that had been presented to it.

Reasons for the Decision

Paragraph 90 of the Code of Practice states that "*Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures*". The Tribunal found that there had been an unacceptable delay on the part of the Respondents in dealing with the report of the lack of water pressure resulting in the Applicant having no toilet facilities. The report had been made in a telephone message which would have been picked up first thing on the morning of 18 April 2018. The Respondents had merely sent a generic e-mail to say the matter had been logged, but it was not until the following day that a plumber contacted the Applicant. This was an urgent matter and should have been treated as such and the view of the Tribunal was that the delay amounted to a failure to comply with paragraph 90 of the Code of Practice.

The Tribunal also held that the delay on the part of the Respondents in dealing with the Applicant's report of the flood which occurred on 19 April was also a failure to comply with Paragraph 90 of the Code of Conduct. The problem was reported in an e-mail on the evening of Thursday 19 April and was manifestly a very urgent matter. The Respondents would have read that e-mail on the following morning, but it appeared that they had not arranged for a suitably qualified tradesman to attend to address the problem by the time the Applicant arrived at the property on the evening of Monday 23rd April. They had e-mailed the Applicant late that afternoon to say they hoped to have an electrician in the flat on the following day. As a consequence, the property was, for at least 4 days, in a condition that constituted a serious potential danger to the Applicant were he to try and occupy it.

Paragraph 91 of the Code of Practice provides "*You must inform the tenant of the action you intend to take on the repair and its likely timescale*". The Tribunal held that the Respondents had failed in this obligation between 19th and 23 April 2018 and from then until the end date of the contractual tenancy on 26 July 2018. They had failed to update the Applicant on Friday 20 April, had promised on Monday 23 April that they would update him, but had failed to do so, other than to say in an e-mail that they hoped to have an electrician at the property on the following day and had not contacted the Applicant at any time after that, other than to demand payment of rent. They had not at any time told the Applicant that the necessary repair and reinstatement work had been carried out and that the property was habitable again.

Further, The Tribunal held that, by failing to carry out their duties under Paragraphs 90 and 91 of the Code of Practice, The Respondents had also failed to comply with the duty set out in Paragraph 93 of the Code of Conduct, which states "*If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible.*"

Paragraph 108 of the Code of Practice states "*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." The Tribunal was of the view that the Respondents had fallen significantly short of the standard set out in Paragraph 108. They appeared to have no out-of-hours facility for dealing with urgent and potentially dangerous issues at the property and the generic acknowledgement by e-mail on the morning of 18 April 2018 did not of itself constitute compliance with Paragraph 108. The Respondents had failed to deal with the original report of loss of water pressure resulting in the Applicant having no toilet or washing facilities for a full day after they became aware of it and had failed to deal with the more serious issue resulting from the reported flooding from the morning of 20 April until at least 23 April, when they told the Applicant that they "hoped" to have an electrician in the property on the following day.

Having determined that the Respondents have failed to comply with paragraphs 90, 91,93 and 108 of the Code of Practice, the Tribunal *must*, in terms of Section 48(7) of the Housing (Scotland) Act 2014, make a Letting Agent Enforcement Order and, as provided in Section 48(8) of the Act, *may* provide in that Order that the Respondents must pay to the Applicant such compensation as the Tribunal considers appropriate for any loss suffered by the Applicant as a result of the failure to comply.

The Tribunal did not make any award of compensation for damage to or loss of the Applicant's personal belongings, as he had already received a payment from his insurers in that respect.

The Tribunal held that the Applicant had been unable to occupy the property from 17 April 2018, when the water pressure issue arose, until at least 25 April, when he returned the keys to the Respondents. The Tribunal determined that the Applicant should be reimbursed the rent for that period and that the sum of One Hundred and Fifty Pounds was an appropriate amount to award in respect of that loss.

The Tribunal was unable to make any finding as to a date on which the property repairs had been carried out, so that the property was again habitable. Contractually, the Applicant was bound in to the lease until 26 July 2018 or, if the landlord concluded that the Applicant had abandoned the property, the date on which it was re-let by the landlord, whichever was earlier. The Tribunal accepted that the flood had rendered the property uninhabitable for a period, but it was unable to hold that the Applicant had been entitled unilaterally to bring the contract to an end. Accordingly, the Tribunal was unable to include in its Order a requirement to refund any amount in respect of the deposit which had been returned to the Respondents by Safe Deposits Scotland. The Tribunal commented, however, that it hoped, in the light of its findings, the landlord would seriously consider refunding the deposit and refraining from any action to recover unpaid rent, but the Tribunal had no power to make any Order in that respect, as the landlord was not a party to the application.

The Decision of the Tribunal was unanimous.

Right of appeal

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

George Clark 28 August 2018

Legal Member