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) in relation to an application under Section 48 of the Housing (Scotland) Act 2014 and Rule 95 of the Tier-Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/LA/18/3167

Parties:

Susan Laidlaw, 27 Corporal John Shaw Court, Prestonpans, EH32 9GJ ("the Applicant")

AMPM Leasing, 441 Union Street, Aberdeen, AB11 6DA ("the Letting Agent")

Tribunal Members:

Fiona Watson (Legal Member)
Elaine Munroe (Ordinary Member)

An application was received by the Tribunal on 22 November 2018, which was submitted in terms of Section 48 of the Housing (Scotland) Act 2014 ("the 2014 Act") and Rule 95 of First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").

The application sought:

1. A determination that the Letting Agent had breached the Letting Agent Code of Practice and in particular, by breaching sections 17, 21, 28 and 32(g) of same.
2. An order for payment in the sum of £405 for replacement certificates
3. An order for payment in the sum of £495 for loss of rent

The Letting Agent Code of Practice ("the Code") is set out in the Letting Agent Code of Practice (Scotland) Regulations 2016.

Section 17 states:

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

Section 21 states:

You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way

Section 28 states:

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

A Hearing took place on 21 February 2019, at which the Applicant was personally present. There was no appearance by or on behalf of the Letting Agent. Following a call by the Tribunal Clerk to the Letting Agent's office, Duncan Kerr of AM-PM Leasing confirmed that he would not be attending and that he wished the Tribunal to consider his written submissions.

As a preliminary issue, the Tribunal raised with the Applicant that whilst she sought determination in her Application regarding there having been a breach of section 32(g) of the Code there did not appear to have been any prior intimation to the Letting Agent of her intention to do so. The Applicant confirmed that she had only intimated to the Letting Agent that she considered there to have been a breach of sections 17, 21 and 28, but not section 32(g). The Tribunal confirmed that in terms of section 48(4) of the 2014 Act, no application can be made unless the applicant has notified the letting agent of the breach of the code of practice in question. Accordingly, the Tribunal determined that section 48(4) of the 2014 Act had not been met in respect of section 32(g) of the Code and accordingly the Application would proceed solely on the basis of sections 17,21 and 28 of the Code.

The Applicant advised the Tribunal that she had instructed the Letting Agent on a tenant find only basis. A copy of the agreement between the parties was lodged with her application. The Letting Agent was responsible for putting in place the necessary safety certificates. A tenant had been found with a tenancy start date of 2 November 2018. On 30 October 2018 the Applicant was told by the Letting Agent that she required two additional smoke detectors in the property. The Letting Agent gave the Applicant a quote of £200 for the works to be carried out. The Applicant asked them to obtain a second quote. The Applicant advised the Tribunal that she was told by the Letting Agent that they couldn't get a second quote, and upon questioning this with them was thereafter advised that they could in fact get a second quote. The Applicant spoke to the Manager of the Lettings Agent on the telephone who advised that it was against their policy to move a tenant into a property where there weren't sufficient alarms. The Applicant's position was that the Letting Agent had left the works very late in the day to have them done in time for the start of the tenancy, and the Applicant said that she was told by both Scottish Fire and Rescue and Landlord Accreditation Scotland that as long as the works had been booked in to be done by the start of the

tenancy, it would be fine to move the tenant in prior to the works being completed thereafter.

The Applicant considered that the attitude of the Letting Agent's staff on the telephone was unacceptable, and that the Letting Agent was using intimidating and coercive behaviour to force her to agree to carry out the work based on a single quote.

The Applicant advised the Tribunal that she did not feel at that point that she could continue with the lease. She was concerned that if the Letting Agent spoke to all of her clients in that way that she did not wish to continue to be associated with them.

The Applicant advised that on 31 October 2018 she notified the Letting Agent in writing that she wished to cancel the service, and she spoke with the Letting Agent by telephone on 1 November 2018 and asked them to advise the tenant of the situation. They said they would do so, and when she contacted the Tenant herself, the tenant advised that he had not heard from the Letting Agent. The Letting Agent told her that they had sent the tenant an email advising them of the position.

The Applicant submitted that the Letting Agent had left too little time to organise the necessary works, and due to this failure she was unable to start the tenancy as planned on 2 November 2018. This caused her financial loss.

The Tribunal highlighted to the Applicant an email sent to her by the Letting Agent on 23 October 2018 and which had been lodged by the Applicant with her application. Said email from the Letting Agent stated *"I deal with all the property aspects at AM-PM and I was wondering if you could please tell me if you have already had the following done, or if you require that we sort this out?".* The email went on to list the safety checks that could be carried out and the costs for same. The Applicant replied to that email on 24 October 2018 in which she stated *"there are hard wired inter-connected smoke and heat detectors in the property already as well as carbon monoxide alarms, the inventory has already been carried out as well as cleaning, however, could you please organise: PAT, Legionnaire's assessment and Gas Certificate?"*

The Tribunal raised with the Applicant whether it could be seen to be reasonable for the Letting Agent to have taken from that email that there were no works required in relation to the smoke alarms, given the statements made by her, and that all she was instructing at that stage were the PAT testing, legionnaires assessment and gas safety. The Applicant submitted that it remained the Letting Agent's responsibility to check that this was indeed the case.

The Tribunal asked the Applicant if she had considered delaying the start date of the tenancy to allow the works to be carried out. The Applicant confirmed that she had not. She did not consider that it was for her to propose this, and that the Letting Agent should have suggested this as an option, which they did not do. The Applicant confirmed that the Letting Agent found the tenant an alternative property to move into,

and she did not continue with the lease with that particular tenant which had been found by the Letting Agent and which was due to start on 2 November 2018.

The Letting Agent had lodged a written response to the application date 29 January 2019. The Letting Agent denied having breached the Code. In their response they referred to the applicant having told them that she had hardwired interconnected smoke detectors already, and that the Letting Agent considered that the Applicant had misled them in this regard.

The Letting Agent denied that their member of staff had said that they couldn't get a second quote. The Letting Agent stated that the Applicant would have been fully aware that they didn't have sufficient smoke and heat detectors in the property. The Letting Agent stated that the Applicant was a letting agent herself and as such would have been fully aware that the smoke and heat detectors did not meet relevant safety legislation. The Letting Agent stated that the Applicant had put pressure on them to check the tenant in without having sufficient alarms in the property. The Letting Agent confirmed that they had sufficient time to obtain all necessary certificates. The Letting Agent stated that the Applicant was trying to mislead the Tribunal by stating that the tenant had not moved in because a safety certificate had not be carried out in a timely manner. The tenant could have been checked in on 2 November 2018 but for the Applicant's refusal to allow the contractor to install the additional hardwired smoke and heat alarms. The Letting Agent considered that the quote of £200 for the additional alarms was a reasonable one.

The Letting agent denied that their staff members had been abusive and in turn accused the Applicant of being abusive towards a member of staff. The Applicant accepted that she had used a derogatory term towards a staff member and she apologised for having done so.

Findings

- The Tribunal considered whether or not the Letting Agent had failed to comply with sections, 17,21 and 28 of the Letting Agent Code of Practice. The Tribunal's findings are as follows:

Section 17:

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

The Tribunal did not find the Letting Agent to be in breach of this section. The Tribunal was not satisfied on the basis of the evidence before it that there had been a breach of this section. Whilst the Applicant's position was that the Letting Agent had been dishonest in advising her that a second quote could not be obtained, this was denied by the Letting Agent. The Tribunal was not satisfied on the basis of the evidence before it, and taking into account the Applicant's oral submissions, that the Letting Agent had failed to be honest, open, transparent or fair. The Tribunal took into consideration the

terms of the email sent to the Letting Agent by the Applicant regarding the works required, that this was not in fact the case and that the Letting Agent was trying to ensure that all necessary works were carried out in a timeously manner to ensure that the tenant could move in on 2 November 2018. The Tribunal was not satisfied that, even if it could be established that the Letting Agent had said that a 2nd quote couldn't be obtained, that this wasn't made in relation to timescales for completion of the works in advance of the tenancy start date, rather than it just not being possible at all. The Tribunal also noted that there is no mention in the Landlord Agency Agreement that the Letting Agent must provide more than one quote for works.

Section 21:

You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way

The Tribunal did not find that this section of the Code had been breached. The Tribunal considered that the Letting Agent had asked the Applicant in sufficient time for confirmation of the works required to be done on her behalf. It was reasonable for the Letting Agent to rely on the terms of the email sent by the Applicant to them on 24 October 2018 that there already were interconnected smoke and heat detectors and all they required to do was PAT testing, legionnaires assessment and gas safety inspection. It was later found that this was not the case. The Applicant is herself operating as a Letting Agent and confirmed that she had been in the property herself in June 2018 so could have assessed herself in her own professional opinion what would have been required. The Letting Agent obtained a quote for the works in sufficient time to allow the works to be instructed and completed but this was a quote which the Applicant chose not to accept.

Section 28:

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

The Tribunal did not find that this section of the Code had been breached. None of the emails produced with the application and which were sent by the Letting Agent were deemed to be abusive or threatening by the Tribunal. The Applicant stated that she felt that she had been coerced into accepting the single quote for the works and was being intimidated into doing so via telephone conversations by the Letting Agent. The Tribunal was not satisfied on the basis of the evidence before it nor on the basis of the oral submissions made by the Applicant, that abusive, intimidating or threatening behaviour had taken place on behalf of the Letting Agent.

The Tribunal therefor refuses the application for a Letting Agent Enforcement Order.

- Claim for payment in the sum of £495 for loss of rent:

The Tribunal refuses the Applicant's claim for payment in the sum of £495 for loss of rent. The Tribunal did not find the Applicant's explanation of events leading to her alleged loss of rent to be reasonable. The Applicant submitted that she did not proceed with the tenancy due to the breakdown of her relationship with the Letting Agent. The Tribunal noted that the Letting Agent was instructed on a 'tenant find only' basis. Accordingly, when the tenant moved in to the property and the lease had commenced, the Letting Agent's role would cease, regardless of the breakdown of the relationship between the Letting Agent and Applicant. The relationship between the parties need have no effect on the ongoing lease which the Applicant would be managing herself. The Tribunal did not consider it reasonable for the Applicant to have taken the step of failing to go through with the contractual tenancy agreement at this point. The Tribunal raised this point with the Applicant but no answer was given as to how the breakdown of the parties' relationship was relevant to the question of the ongoing tenancy. Further, when the Tribunal pressed this point the Applicant then stated that she didn't wish to proceed with the tenancy because the Letting Agent hadn't given her any of the safety certificates. However, it was noted by the Tribunal that there was no evidence presented by the Applicant of any demand for production of same being made by her in advance of this decision being made by the Applicant.

- Claim for payment in the sum of £405:

The Applicant's claim for payment in the sum of £405 was refused. The Tribunal noted that the certificates had been instructed by the Agent and paid for by the Applicant. It was the Applicant's choice not to proceed with the tenancy. The Tribunal was not satisfied that the reason the tenancy did not commence was due to the fault or negligence of the Letting Agent. The Applicant made the decision not to proceed with the tenancy agreement. The Tribunal was not satisfied on the basis of the evidence provided by the Applicant that there was any entitlement to a refund of these costs. However, the Tribunal was satisfied that the certificates had been paid for by the Applicant and she was entitled to receive these. Accordingly, the Tribunal grants an order ordaining the Letting Agent to issue these to the Applicant.

Decision

The Tribunal does not find that there has been any breach of sections 17, 21 or 28 of the Letting Agent Code of Practice.

The Tribunal refuses the Applicant's claim for payment in the sum of £495 in respect of loss of rent.

The Tribunal refuses the Applicant's claim for payment in the sum of £405 in respect of reimbursement of payment made for safety certificates. However, the Tribunal

grants an order ordaining the Letting Agent to produce the safety certificates in respect of EICR, PAT, gas safety and legionnaires assessment, within 14 days of receipt of this Order.

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.

F Watson

21/2/19.

Legal Member/Chair **Date**