

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision: Housing (Scotland) Act 2014 Section 48 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26

Chamber Ref: FTS/HPC/LA/19/3401

The Parties:-

Justine Williams, 21 Hunter Hall Place, St Madoes, Perth PH1 7TZ ("the Applicant")

Pavillion Properties, 86 Bell Street, Dundee, DD1 1HN ("the Letting Agent and Respondent")

Tribunal Members:-

Petra Hennig McFatridge -	Chairing and Legal Member
Frances Wood -	Ordinary Member (Housing)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Letting Agent has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 ("the 2014 Act"), determines unanimously that, in relation to the present Application, the Letting Agent has not complied with the Code of Practice Section 7 Numbers 108, 110 and 112 and determined to issue a Letting Agent Enforcement Order ("LAEO") in the following terms:

Within 28 days of intimation of the LAEO the Letting Agent must:-

- 1. In terms of Number 110 ("110: You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer to ") provide information to the landlord regarding the Code of Practice and offer them a copy of same in either paper or electronic format and provide evidence to the Tribunal that this has been done.**
- 2. In terms of Number 112 ("112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business. ") provide a copy of the complaints**

procedure drafted in compliance with the Code of Practice and to be used in all future dealings with their clients to the landlord and evidence to the Tribunal that this has been done.

The Applicant's representative had been advised of the decision of the Tribunal after the conclusion of the hearing on 2 October 2020

Introduction

On 16 November 2020 an application under S 48 of the Housing (Scotland) Act 2014 (the Act) was made to the tribunal by the Applicant's representative Ms Lucchesi Edwards. The application was made in terms of S 48 and rule 95 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations (the Rules) and included a copy of the Letting Agent Code of Practice Notification Letter sent to the Respondent by the Applicant in terms of rule 95 (b).

Due to the Covid 19 lockdown the initial date for the hearing was discharged. The tribunal issued directions dated 11 March 2020 and 23 June 2020 to the parties to regulate the process. These are referred to for their terms and held to be incorporated herein. In these directions the tribunal ordered the production of a full bundle of documents regarding the application from the applicant and asked the respondent to advise the tribunal of their position. A paginated bundle of productions and representations with inventory of all production was received from the Applicant's representative on 13 July 2020 and intimated to the Respondents on 23 July 2020. The Respondents were invited to participate in the hearing on 2 October 2020 and provided with the details to join the telephone conference by recorded delivery letter dated 28 July 2020 and signed for by the Respondents on 30 July 2020. The tribunal is satisfied that the Respondent received the appropriate notice in terms of Rule 24 (2) of the Rules.

The inventory and documents lodged by the Appellant on 13 July 2020 are referred to for their terms and held to be incorporated herein.

At the hearing on 2 October 2020, held by telephone conference, the Applicant's representative Ms Lucchesi Edwards took part. The Respondent had not lodged any representations, had submitted no documents to the tribunal and did not take part in the hearing. The hearing was thus held in the Respondent's absence in accordance with Rule 29 of the Rules.

The Legal Basis of the Complaints

The following parts of the Letting Agent Code of Practice (the Code) are engaged in this case:

5. The Code applies to every person who carries out letting agency work in Scotland, which is defined in section 61(1) of the 2014 Act as:

"things done by a person in the course of that person's business in response to relevant instructions which are—

- a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy agreement by virtue of which an unconnected person may use the landlord's house as a dwelling, or
- b) for the purposes of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a)."

Section 7 Communications

110. You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.

Complaints resolution

112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.

The Applicant notified the Respondent by letter 30 October 2020 that she considered they had failed to comply with the undernoted Sections of the Code of Practice for Letting Agents:

Section 4 number 68

Section 5 numbers 73 and 74

Section 6 numbers 102 and 104

Section 7 numbers 108, 110 and 112

The Tribunal application detailed the following complaints:

Section 4 number 68

Section 5 numbers 73 and 74

Section 6 numbers 102 and 104

Section 7 numbers 108, 110 and 112

Hearing

1. At the hearing the tribunal heard evidence from the Applicant's representative Ms Lucchesi Edwards who explained that she is the mother of the Applicant and deals with all matters concerning the properties belonging to the Applicant on her behalf.
2. The tribunal legal member clarified to Ms Lucchesi Edwards that the tribunal can only consider breaches of the Letting Agent Code of Practice which came into force on 31 January 2018 and that thus any matters which were concluded prior to the Code coming into force could not be considered by the tribunal even if the actions, had the Code of Practice been in force at that time, would have constituted a breach of the terms of the Code of Practice.
3. The Applicant's representative thus confirmed she understood that the complaints in terms of Section 4 number 68, Section 5 numbers 73 and 74, Section 6 numbers 102 and 104 could not be considered as the conduct of the Letting Agent in this regard related to conduct in 2014 -2017 and thus the issues arising from the tenancy for no 34 Spey Drive Dundee, DD2 4AQ with Mr Wang from 1 April 2015 to 3 September 2016 all related to matters taking place prior to the Code of Practice coming into force.

4. She stated that the Letting Agent still dealt with the property, had not advised the landlord of the Code of Practice and had not provided the landlord with any information about a complaint's procedure at any stage.
5. She had always made complaints by telephone or email and the problems with obtaining timely responses to enquiries and complaints persist to date.
6. She referred the tribunal to the email exchanges between her and the Letting Agent and in particular to the summary of her claim on page 50/51 of the bundle as well as the full explanation of her grievances as set out in the letter to the tribunal on pages 1 and 2 of the email of 13 July 2020.
7. As the Respondent did not participate in the hearing and had lodged no representations and documents the application was unopposed and the evidence of the Applicant and her representative accepted as factually correct.

Findings in Fact

The tribunal makes the following findings based on the oral evidence at the hearing and the documents lodged by the Applicant as per the bundle of 13 July 2020:

1. The Respondent is still carrying out Letting Agency work for various properties in Dundee for the Applicant and has done so since 2014.
2. The Respondent acted as Letting Agent for the Applicant for the property at 34 Spey Drive Dundee from at least 1 April 2015 onwards.
3. The property was rented out to Mr Wang between through the Letting Agent from 1 April 2015 to 3 September 2016.
4. At the end of the tenancy it transpired that water damage had occurred which was due to a leak from the shower caused by a missing water strip seal, which had not been reported by the tenant and not identified as requiring attention by the Respondent despite it having been identified and highlighted as an issue requiring attention in the inventory and house condition report prepared at the beginning of the said tenancy (pages 30-32 of the bundle).
5. Various repairs were undertaken subsequently to deal with the damage.
6. The amount of £218.40 from the deposit was allocated to the Applicant by SafeDeposits Scotland.
7. Following various complaints from the Applicant on 14 June 2017 the Respondent offered a further goodwill gesture and made payment of £250 to the Applicant.
8. On 11 April 2019 the Applicant sent a further email to the Respondent asking for the evidence of damages the Respondent had sent to the deposit scheme administrator and the reply. This was not forwarded to the Applicant.
9. The Respondent did not make the Applicant aware of the Code of Practice once this came into force in January 2018.
10. The landlord contract between the Applicant and the Respondent dated 20 April 2017 (pages 43-49 of the bundle) makes no provision for a complaints procedure.
11. No complaints procedure complying with the Code of Practice has been shown to exist and to have been intimated to the Applicant by the Respondent.

12. On 30 October 2019 the Applicant had notified the Respondent of alleged breaches of the Code in relation to the property as per the list stated above.

Findings in Law and Reasons:

Section 6 numbers 102 and 104

Section 7 numbers 108, 110 and 112

1. In terms of S 48 of the Act an application can be made by a landlord to the tribunal. The Applicant is a landlord.
2. **The Tribunal did not find that there was a breach of Section 4 number 68 of the Code of Practice**
3. The jurisdiction of the Tribunal for applications in terms of S 48 of the Act only commenced in January 2018. The complaint relating to a check in inventory prepared in 2015 and the failure of the Respondent to identify a require repair falls out with the jurisdiction of the Tribunal as this predates the date when the Tribunal's jurisdiction commenced.
4. **The Tribunal did not find that there was a breach of the Code of Practice Section 5 Number 73 and 74**
5. The jurisdiction of the Tribunal for applications in terms of S 48 of the Act only commenced in January 2018. The complaint relating to a lack of follow up on the moving in inspection and dealing with the damage after the end of the tenancy in 2016 falls out with the jurisdiction of the Tribunal as this predates the date when the Tribunal's jurisdiction commenced. A new tenant moved into the property in January 2017 and no problems were claimed in regard to the duration of that ongoing tenancy.
6. **Section 7 Communications Number "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."
7. The Respondent continues to act as Letting Agent for the property. Whilst it is clear from the email exchanges between the Applicant and Respondent that an offer of goodwill was made on 14 June 2017 by the Respondent regarding the complaints as stated above, the Applicant requested specific information in an email to the Respondent dated 11 April 2019 for which the Applicant's representative stated at the hearing no reply was received. This failure to reply to the request falls into the jurisdiction of the tribunal as it occurred after the Code of Practice came into force.
8. **Section 7 Communications Number "110** You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer."
9. The Respondent did not deny that they did not make the Applicant aware of the Code of Practice. They made no representations to the tribunal and provided no evidence. Thus the breach is considered to be admitted.
10. **Section 7 Communications Number "112** You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on

request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.

11. The Respondent did not deny that they do not have a written complaints procedure complying with the requirements of the Code of Practice. The only document setting out the Respondent's procedures is the agreement with the Applicant from April 2017, which contains no indication of a compliant complaints procedure being in place. The Respondent made no representations to the tribunal and provided no evidence. Thus the breach is considered to be admitted.
12. The Tribunal considers that as the information regarding the SafeDeposits Scotland report has since been obtained by the Applicant the failure to produce the information requested by the Applicant in the email of 11 April 2019 would no longer be required.
13. The Tribunal considers that as the Respondent continues to act as Letting Agent for the Applicant the obligations under numbers 110 and 112 still apply and thus makes the LAEO as stated above to ensure that the Respondent now complies with these requirements.

The Respondent should note that failure to comply with an LAEO may constitute a criminal offence.

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.

Petra Hennig McFatridge
Legal Member and Chair

Date 7 October 2020