

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**DECISION WITH STATEMENT OF REASONS: Housing (Scotland) Act 2014, section 48**

**Reference number: FTS/HPC/LA/21/0014**

**Re: 2/1, 1663 Dumbarton Road, Glasgow G14 9YD (“the Property”)**

**The Parties:**

**Mr Alvin Hadiono, 0/1 190 Earl Street, Glasgow, G14 0BU (“the Applicant”)**

**Let It Letting Agent, 123 Stockwell Street, Glasgow, G1 4LT (“the Letting Agent”)**

**Letting Agent Registration Number: LARN1806016**

**Tribunal Members:**

**Susan Christie (Legal Member and Chair)**

**Elizabeth Currie (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), having made such enquiries as it saw fit for the purpose of determining whether the Letting Agent has complied with the Letting Agent Code of Practice (“the Code”), and taking account of all available evidence, determined that the Letting Agent has failed to comply with paragraphs 86,90,91 93 and 108 of the Code. The Tribunal therefore proceeded to make a Letting Agent Enforcement Order which specifies the steps the Tribunal considers necessary to rectify the failures and in addition provides that the Letting Agent must apologise in writing and pay to the Applicant an amount of compensation for the losses suffered by the Applicant as a result of the failures to comply. The Tribunal’s decision is unanimous.**

### **Background**

1. By application received on 1 January 2021 the Applicant applied to the Housing and Property Chamber under section 48 of the Housing

(Scotland) Act 2014 and Rule 95 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) to enforce the Code and for a determination that the Letting Agent had failed to comply with the Code.

2. The Application specifically referred to alleged failures to comply with Paragraphs 17,18,19,20,21,23,24,26, 27,75,86,90,91,93, 94,95,98,101,103 &108 of the Code.
3. The Applicant sought monetary compensation and an apology.
4. The Notice of Acceptance of the application by the First- tier Tribunal is dated 7 January 2021.
5. Written representations were due to be submitted by 17 February 2021 and a Hearing was assigned for 10 March 2021.
6. On 11 February 2021, written representations were submitted by the Letting Agent and their preference was to rely on those written representations. They did not wish to participate in an oral hearing.

### **The Hearing- 10 March 2021.**

7. The Applicant participated. His wife listened into part of the call as a supporter. The Tribunal had been advised in writing she would do that in advance.
8. The Letting Agent did not participate.
9. The Applicant had a written documented outline prepared that was in line with the oral submission that he was to make. It was e- mailed to the Tribunal. He also e- mailed a document headed ‘Overview of the Dispute’. This was a copy of what the Letting Agent had produced as part of the adjudication process relating to the Deposit under the SDS Scheme. These were received on the morning of the Hearing by e-mail.
10. It was clarified with the Applicant
  - (a) That he did not have any medical report to produce (his e mail of 6 February 2021 No.2).
  - (b) He had not invited the LKS contractor to participate as a witness.
  - (c) The reasons in the application come under the headings Repair Timelines, Communication, Fairness, Clear Procedures and Presence during checkout.
  - (d) The Applicant had no other documents to produce and had submitted those he relied on.
11. It was noted that he was asking the Tribunal to reconsider the Deposit decision of the Adjudicator.
12. It was explained that this application was to consider whether the Letting Agent had breached the Letting Agent Code of Practice. To assist the Tribunal, it needs to consider a variety of evidence from both Parties. It became apparent that there were documents that the Tribunal considered it now needed.
13. If it considers that the Letting Agent Code has not been complied with then a compensation requirement could follow and /or specifying steps that are to be taken by the Letting Agent. It was noted that the second tenant had not yet advised the Tribunal in writing that the first Applicant might represent her in this application. This should now be done.

14. The hearing was adjourned to a later date and a Direction was thereafter issued.

### **The Hearing- 21 April 2021**

15. The Tribunal held a Hearing by conference call.
16. The Applicant was the only Party in attendance along with his wife as a Supporter.
17. The Letting Agent staff had intimated in advance that they did not intend to participate in the oral Hearing and instead relied on the paperwork produced by them in response to the Application and the Direction. This was unfortunate, as it would have assisted the Tribunal for there to have been someone available to instantly answer questions in interpreting the documentation they produced.
18. The Applicant presented his case to the Tribunal and verbally presented his submissions as set out in the written Summary provided by him in advance. He indicated that he was not insisting on the heading of claim- 'Presence during checkout'-Paragraphs 98,101 & 103 of the Code.
19. The Applicant went through his written submission. He considered that the Letting Agent had breached the Code. His main complaints related to the repairs complained of -in the bathroom of the Property and looking at the mould issue in the lounge that were not remedied prior to end of the tenancy. He also said his main issue with the Letting Agent's approach was lack of resolution and clear communication.
20. The Applicant stated that he had reported by telephone earlier than September 2019 that there was a leak and dampness/mould problems in the bathroom. He referred to information now in his possession- Worksheet 863374 provided by the Letting Agent. He referred to the entries on it that appeared to suggest that as early as August 2019 that the Letting Agent had been made aware of issues with the WC connection and the external wall being damp in the bathroom. A quotation for the works had been given on 2 September 2019 and it appeared from the entries that this work had not been carried out as of 11 September 2019. When asked, the Applicant was unable to state whether the work on the WC had ever been carried out.
21. By 23 January 2020, the Letting Agent still had outstanding a report by the tenant of the bathroom leaking and mould. By 29 January 2020 as per Worksheet 864622 this was put down by the contractor to be condensation and recommended a fan be installed to the bathroom and the pipes in the hall be insulated as they too were showing signs of water condensation. Authorisation by the landlord was given to progress on 30 January 2020. It appeared that sometime after that the pipes were insulated.
22. Worksheet 864671 picks the same issue regarding the installation of a fan from around 13 February 2020. The Letting Agent was looking for information from the contractor to give to the Landlord regarding

- additional cost for a specialist corer to bore through an external wall to do the job. By 29 June 2020, the Letting Agent is seeking further information on the fan job and alternative solutions. The entry notes that the tenant has advised the Letting Agent that the mould is getting worse; the suggestion by the contractor to the Letting Agent being to consider alternatives such as to remove the bathroom window and replace with a window with an integral fan or to fit window vents.
23. By 4 August 2020 as per Worksheets 865557 & 865702, the Letting Agent is asking someone to provide a quote to install window fans to the bathroom and requesting a report on damage to amongst other things the walls in the lounge and bathroom window wall.
  24. The Applicant said contractors came several times between September 2019 and January 2020 and the only work carried out was to insulate the pipes in the cupboard where he stored shoes. He says he was promised that an extractor fan would be installed in addition.
  25. The second main element complained of related to the presence of mould in the lounge at the window. The Applicant stated that he reported this to the contractors who came out and to the Letting agent by telephone. The Letting Agent appears to dispute this stating that this was only picked up by them during a walk through on 20 February 2020.
  26. The Applicant had expected the Letting Agent to relay any information about the cause and any actions to be taken to him. He said that he was not aware of the detail of a Report on the lounge mould until after the tenancy ended. The detail only came in response to an adjudication triggered by a dispute over how much of the tenancy deposit was to be returned to him and from the responses made by the Letting Agent in this application. He felt they had not been fair with him.
  27. He was seeking compensation and an apology.
  28. The Tribunal thereafter considered:
  29. The written evidence before the Tribunal that consisted of the application itself and supporting documentation, the written representations of the Letting Agent and supporting paperwork, and the Parties answers to the Direction issued.
  30. The Legislation considered is as follows:

### **Relevant Legislation**

The relevant legislation that the Tribunal considered is as follows:

Housing (Scotland) Act 2014

46 Letting Agent Code of Practice

- (1) The Scottish Ministers may, by regulations, set out a code of practice which makes provision about—
  - (a) the standards of practice of persons who carry out letting agency work,
  - (b) the handling of tenants' and landlords' money by those persons, and
  - (c) the professional indemnity arrangements to be kept in place by those persons.
- (2) The code of practice is to be known as the Letting Agent Code of Practice.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate on a draft of the code of practice.

#### 48 Applications to First-tier Tribunal to enforce code of practice

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is—

(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,

(b) in relation to an application by a landlord, a letting agent appointed by the landlord,

(c) in relation to an application by the Scottish Ministers, any letting agent.

(3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a "letting agent enforcement order") require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.

(8) A letting agent enforcement order—

(a) must specify the period within which each step must be taken,

(b) may provide that the letting agent 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.

(9) References in this section to—

(a) a tenant include—

(i) a person who has entered into an agreement to let a house, and

(ii) a former tenant,

(b) a landlord include a former landlord.

The Scottish Ministers, by regulations produced a Code which came into force on 31 January 2018, namely

The Letting Agent Code of Practice (Scotland) Regulations 2016 ("the Code").

The paragraphs of the Code relied on in the original Application were as follows:

Repair Timelines- 21,26,90,94,95

Communication-18,19,27,75,91,93,108

Fairness -17

Clear Procedures-20,23,24,86,98

## Findings in fact

The Tribunal finds the following facts to be established:

- I. The Applicant's tenancy of the Property commenced on 2 November 2018.
- II. The Letting Agent is appointed on behalf of the landlord to deliver to the Applicant as tenant services including "arranging repairs" and is the first point of contact for "reporting repairs and submitting a complaint".
- III. The Applicant was provided with a copy of the Private Residential Tenancy agreement and a "Repairs Guidelines" leaflet at the outset of the tenancy.
- IV. The "Repairs Guidelines" leaflet provides a procedure to the Applicant as tenant in the event of a standard repair being needed. It provides categories of repair and specifies steps that the tenants personally should take. If unresolved, it provides the Letting Agent contact details.
- V. The Applicant notified the Letting Agent of the failure to comply with the Code on 19 December 2020 by way of a formal Notification letter.
- VI. Around the end of August/early September 2019 the Applicant reported a leak and dampness or mould problems in the bathroom and a cupboard pipe.
- VII. On 13 September 2019, a contractor contacted the Applicant by text and arranged access to carry out works at the WC in the property. It was not clear whether the work to the WC was ever carried out.
- VIII. On 29 January 2020, the Letting Agent e-mailed the Applicant stating that they had been advised by SJM plumbing that the reported leak was due to condensation in the bathroom and stated that it was the tenant's responsibility to ensure the Property was properly heated and ventilated. Failure to do so could result in the tenant being liable for re-instatement work. A booklet was provided for reference regarding managing condensation.
- IX. On 30 January 2020, the Applicant e- mailed the Letting Agent to say that SJM Plumbing had recommended the installation of a fan. This was confirmed the next day by the Letting Agent who qualified this by stating that where no fan is installed the obligation is on the tenant to ensure the property is fully ventilated.
- X. The fan was to be installed.
- XI. On 26 February 2020, the Letting Agent text the Applicant to say LKS Construction had been assigned to investigate the mould in the living room and would call the Applicant to schedule an appointment.
- XII. On 28 February 2020, the Applicant e- mailed the Letting Agent to indicate he was still waiting for repair work to be done and refers to awaiting installation the fan in the bathroom, investigations by LKS construction regarding mould in the living room and the induction stove being broken.
- XIII. The Applicant is not relying on in this application any issue with the repairs to the WC itself or the induction stove.
- XIV. On 2 March 2020, the Letting Agent stated they had contacted LKS and A2B Electrics for an update on the repairs.
- XV. On 8 March 2020, the Applicant e- mailed the Letting Agent stating he was waiting for 3 technicians.
- XVI. On 9 March 2020, the Letting Agent provided the telephone numbers of two contractors saying that the Letting Agent did not have access to the Contractors and that the Applicant may have to speak to them direct. This

was then qualified when the Applicant queried whether it was his place to contact the contractors, and the Letting Agent responded they had then contacted the contractors.

- XVII. On 16 June 2020, the Applicant e- mailed the Letting Agent giving written notice to end the tenancy.
- XVIII. On 28 June 2020, the Applicant contacted the Letting Agent by e mail saying that the fan had not yet been installed in the bathroom.
- XIX. On 29 June 2020, the Letting Agent responded explaining that A2B Electrics had been instructed to install a fan however a specialist corer was required, and they had contacted them that day for an update, however due to the government restrictions most works had been placed on hold.
- XX. The tenancy ended on 13 July 2020.
- XXI. On 13 August 2020, the Letting Agent wrote by e mail and acknowledged that the Applicant provided an e mail on 28 February 2020. It noted the need for an investigation by LKS Construction regarding the lounge window. The email refers to a specialist report that is also attached. This was the first time the Letting Agent had relayed this information to the Applicant.
- XXII. On 14 August 2020, the Applicant advised the Letting Agent by e mail that he had never received any feedback regarding multiple inspections from LKS Construction nor the actions and requested copy reports. He advised them that he had reported the problems much earlier than February 2020 starting with water in the bathroom. He referred to responses being slow and several visitations from months before that time from the appointed engineers, without “resolving action or notice back to the tenants”.
- XXIII. On 14 August 2020, the Letting Agent advised the Applicant by e mail that the Landlord had requested a damp specialist to attend to determine if there was an underlying issue with damp/dry rot which the report they said confirmed there is not. This was the first time the Letting Agent had relayed the information to the Applicant.
- XXIV. On 24 August 2020, the Applicant e- mailed the Letting Agent stating that he considered they had failed to act or communicate with him around the reported issues.
- XXV. On 11 February 2021, the Letting Agent in their written representations provided to the Tribunal an explanation to the history of the more recent repairs issues.
- (1) A quote was provided by LKS Construction Ltd dated 9 July 2020. It makes a recommendation for installation of new double glazed windows with built in trickle vents.
  - (2) A report by APS was provided. The survey date is 3 August 2020, post termination of the tenancy.
  - (3) Two Letting Agent Inspection reports dated 21 October 2019 and 20 February 2020 were produced. These are “walk through” inspections and are not surveys. The former noted no issues with the bathroom or lounge. The latter noted “visible mould issue under window” in the lounge that needed investigation. It noted no issues with the bathroom.
  - (4) Worksheets were provided. Job number 864953. LKS Construction Ltd. It notes that the Letting Agent asked contractors to investigate the cause of the mould issue on the lounge wall under the window on 26 February 2020. The contractor was asked on 8 July 2020 if he attended to this.

- (5) A check out Inspection report is produced dated 16 July 2020.
- (6) A Report of independent adjudication over the tenancy Deposit dispute is produced.
- XXVI. On 29 March 2021 in response to a Direction the Letting Agent produced
- (1) A worksheet showing SJM plumbing were asked to look at a leak coming from the bath around 21 January 2019.
  - (2) A request around 8 April 2019 for A2B Electrical to contact the tenant for access regarding a shower pull cord that was broken.
  - (3) A worksheet regarding repairs to a WC connection in the property dated from 30 August 2019 to 11 November 2019. In it the work is quoted for, instructed on 9 September 2019 and updates were asked for on 19 September 2019, 10 October 2019 and 11 November 2019.
  - (4) Worksheets regarding investigation of a possible leak in bathroom and mould. It suggests an extractor fan be fitted and insulation of pipes in the hall cupboard. Quote received 29 January 2020. Authorisation was given to proceed on 30 January 2020. On 29 June 2020 the Letting Agent indicates that the tenant advised the works are outstanding and the mould is getting worse. On 29 June 2020 alternative suggestions as to how to carry out work are given-including installing window vents or fitting anew window with a fan.
  - (5) No receipts for work carried out in the bathroom and lounge have been produced.
  - (6) Documentation regarding the exchanges between the Parties regarding the dispute over the Deposit around August 2020.
  - (7) The written Complaints Procedure.
  - (8) The Repairs Handling Procedures. It does not include target timescales for carrying out routine and emergency repairs. (Paragraph 86 of the Code).
  - (9) The Repairs Handling Procedures. It does not provide for a tenant to be advised of the action the Letting Agent intends to take on the repair and its likely timescale or when there is a delay it does not provide for a tenant to be kept informed (Paragraphs 91 & 93 of the Code).
- XXVII. The Letting Agent has failed to comply with paragraphs 86, 90, 91, 93 & 108 of the Code.

### **Reasons for Decision**

The Applicant stated that was not insisting on the heading of claim- 'Presence during checkout'-Paragraphs 98, 101 & 103 of the Code. The Tribunal therefore disregarded those Paragraphs in their deliberations.

The Tribunal considered the oral evidence given by the Applicant and then considered the number of documents produced by both Parties. It was difficult for the Tribunal to fully follow the timeline of events easily. This was because there had been several repairs reported and some did not appear to be relevant to the repair issues to which this application related. Completed job invoiced information had not been produced by the Letting Agent with which to cross reference. Many of the documents were in duplicate but sometimes presented in different ways or in a different order. A clear and comprehensive bundle for each Party with numbered

pages would have assisted the Tribunal greatly and reduced any possibility of misinterpretation.

The Tribunal concluded that the root of the complaint by the Applicant in this application was that:

- a) The extractor fan had never been installed as had been promised and before the termination of the tenancy,
- b) He had not been given timescales at the outset as to when he could reasonably expect the work to be completed, nor the ongoing causes for any delays.
- c) He had not been given any feedback as to the cause of the mould in the lounge until after the tenancy had ended and this only came when the Parties were in the throes of a dispute regarding the tenancy deposit.

The Tribunal accepted that the Applicant had reported around August or September 2019 a leak and/or dampness problems in the bathroom and cupboard pipes in the Property; the Applicant had been advised that a fan would be installed in the bathroom; a fan was never in fact installed in the bathroom of the Property prior to the tenancy coming to an end on 13 July 2020.

The Tribunal also accepted that the Applicant was not advised of the outcome of the investigations in relation to the mould in the lounge until after the tenancy ended.

The Letting Agent had failed to clearly explain to the Applicant directly and in writing the expected timescales for the bathroom fan to be installed, and the timescales for the investigation into the mould issue in the lounge. Had there been delays due to Covid-19, it should have communicated that to the Applicant in writing and to manage expectations. This was only done belatedly in relation to the fan on 29 June 2020, after the Applicant had intimated his intention to terminate the tenancy. Given the time delays before that, this was unacceptable (reference to Paragraph 108 of the Code).

The Applicant was clearly aggrieved that he had expected work to be carried out and it had never materialised, nor had he been given meaningful updates from the Letting Agent in writing in relation to the items highlighted by the Tribunal. He had given access to contractors on several occasions. He quite rightly should not have relied on receiving information from contractors who were not fully in control of the process nor should the Letting Agent have assumed that he knew what they were doing or not doing.

He felt that living in the Property without the benefit of a resolution and with mould problems had had an adverse impact on him and his family and this was the reason he felt the need to terminate the tenancy and seek alternative accommodation. He felt it adversely impacted on their enjoyment of the Property.

The Tribunal was unable (nor was it proper for them) to conclude the reasons and who was to blame for the mould issues in the Property in this application. It deals solely with the Letting Agent Code of Practice. It is not an application under the Repairing Standard against the landlord.

The Repairs Handling Procedures produced by the Letting Agent. It does not include target timescales for carrying out routine and emergency repairs. (Paragraph 86 of the Code).

The Repairs Handling Procedures produced by the Letting Agent. It does not provide for a tenant to be advised of the action the Letting Agent intends to take on the repair and its likely timescale or when there is a delay it does not provide for a tenant to be kept informed (Paragraphs 91 & 93 of the Code).

The Tribunal was not provided with any other documents by the Letting Agent regarding repairs handling. Had the Letting Agent been relying on any other documents to resist the complaints, they should have been produced by them for consideration by the Tribunal at the outset. As it stands, the documentation produced did not appear to have in it the detail required to comply with the Code at those paragraphs.

The Applicant did not invoke the complaints procedure but instead made representations in the adjudication process relating to the tenancy deposit.

The Tribunal did not consider based on the material before it that it could fairly and on balance determine that there was a failure of the Code in respect of Paragraphs 17,18,19,20,21,23,24,26,27,75,94 & 95 of the Code.

The Tribunal proceeded to make a Letting Agent Enforcement Order which specifies the steps the Tribunal considers necessary to rectify the failures of paragraphs 86,90,91,93 & 108 of the Code.

The Tribunal exercised its discretion and considered that, the Letting Agent must make a written apology for the failures and pay to the Applicant an amount of compensation because of the failures to comply. The Tribunal accepted that the Applicant had been caused unnecessary and unwelcome stress and inconvenience because of the failures. The Tribunal determined that it was reasonable to award compensation of £300.

Note-

Given that the focus of the application mainly deals with repair matters, the Tribunal had particular regard to

“Carrying out repairs and maintenance-

86.

You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required, if you provide this service directly on the landlord's behalf. Your procedure should include target timescales for carrying out routine and emergency repairs.

90.

Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

91.

You must inform the tenant of the action you intend to take on the repair and its likely timescale.

93.

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.”

**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.**

**Please note that in terms of section 51(1) of the Act, a Letting Agent who, without reasonable excuse, fails to comply with an LAEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.**

Legal Member and Chair

28 April 2021