

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION:

**Housing (Scotland) Act 2014, Section 48(6)
First-tier Tribunal Housing and Property Chamber (Rules of Procedure)
Regulations 2017 ("the 2017 Rules"), Rule 95
The Letting Agent Code of Practice ("the Code of Practice")**

Chamber Ref: FTS/HPC/LA/19/2280

**Wallace View, Ferry Road, South Alloa, Falkirk, FK7 7LF
("the House")**

The Parties:-

**Mr Kenneth Kendall-Ball, Nyadd Cottage, Blair Drummond, Stirling, FK9 4UN
("the Applicant")**

**RKH Property Management Limited trading as Martin & Co, 14 King Street, Stirling,
FK8 1AY
("the Letting Agent")**

Letting Agent Registration Number: LARN1903080

The Tribunal:-

**Gillian Buchanan, Legal Member & Chair
Eileen Shand, Ordinary Member**

DECISION

1. **The Letting Agent has failed to comply with the Code of Practice, in particular:-**
 - **Section 2, paragraph 27;**
 - **Section 4, paragraphs 45, 46 and 70; and**
 - **Section 5, paragraph 85.**
2. **The Tribunal issued a Letting Agent Enforcement Order ("LAEO") setting out the steps the Letting Agent must take by the date specified in the LAEO; including payment of compensation to the Applicant for his loss occasioned by the Letting Agent's failure.**
3. **The Tribunal will notify the Scottish Ministers that the Letting Agent has failed to comply with the Code of Practice.**
4. **The decision of the Tribunal is unanimous.**

STATEMENT OF REASONS

Background

5. The Letting Agent carries out letting agency work in Scotland.
6. The Letting Agent has joined the Register of Letting Agents in Scotland in its company name, RKH Property Management Limited trading as Martin & Co, 14 King Street, Stirling, FK8 1AY, LARN1903080.
7. The Code of Practice sets out the standards all those doing letting agency work must meet. The Code of Practice came into force on 31 January 2018. The Letting Agent's duty to comply with the Code of Practice arises from that date.

The Application

8. The Applicant lodged an application with the Tribunal dated 19 July 2019 in terms of section 48 of the 2014 Act and Rule 95 of the 2017 Rules, to enforce the Code of Practice ("the Application"). In the Application the Applicant named the Letting Agent as "Martin & Co., Stirling", 14 King Street, Stirling, FK8 1AY.
9. The complaint in the Application was specified with reference to the following sections and paragraphs of the Code of Practice, namely: –
 - i. Section 2, paragraph 27;
 - ii. Section 4, paragraphs 45, 46, 68, 70 and 71; and
 - iii. Section 5, paragraph 85.
10. The Applicant's reasons for considering that there has been a failure to comply with the specified paragraphs are that the Letting Agent: –
 - i. Failed to inform the Applicant that the House was the subject of a Repairing Standard Enforcement Order and Rent Relief Order;
 - ii. Failed to make the Applicant aware of or provide to him a copy of the Code of Practice;
 - iii. Failed to manage the check-in process in that the Applicant asked verbally for an Inventory and a walk-through inspection but was not offered either of these.
 - iv. Failed to provide a Gas Safety Record and an Electrical Installation Condition Report.
 - v. Failed to let the House in a proper state of repair in that: –
 - The prepaid electricity meter was in disrepair;
 - Wires in the lounge where fittings had been removed had not been made safe;
 - The electric fireplace in the lounge had a missing plug;
 - The wall light in the lounge did not work;
 - The door leading to the outside through the utility room had rotten boards at the threshold;

- There was a hole in the bedroom floor;
 - The double glazed window in the kitchen had failed allowing cold air to seep through;
 - The shower drain had failed and there was a stench coming up through the lavatory sink and also under the wall cabinets in the utility room;
 - The washing machine had to be removed and stored in the outside shed due to black slime in the door seals which could not be removed;
 - The loft flooring was unsafe in that the boards were loose; and
 - The new dishwasher was not safely connected to the electricity supply.
- vi. Failed to lodge the pet deposit in a recognised deposit scheme.

11. The Applicant therefore sought:-

- i. The return of all monies paid to the Letting Agent and totalling £2,400;
- ii. Reimbursement of all costs relative to the Applicant moving to the House;
- iii. Reimbursement of all costs relative to the Applicant moving out of the House;
- iv. Compensation for administration fees caused by the two moves; and
- v. Compensation for stress and anxiety caused, the interruption of the Applicant's ministry work, the need to change addresses including for medical provision and car insurance, wear and tear on furniture and household goods.

12. On 14th August 2019 a legal member of the Tribunal with delegated powers of the Chamber President considered the Application and referred the Application to the Tribunal.

13. A hearing on the Application was fixed for 1 October 2019 at STEP, Stirling Enterprise Park, John Player Building, Stirling, FK7 7RP.

14. On 17th September 2019 the Tribunal issued a Notice of Direction under Rule 16 of the 2017 Rules in terms of which the Applicant was required to provide to the Tribunal the following: –

- i. Evidence of the removal costs said to have been incurred in moving to and removing from the House;
- ii. Evidence of costs incurred relative to work said to have been done at or to the House; and
- iii. Evidence of administration costs incurred said to have been incurred including those relative to changing car insurance.

The information required in terms of the Notice of Direction was to be lodged with the Tribunal no later than 12 noon on Friday 27 September 2019.

15. In response to the Notice of Direction by email dated 20 September 2019 the Applicant lodged with the Tribunal extracts of bank statements of US Bank.

16. At the hearing on 1 October 2019 the Applicant was present along with his wife, Mrs Judy Kendall-Ball. The Letting Agent was represented by Mr Imtiaz Ahmed.

Preliminary Matter

17. At the hearing it was identified that "Martin & Co (Stirling)" is not a recognised legal entity and is the trading name of "RKH Property Management Limited", a Company incorporated under the Companies Acts and registered in the Scottish Letting Agent Register with Registration Number LARN1903080.

18. After hearing from the Applicant and with the consent of Mr Ahmed the Tribunal made the following order:-

In terms of Rule 32(1) of the 2017 Rules, to substitute the following person as the Letting Agent in the Application, namely:-

"RKH Property Management Limited trading as Martin & Co, 14 King Street, Stirling, FK8 1AY"

In respect that Mr Ahmed is the Managing Director of RKH Property Management Limited trading as Martin & Co and consented to the hearing proceeding against RKH Property Management Limited trading as Martin & Co as the Letting Agent the Tribunal dispensed with further intimation of the Application.

Matters not in Dispute

19. The following matters are not in dispute between the parties:-

- i. That the Applicant and the Letting Agent on behalf of the landlord entered into a Private Residential Tenancy Agreement in respect of the House which is dated 1 February 2019 ("the Agreement");
- ii. That in terms of the Agreement the tenancy commenced on 1 February 2019.
- iii. That the monthly rent payable in terms of the Agreement was £750.
- iv. That the Applicant paid to the Letting Agent a deposit of £750 which was lodged in a recognised tenancy deposit scheme, namely Safe Deposit Scotland.
- v. That the Applicant additionally paid to the Letting Agent a pet deposit of £150 which, at the time of the Hearing, was retained by the Letting Agent.
- vi. That at the time the Agreement was entered into the House was the subject of a Repairing Standard Enforcement Order issued on 5 June 2018 ("the RSEO").

Summary of the Applicant's submissions and evidence

20. The House was to be let on an unfurnished basis in terms of the Agreement.
21. The Applicant and his wife stated that they moved into the House over a period of several days in February 2019.
22. On taking occupation, the Applicant and his wife found several pieces of furniture left in the House. Previously, the Applicant and his wife had asked "Grant", a representative of the Letting Agent if the carpets would be cleaned and all items of furniture removed prior

to them taking occupation and was assured that this would be the case.

23. "Grant" showed the Applicant and his wife the House on two occasions, namely briefly on 29th December 2018 and again on 31st January 2019 when the Agreement was signed. Signature of the Agreement took place at the House with "Grant" signing on behalf of the Letting Agent. Notwithstanding the actual date of signing, the date written onto the Agreement was 1st February 2019.
24. On taking occupation the Applicant and his wife found mould on the walls in two of the bedrooms. They scrubbed the mould with bleach and painted each of the three bedrooms before putting the furniture in. Their daughter flew over from the USA and assisted with the move.
25. At the outset of the tenancy the Letting Agent only provided to the Applicant a copy of the Agreement and no other documentation.
26. The Applicant asked about a copy of the Electrical Installation Condition Report and Gas Safety Record and was told that these were in the Letting Agent's office.
27. The Applicant and his wife also asked about an Inventory. An Inventory was emailed to the Applicant by Karen Clelland on 31st January 2019. The following day the Applicant was advised that the Inventory had been sent by mistake. The Inventory referred to the previous tenants. Whilst the Inventory was dated 30 January 2019 the photographs were not of the House as it was when the Applicant took occupation.
28. On taking occupation the Applicant knew nothing of the RSEO. The Applicant and his wife first became aware of the RSEO when they received from Kate Smith of Falkirk Council Private Sector Office a letter dated 25th March 2019. That letter referred to no rent being payable. The Applicant called Kate Smith and she attended at the House on 29th March 2019 indicating that the Applicant and his wife were occupying the House illegally. Kate Smith indicated that the Letting Agent was aware of the position as she had previously spoken to a representative thereof.
29. The Applicant expected a walk-through inspection of the House to take place. He mentioned this to "Grant" and also to "Laura" in the Letting Agent's office on or around 1 February 2019. The Applicant was advised that the Letting Agent did not carry out such walk-through inspections.
30. The Applicant had a "dashboard account" with the Letting Agent which was to be used to record in writing any issues arising relative to the House.
31. The items listed by the Applicant in his letter to the letting agent dated 2nd April 2019 were not recorded on the dashboard as the letter itself served as written intimation thereof.
32. The electricity meter did not light up when a card was put in. Readings could not be taken. The Applicant contacted SSE and was advised that the meter was "fried" but that electricity would continue to be supplied. A new meter was fitted by SSE 4 to 5 weeks later.
33. There were two holes in the lounge wall measuring around 1.5 in² with bare wires tucked back into them.

34. The electric fire had no plug and bare wires were left.
35. The wall light did not work. The Applicant replaced the light bulbs but that made no difference.
36. With regard to the door leading to the outside through the utility room the subfloor was rotten and would flex when walked upon. The landlord, Mr Tannock, attended around the end of April. The Applicant showed him the flooring. He lifted the carpet but did nothing.
37. The hole in the floor in the bedroom was located in front of the window and covered with the fitted carpet. The Applicant marked the area with tape to avoid stepping into it.
38. The Applicant mentioned the kitchen window to the tradesperson who attended to replace the dishwasher. He indicated that the window required replaced and that he would mention the position to the Letting Agent.
39. With regard to the stench from the bathroom and utility room wall cabinets, there is a common wall between the utility room and the bathroom.
40. With regard to the washing machine, there was a terrible smell when the door was open and black slime was present.
41. With regard to the flooring in the loft, the boards were not fixed and were covered with carpet.
42. When the new dishwasher was connected the wire through the worktop leading to the plug and socket required to be cut and removed with the old dishwasher. An extension cable was used for the new dishwasher which Falkirk Council advised was not legal.
43. The Applicant paid two months rent to the Letting Agent namely in February and March 2019 each in the sum of £750.
44. The Applicant has received back the deposit of £750 from Safe Deposit Scotland but the pet deposit remains outstanding.
45. The Police visited the House looking for the previous tenants.
46. The Applicant and his wife moved out of the House around the end of June 2019.
47. With regard to their claim, it comprises the following elements: –
 - i. Rent paid, namely £1500.
 - ii. The outstanding pet deposit of £150.
 - iii. £183.70 being the cost of renting a vehicle from 5th Gear Hire Drive, Airdrie to move into the House.
 - iv. £1,520.06 being the removal costs paid to Doree Bonner, Clydebank for moving out of the House.
 - v. The cost of paint purchased to decorate the House including not only the bedrooms

but also the kitchen and the border in the lounge.

- vi. The cost of having a TV aerial installed at the House to provide Freeview channels, namely £230.
 - vii. Administration fees associated with changing car insurance details. Car insurance was provided by the RAC and an administration fee was built into the new contract written when the Applicant's address changed.
 - viii. With regard to compensation more generally, the reason the Applicant moved to the area was to be closer to the Church with which the Applicant works. The House was perfect for that reason. The Applicant and his wife are elderly and having to pack up and move home twice in a few months was stressful. This affected the Applicant's ministry work due to being worn out and unable to fulfil a more complete role with the Church. The frequent changing of addresses made the Applicant feel that, to third parties, he looked unstable and less credible. The Applicant required to move GP practice and all of this caused a lot of stress. The Applicant is 74 years of age.
48. The Applicant received an email from the Letting Agent on 24th April to the effect that they would no longer be dealing with the House from 7 May 2019.
49. The Applicant was not aware of the Code of Practice and did not therefore ask for a copy from the Letting Agent. He was made aware of the Code of Practice from Kate Smith when she visited.

Summary of the Letting Agent's Submissions & Evidence

50. Mr Ahmed stated that he has not looked into whether the House was unfurnished or not. From his recollection a property would normally be let as unfurnished but would include "white goods". He had not been at the House for a number of years.
51. Mr Ahmed observed there is no mention of any items of furniture being left in the House within the Applicant's letter of complaint.
52. With regard to the Inventory, this was prepared on 30 January 2019. He provided to the Tribunal a copy of an "Inventory & Check-In Report" dated 30 January 2019 ("the Inventory"). Each photograph within the Inventory bears that date and the Inventory was compiled by "Karen", an employee of the Letting Agent, who simply failed to take out the erroneous reference to the previous tenants. The Inventory was emailed twice, the second occasion being on 31st January 2019 at 10:04. The Inventory was not signed and returned by the Applicant and his wife. The Inventory is prepared using isurvey and using an ipad. An Inventory would normally be emailed as it is a lengthy document and is only prepared up to 3 days before a new tenant takes occupation.
53. Mr Ahmed accepted that some items of furniture are seen in the photographs. He said there were no notes from "Grant" suggesting that any request had been made for the furniture to be taken out. A property is taken as seen by viewers and any such requests need to be made in writing. That did not happen.
54. Mr Ahmed stated that tenancy agreements are never signed out of the office as that is not company policy. Normally "Laura" deals with drafting agreements and providing

certificates. Mr Ahmed accepted that the Agreement had been signed by Grant Thomson on behalf of the Letting Agent.

55. Mr Ahmed stated that all certificates were printed and given over at the point of signing the Agreement.
56. Mr Grant Thomson was a Lettings Negotiator. He had nothing to do with the tenancy sign-up process. This would be handed over to "Laura" to prepare the documentation and ensure the certificates and safety checks were in place before the tenancy commenced. Mr Ahmed believed that "Laura" gave the certificates to the Applicant and his wife when they came to pick up the keys from the office. "Laura" told him this directly. No paperwork was signed by the Applicant or his wife to acknowledge receipt of these documents. The documents handed over comprised the EICR, Gas Safety Record, Letting Agent Code of Practice, the EPC, PAT testing report and Legionella Scotland information.
57. The Code of Practice was also emailed to the Applicant by Tracy Horton of the Letting Agent on 22 February 2019 at 4:54pm. Mr Ahmed had not brought that email with him to produce to the Tribunal.
58. With regard to the RSEO, Mr Ahmed had been dealing with the landlord of the House for a number of years. The issue with the septic tank came to light during the previous tenancy. Falkirk Council got involved. The landlord was reluctant to spend money and there were complications with neighbours as their garden needed excavated and they refused permission. The landlord was not motivated to get the problem fixed. The Letting Agent had sent out a number of contractors. Repair costs were estimated at around £5000, possibly more.
59. Falkirk Council sent a letter to the landlord on 30th July 2018 indicating that it would enter the House to carry out repairs and would seek to recover costs. The Letting Agent understood from the landlord that the problem had been resolved. However the position was not checked. This was the first time the Letting Agent had come across an RSEO. The landlord's instructions were accepted in good faith.
60. With regard to a walk-through inspection, this is never done. The Inventory is very comprehensive and sufficient. Mr Ahmed could not see any evidence of a walk-through inspection having been asked for and this request was never put in writing.
61. Mr Ahmed referred to the "dashboard account" as "My Property File" being a tenant portal where issues could be reported and photos and videos uploaded. He did not have a copy of the dashboard with him.
62. Mr Ahmed stated that the House had been cleaned prior to the tenancy commencing and the contractor had been paid. The Inventory took account of that.
63. With regard to paint costs, if the Applicant did not like the colour of the walls in the House then he required to obtain permission in writing to decorate. No requests to paint the House were made. Mr Ahmed referred to paragraph 31 of the Agreement.
64. With regard to the electricity meter there had been no complaint by the previous tenant that the meter was in disrepair. Mr Ahmed speculated that during the void between the previous tenant leaving and the Applicant taking occupation, a standing charge may have been applied by the electricity provider and a debit balance may have accrued on the

electricity meter. When the Applicant put his credit into the meter it would simply be offset against the debit.

65. With regard to the wires in the lounge, the Decision of the Tribunal relative to the RSEO and 20th December 2018 stated that the wires had been removed.
66. With regard to the electric fireplace, Mr Ahmed had not been informed prior to 2 April 2019 that the plug was missing. He could not confirm the position one way or the other. He emailed the Applicant and his wife to ask whether they wanted the fireplace repaired and they did not reply.
67. Mr Ahmed could not confirm the position with regard to the wall light in the lounge.
68. With regard to the rotten flooring at the door from the utility room, Mr Ahmed was not disputing that there might have been a problem. He did not know when the problem occurred and did not personally know the position. He said that he was not given the opportunity to carry out any repairs.
69. With regard to the hole in the bedroom floor, Mr Ahmed did not inspect that himself and did not know when that had occurred. He said that he was not given any opportunity to carry out repairs.
70. With regard to the kitchen window, he did not inspect this himself and the issue could have been long-standing. He was not given the opportunity to carry out any repairs.
71. With regard to the issue of the drain and the stench, Mr Ahmed stated that this was no doubt linked to the septic tank but again he had not inspected personally nor had he been given any opportunity to carry out repairs.
72. Mr Ahmed did not know anything about the washing machine. There was no request to replace the washing machine which the Applicant was happy to provide himself. The previous tenants had not reported any difficulties.
73. With regard to the flooring in the loft, again, Mr Ahmed had not inspected and was not given the opportunity to carry out any repairs.
74. With regard to the dishwasher connection, this was organised by the landlord's own contractor.
75. On 11 April 2019 the Letting Agent received a letter from Falkirk Council requiring that the issues identified be addressed by 19th April 2019 or the matter would be referred to the Tribunal.
76. On 12th April 2019 the landlord instructed the Letting Agent to give notice to the Applicant and his wife to leave the House as the landlord intended to sell. A Notice to Leave was therefore issued. The Notice was issued twice with a removal date of 16th May 2019.
77. With regard to the pet deposit, the sum of £150 is sitting on the landlord ledger. The pet deposit was not documented as being a deposit and has been treated as rent partly due.
78. The Applicant and his wife moved out the House around the end of June or early July and handed back the keys.

79. With regard to the Applicant's financial claims, Mr Ahmed disputed particularly the claim for £5,000 to reflect stress and anxiety which he said had been "plucked out of the air".
80. With regard to the Applicant's letter of 19th July, Mr Ahmed stated that he didn't think he had seen that letter and certainly could not recall having received it. The first time he had seen the letter was in the pack of papers sent to him by the Tribunal. However, even if the letter had been sent to him by then the Letting Agent was not managing the house.
81. With regard to the alleged breaches of the Code of Practice, Mr Ahmed stated: –
- i. Section 3, paragraph 27 – that the Letting Agent informed the Applicant of everything that was required and understood the RSEO had been dealt with. Any rational letting agent, he said, would not let out the House with an RSEO in place.
 - ii. Section 4, paragraph 45 – a copy of the Code of Practice was provided in hard copy on the date the Applicant and his wife moved into the House and also by email.
 - iii. Section 4, paragraph 46 - the Letting Agent did not knowingly omit anything.
 - iv. Section 4, paragraph 68 – an Inventory was provided.
 - v. Section 4, paragraph 70 - Mr Ahmed accepted that he did not take any steps to remind the applicant to sign and return the Inventory. Mr Ahmed accepted that he did not take any steps to tell the Applicant that the Inventory would be treated as correct.
 - vi. Section 5, paragraph 85 – Mr Ahmed stated that he had appropriate systems and controls in place and all documentation was provided. He maintained that the landlord was also responsible for the House meeting the Repairing Standard. The landlord should have inspected during the void period between the previous tenancy and the Agreement. Mr Ahmed stated that the Letting Agent does not manage properties that are empty and that is contained within the terms of business agreed with the landlord.

Findings of Fact

82. The Applicant and his wife were the tenants of the House.
83. The Letting Agent carries out letting agency work in Scotland.
84. The Letting Agent is registered in the Scottish Letting Agent Register, LARN1903080.
85. On or about 31 January 2019 the Applicant and the Letting Agent on behalf of the landlord of the House entered into the Agreement;
86. In terms of the Agreement the tenancy of the House commenced on 1 February 2019 and the monthly rent payable was £750.
87. The Applicant paid to the Letting Agent a deposit of £750 which was lodged in a recognised tenancy deposit scheme, namely Safe Deposit Scotland.

88. The Applicant additionally paid to the Letting Agent a pet deposit of £150 which, at the time of the Hearing, was retained by the Letting Agent.
89. At the time the Agreement was entered into the House was the subject of the RSEO.
90. The Letting Agent was aware of the existence of the RSEO and took no steps to check whether the RSEO had been discharged.
91. The Letting Agent did not inform the Applicant that the House was the subject of an RSEO.
92. The Letting Agent did not inform the Applicant of the repairs required to the House in terms of the RSEO.
93. An "Inventory & Check-In Report" was provided by the Letting Agent to the Applicant on or around 30 January 2019 containing photographs of the same date. The Letting Agent omitted to change the tenants details in the Inventory & Check-In Report from the previous tenants to the Applicant and his wife.
94. The Applicant and his wife did not sign and return the Inventory & Check-In Report to the Letting Agent.
95. The Letting Agent did not take any steps to remind the Applicant to sign and return the Inventory & Check-In Report.
96. The Letting Agent did not take any steps to inform the Applicant in writing that the Letting Agent will regard to Inventory & Check-In Report as correct notwithstanding the absence of any response from the Applicant.
97. The Letting Agent did not provide to the Applicant a copy of the Code of Practice or otherwise make the Applicant aware of the existence of the Code of Practice.
98. The Letting Agent did not provide to the Applicant a current EICR or Gas Safety Record in respect of the House at the outset of the tenancy.
99. The Applicant paid to the Letting Agent rent for the months of February and March 2019 each in the sum of £750.
100. The Applicant was served with a Notice to Leave the House which took effect on 16 May 2019.
101. The Applicant and his wife vacated the House around the end of June 2019.
102. The Applicant incurred costs of £185.70 moving into the House and costs of £1,520.06 moving therefrom.
103. The Applicant incurred costs of £230 installing a TV aerial at the House.
104. The Applicant incurred costs associated with purchasing paint to decorate the House.
105. The Applicant had not received from the Letting Agent written permission to decorate the House as required in terms of the Agreement.

106. The Applicant has been put to delay, stress, worry and inconvenience as a consequence of the Letting Agent's actions including but not limited to finding alternative accommodation and moving from the House, changing car insurance details, changing medical practices, being distracted from his ministerial duties at the Church, dealing with the Letting Agent and Falkirk Council, being visited by the Police and dealing with the perceptions of third parties at the frequency of changing address.

The Code of Practice

107. The Tribunal finds that the Letting Agent is in breach of Section 2, paragraph 27 of the Code of Practice in that the Letting Agent failed to inform the Applicant of the RSEO outstanding in respect of the House and the repairs required in terms thereof.
108. The Tribunal finds that the Letting Agent is in breach of Section 4, paragraph 45 of the Code of Practice in that the Letting Agent failed to make the Applicant aware of the Code of Practice.
109. The Tribunal finds that the Letting Agent is in breach of Section 4, paragraph 46 of the Code of Practice in that the Letting Agent failed to advise the Applicant of the existence of the outstanding RSEO and the repairs required to the House in terms thereof.
110. The Tribunal accepts that the Letting Agent provided to the Applicant an "Inventory and Check-In Report" dated 30th January 2019 which was emailed to the Applicant by Karen Clelland, an employee of the Letting Agent, on 31st January 2019. The Tribunal does not therefore consider the Letting Agent to be in breach of Section 4, paragraph 68 of the Code of Practice.
111. The Tribunal finds the Letting Agent in breach of Section 5, paragraph 70 of the Code of Practice in that the Letting Agent accepted taking no steps to remind the Applicant to sign and return the Inventory nor, in the absence of any response from the Applicant, inform the Applicant in writing that the Letting Agent would nevertheless regard the Inventory as correct.
112. Given that the Applicant did not sign and return the Inventory, the Tribunal did not consider the Letting Agent to be in breach of Section 5, paragraph 71 of the Code of Practice.
113. The Tribunal finds the Letting Agent to be in breach of Section 5, paragraph 85 of the Code of Practice in that in carrying out pre-tenancy checks and having regard to the Letting Agent's responsibility for maintenance obligations, the Letting Agent failed to make any enquiries as to whether the RSEO in respect of the House had been discharged. The Letting Agent was aware that it is illegal to let a property at any time during which an RSEO has effect.

Decision

114. As the Tribunal has decided that the Letting Agent has failed to comply with the Code of Practice, the Tribunal is required to make a Letting Agent Enforcement Order ("LAEO") in terms of Section 48(7) of the 2014 Act. The LAEO requires the Letting Agent to take the steps the Tribunal considers necessary to rectify the failures within the

specified period.

115. The Tribunal considers that it is appropriate for the Letting Agent to pay compensation to the Applicant for losses suffered plus compensation for delay, stress, worry and inconvenience.
116. The Tribunal therefore orders the Letting Agent to pay to the Applicant:-
- i. £183.70 being the costs incurred by the Applicant to "5th Gear Hire Drive" to facilitate moving to the House;
 - ii. £1,520.06 being the costs incurred by the Applicant to "Doree Bonner" in removing from the House;
 - iii. £230.00 being the costs incurred by the Applicant in installing and relocating a TV aerial at the House;
 - iv. £150.00 being the pet deposit paid by the Applicant to the Letting Agent in terms of the Tenancy Agreement dated 1 February 2019 and retained by the Letting Agent;
 - v. £1,500.00 being the rent paid by the Applicant to the Letting Agent in terms of the Tenancy Agreement dated 1 February 2019;
 - vi. £2,500.00 in respect of the delay, stress, worry and inconvenience suffered by the Applicant.
117. The Letting Agent is ordered to pay the foregoing sums to the Applicant within 14 days.

Reasons for Decision

118. The Application is substantially premised upon the House having been let to the Applicant and his wife whilst an RSEO has effect in relation thereto. The Letting Agent readily accepted being aware of the existence of the RSEO and that no steps were taken to verify whether the RSEO had been discharged formally by the tribunal. Whilst the Letting Agent had never previously come across an RSEO in relation to a property the Tribunal was satisfied that it was simply not good enough for the Letting Agent not to make any enquiries as to whether the RSEO continued to have effect at the time the Agreement with the Applicant and his wife was in contemplation.
119. It is an offence under Section 28(5) the Housing(Scotland) Act 2006 for a landlord to enter into a tenancy in relation to a property at any time during which an RSEO has effect. The Letting Agent is the landlord's agent and it is inconceivable to the Tribunal that the Letting Agent would make no independent enquiries as to the effectiveness of an RSEO that is within its knowledge. Put simply, the Agreement with the Applicant and his wife ought never to have been entered into. The Applicant and his wife ought never to have been in occupation of the House. The House did not meet the Repairing Standard.
120. The Applicant required to find alternative accommodation once it came to his attention that the RSEO was still in effect. Had this not been the case, the Applicant and his wife would have remained tenants of the House in the long term.
121. The Tribunal accepted that the Applicant is entitled to recover costs associated with moving into and out of the House, rent paid in respect of the House and the outstanding pet deposit admittedly still held by the Letting Agent. The Tribunal also concluded that the Applicant is entitled to recover the costs associated with the installation of the TV aerial at the House but not the cost of purchasing paint to decorate for which no written consent had been obtained in terms of paragraph 31 of the Agreement.

122. No evidence was provided by the Letting Agent that the Applicant had been made aware of the existence of the Code of Practice and, and on the balance of probabilities, the Tribunal accepted the Applicant's evidence that he had not been made so aware by the Letting Agent.
123. The Tribunal similarly accepted, on the balance of probabilities, and in the absence of any evidence to the contrary, that the Applicant had not been provided with and the EICR or Gas Safety Record at the outset of the Agreement.
124. The Applicant is 74 years of age. The Tribunal entirely accepted that the situation in which he found himself was one which would cause considerable stress, worry and inconvenience. He was unaware of the RSEO until so advised by Falkirk Council. The Police attended at the House looking for the previous tenants. The Applicant had to deal with the Letting Agent and Falkirk Council with regard to the RSEO and the outstanding repairs. The Applicant had to find alternative accommodation and move thereto. That move required that the Applicant change his medical practice, car insurance details and generally intimate to third parties a further change of address. The Applicant perceived that yet another change of address would affect his credibility generally. The Applicant was also distracted from and unable to fulfil fully his ministerial duties to the Church. The Tribunal was satisfied that it was appropriate that a compensatory payment be made by the Letting Agent to the Applicant to reflect these various factors.

Appeals

An applicant or letting agent 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.

Signed _____

Date

15 October 2019