

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/20/1895

Lyleston, 44 Robert Street, Stonehaven, AB39 2DJ (“the Property”)

The Parties:-

Mr Roger Clarke, Mrs Carolyn Clarke, The Red House, Dean Lane, Cookham Dean, SL6 9BD (“the Applicant”)

Aberdein Considine, 5-9 Bon Accord Crescent, Aberdeen, AB11 6DN (“the Letting Agent”)

Tribunal Members

Ms Helen Forbes (Legal Member)

Mrs Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has not complied with paragraphs 21, 27, 85, 90 and 93 of the Code of Practice for Letting Agents (“the Code”) as required by the Housing (Scotland) Act 2014 (“the Act”) and issues a Letting Agent Enforcement Order (“LAEO”).

The decision is unanimous.

Background

1. By application received on 7th September 2020, the Applicant applied to the Tribunal for a determination on whether the Letting Agent had failed to comply with sections 18, 19, 21, 27, 29, 73, 85, 90, 93 and 120 of the Code. The Applicant included written representations, notice to the Letting Agent dated 1st July 2020, copy email correspondence between the parties, credit card receipt and landlord statement.

2. By decision dated 24th September 2020, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) referred the application to a Tribunal for a hearing.
3. On 30th October 2020, the Letting Agent lodged written representations and productions including contractual documents between the parties, email correspondence, invoices, landlord statements, photographs and inventories.
4. On 11th November 2020, the Applicants lodged further written representations.
5. By email on 24th November 2020, the Letting Agent requested a postponement of the hearing set down for 25th November 2020.

The Hearing

6. A hearing took place by teleconference on 25th November 2020. The Applicant, Mr Roger Clarke, was in attendance. Ms Yvonne Bryce, Lettings Manager North, and Mr Andrew Reid, Property Management Operations Manager attended on behalf of the Letting Agent. The Letting Agent was represented by Ms Carly Stewart, Solicitor.

Preliminary Matters

7. The Tribunal heard parties on the postponement request. Ms Stewart said it had recently been noted that documents that should have been lodged in relation to repairing issues with the Property had not been lodged. She had submitted an email with the documents to the Housing and Property Chamber the previous evening.
8. Mr Clarke opposed the postponement on the grounds that this matter had been ongoing for some time. The Letting Agent claimed to have looked into matters fully at an earlier stage and had plenty of notice that the matter was being taken to a Tribunal. The notification letter to parties made clear that written representations had to be lodged by 30th October 2020 and he was disappointed that the Letting Agent was trying to lodge documents at this late stage.
9. The Tribunal adjourned to consider the postponement request and the further documents that had been lodged by the Letting Agent. The clerk circulated the email with the further documents to the Tribunal and the Applicants.
10. The Tribunal reconvened and notified parties that the postponement request was refused. The Letting Agent had not shown good reason, in terms of Rule 28 why a postponement was necessary. The Tribunal refused to allow the late lodging of the documents, which extended to 130 pages, as, in terms of Rule 22, it was considered that the Letting Agent did not have a reasonable excuse for the late lodging of the documents, and to allow that volume of documents at this late stage would be prejudicial to the Applicants.

Agreed Matters

11. Responding to questions from the Tribunal as to whether any matters could be agreed, Ms Steward said the Letting Agent accepted that concerns regarding the failure of the Letting Agent to progress repairs to the windows and drains were accepted. Although works had been instructed promptly, the Letting Agent had failed to chase matters up. Ms Steward said this may constitute minor breaches of paragraphs 85, 90 and 93 of the Code.

Issues to be considered

August 2018 – Loss of Prospective Tenant

12. In August 2018, a prospective tenant was identified for the Property. The Tenant was moving from the USA and setting up a new company, which meant a lack of evidence of income. The Letting Agent undertook various checks. Eventually, the tenant lost patience and decided not to rent the Property. Thereafter, the Applicants were informed that the tenant had three rental properties in Dundee. It was the Applicants' position that, if this information had been made available at an earlier stage, it might have made a difference to their decision, and they believed that the failure of the Letting Agent to inform them of the rental properties led to a loss of rental income between August and December 2018.
13. The Applicants considered that matters might have been handled differently had the Letting Agent not changed its procedures and moved matters to a central hub, rather than a local office. The local office had a better understanding of local issues.
14. Responding to questions from the Tribunal, Mr Clarke said the reason the Property was not let thereafter until December 2018 was because the market was poor. Asked whether he accepted that the let properties belonging to the prospective tenant might not have been an indicator of income, if, for instance, they were mortgaged, Mr Clarke said they should have had the full information, which they would have taken into account. He accepted it was not a guarantee of income, but something that should have been passed on, and checked by the Letting Agent.
15. Ms Stewart said management of properties was always carried out by the central hub. All staff are trained and this provides a better service to customers.
16. The prospective tenant was subjected to a credit check by Van Mildert. Van Mildert do not take account of rental income as the properties may be subject to mortgages and are not an indicator of private income. In any event, the properties appeared to be privately owned, and the tenancy agreement was to be in the name of the company owned by the prospective tenant. The tenant had suggested a lease in the name of himself and his wife but the Applicants

did not agree with this approach. Ms Stewart referred to several emails within parts 1 and 2 of the Letting Agent's productions that supported her position.

17. There was difficulty in finding particular emails as the Letting Agent's documents were not numbered. It then became clear that there was an issue with the Letting Agent documents circulated to the Applicants. They did not appear to follow the same format as those provided to the Tribunal. The Tribunal asked Mr Clarke whether he would wish to adjourn to another day to be provided with another bundle of documents to ensure that all were referring to the correct documents. Mr Clarke said he did not wish to adjourn the hearing. Ms Stewart said she would read out in full any emails to which she referred. Mr Clarke agreed to this suggestion.
18. Ms Stewart read out various emails that had passed between the prospective tenant and the Letting Agent over a period from 29th August to 24th September 2018, which included matters relating to credit checks and discussion about a three month rent free period, in which the prospective tenant would carry out repairs. In the end, the tenant decided against renting the Property. Ms Stewart said this was not the fault of the Letting Agent.
19. Responding to questions from the Tribunal as to why the information about the let properties in Dundee was not passed to the Applicants at the time it was provided to the Letting Agent (by email dated 5th September 2018), Ms Stewart said the comment was made in passing by the prospective tenant, and was not included in the application to rent the Property.

Failures in relation to December 18 tenancy – basement flat and repairing standard

20. Mr Clarke said a tenant ("GD") was keen to rent the Property from December 2018. GD was keen to progress matters quickly and move in before Christmas. The Applicants did not intend to rent the basement flat of the Property but GD was keen to have the whole Property. The Applicants were aware of flooring and decoration issues with the basement flat. They felt pressured by the Letting Agent to include the basement flat, and this incurred significant costs beyond the value of the rental. The staff at the Letting Agent did not have a full understanding of the repairing standard.
21. Mr Clarke explained that the basement flat had its own front door. The connecting door within the house could be locked. He and the Letting Agent discussed the situation because it had not been included in the previous let.
22. GD eventually complained of various matters that culminated in the raising of an application to the Housing and Property Chamber in March 2019 for a determination as to whether the repairing standard was met. A Repairing Standard Enforcement Order ("RSEO") was put in place by a tribunal on 28th May 2019. It was the Applicants' position that the Letting Agent ought to have informed the Applicants that the Property did not meet the repairing standard at the start of the tenancy. If they had been so informed, they would have carried out works to the Property.

23. The Tribunal drew the attention of Mr Clarke to the contract signed between the parties and lodged by the Letting Agent, which had been signed on 18th May 2018. There was a fact sheet entitled 'An Introduction to the Housing (Scotland) Act 2006', which set out the Landlord's responsibilities in terms of the repairing standard, and a declaration signed by both Applicants confirming that they had carried out a pre-tenancy inspection and that it met the repairing standard. Mr Clarke said that the Property did meet the repairing standard at that time, but it was seven months before a tenancy commenced. It was their position that the Property was under the management of the Letting Agent and they should have inspected it to see that it continued to meet the repairing standard. Even if there was no inspection, they ought to have noted concerns at the time of showing the tenant around. The Applicants employed the Letting Agent because they did not live locally and would have expected to have been asked if they wished an inspection of the Property prior to the tenancy commencing, given the delay since the contract was signed.
24. Ms Stewart said it was not incumbent upon the Letting Agent to check whether the Property continued to meet the repairing standard. Responding to questions from the Tribunal concerning the delay between the Applicants signing the declaration in May 2018 and the letting of the Property in December 2018, Ms Stewart said the Applicants had not opted for a pre-tenancy check, as mentioned in the factsheet. At that time, there was no empty property service provided by the Letting Agent, as there now is.
25. By email dated 4th December 2018, a list of concerns with the Property were notified to the Applicants. It was then up to the Applicants to decide if they wished to go ahead with the tenancy. In an email dated 6th February 2019, the Letting Agent mentioned the repairing standard. It is not the Letting Agent's responsibility to ensure a property meets the repairing standard. They are not structural engineers or qualified to say if the repairing standard is met.
26. Asked by the Tribunal about clause 2(d) of the contract between the parties that states the Agent will: '*manage the maintenance of the property to ensure the Landlord meets his obligations under the Housing (Scotland) Act 2006 ...*' and 2(e) '*inspect the Property within 30 days of commencement of the lease and once every three months thereafter... and report to the Landlord where necessary...*', Ms Stewart said this duty is carried out if the tenant reports problems to the Letting Agent. The Agent will then take the landlord's instructions and procure quotes for works.
27. Ms Stewart asked Mr Clarke which findings of the tribunal in relation to the repairing standard application had arisen after May 2018. Mr Clarke could not say for certain, but he said the games room floor was not broken in May 2018.
28. Ms Stewart said there had been no pressure on the Applicants to let the basement flat. The Applicants had initially approached the Letting Agent to market the Property for sale. When it was decided to let the Property instead, there was no discussion about whether it came as one or two units.

Cleaning

29. Cleaning was required prior to commencement of the lease in December 2018. The Letting Agent procured a quote of £2,733 plus VAT for the cleaning. The Applicants thought this was excessive and attributed the failure to get a lower quote to a lack of local knowledge at the Letting Agent's hub. A quote of £945 was sourced by the Letting Agent. The Applicants felt compelled to accept this. When the tenant left, an amount of £250 was quoted for cleaning in connection with the tenancy deposit return. The Applicants feel they were significantly overcharged for cleaning prior to the tenancy commencing. In the application they claimed a sum of £500 in this regard, but Mr Clarke said it should be the difference between £945 and £250.
30. Ms Stewart said the contract between the parties required them to procure two quotes for work to be carried out. The Letting Agent procured three cleaning quotes, as the Applicants were unhappy with the first two, which were both over £2500. The third quote was £945. The estimated cost of cleaning at the end of the tenancy is not relevant or comparable. A full clean was not required at the end of the tenancy. The sum of £250 was estimated by the company that carried out the final inventory check. Responding to questions from the Tribunal as to whether all three cleaning companies carried out the same checks prior to quoting, Ms Stewart said the first two companies were provided with the keys by the Letting Agent.

Handling of funds – failure to account

31. Mr Clarke said the sum of £2000 was transferred to the Letting Agent on 13th December 2018 so that work could be completed before the tenant moved in. On 17th December 2018, the Letting Agent asked for more money without providing a reconciliation of how the £2000 had been spent. A statement received on 19th December 2020 showed that the money had not been spent and work had been delayed. It was his position that substantial sums of money were held by the Letting Agent without work being instructed. When he asked for a proper reconciliation of the funds to be set out on a spreadsheet, he was told by local staff that they could not, or did not, do that. A spreadsheet showing repairs was produced but it did not reconcile payments. Mr Clarke said he accepted there was a ledger, and regular statements were received; however, he was not aware of having received all the statements lodged by the Letting Agent as productions. It was not clear at the time why the Letting Agent was asking for further cash when the money had not been spent.
32. Ms Stewart said that the Letting Agent has a strict process to account for funds. There are two separate ledgers showing rent in and out, and repairs in and out. They are kept updated and are available at any time. Ms Stewart referred to the landlord statements that she had lodged as productions. Monthly statements were sent out, showing income and expenditure, but additional statements were sent out more regularly over the initial period of the tenancy.

33. Ms Bryce explained that she had told the Applicants that it was not part of her job to provide a reconciliation of funds – it was not something she could do, but she had tried her best to be helpful by providing the spreadsheet. The accounts department would not have got involved at that stage, as they only become involved when actual invoices are paid, not when costs are estimated. Responding to questions from the Tribunal regarding the statement dated 31st December 2018 that showed a balance of £146.81, Ms Bryce said that was the usual type of balance that would be held after repairs had been carried out.

Failure to identify tradesmen, obtain quotes and ensure work carried out timeously

Damp

34. Mr Clarke said the Letting Agent had permitted Wise Property Care (“Wise”) to carry out a full survey of the Property without permission or notification. This was not what was requested or expected by the Applicants, who were aware there were localised specific issues with damp. Wise provided a quote of £7464.20 to rectify the problems, which included unnecessary works such as roof repairs that were not required. This was the subject of a complaint to the Letting Agent by the Applicants. They procured their own contractor, who carried out all necessary works for £1660 plus VAT. It was the Applicants’ position that the quality and credibility of tradesmen used by the Letting Agent was questionable. It seemed the tradesmen were being given a blank cheque. It was not the service the Applicants expected.

35. Responding to questions from the Tribunal, Mr Clarke said the surveyor at the repairing standard inspection discovered damp in other areas of the Property, including two internal walls on the first floor.

36. In written representations, the Applicants complained that the Letting Agents caused delays by getting Wise involved. There were then weather-related delays that prohibited their contractor from commencing work. GD, having been asked to leave, delayed matters further by refusing to allow works to be carried out while he was still in occupation. This led to a delay in a final inspection to ensure compliance with the RSEO, and a consequent delay in being able to market the Property for sale or rent. It was the Applicants’ position that the Letting Agent was responsible for the delays.

37. Ms Stewart said that Wise were instructed to investigate a complaint of damp. The Applicants were copied into an email dated 23rd January 2019 that showed the instruction to Wise. The instruction was specific to the issues identified. The keys were provided to Wise. The Letting Agent was not there at the time of inspection and was not responsible for Wise taking it upon themselves to do a full survey. The report from Wise was forwarded to the Applicants on 19th February 2019. There was mention of roof damage, and a further two quotes were forwarded from slaters. The Letting Agent had problems reaching the Applicants’ contractor from March to May 2019, then the Applicants said they would deal directly with their contractor.

38. Ms Stewart pointed out that the Applicants' contractor identified several issues in the Property including gas issues, plaster work, plasterboard to be removed, gutters to be cleaned and roof tiles checked.

Cooker

39. Mr Clarke said there were concerns about the gas supply and flue for the Aga at the start of the tenancy. In February 2019, the Applicants were informed the Aga had to be replaced. GD had use of an alternative cooker in the basement flat. The Applicants blamed the Letting Agent for delays in replacing the cooker, as the Letting Agent insisted it had to be an Aga, rather than the Applicants' preference of a high-end cooker. Over a period from 7th February 2019, the Applicants repeatedly asked for measurements and technical requirements, and received limited assistance from the Letting Agent. GD was left without the Aga for four weeks. It was the Applicants' position, in their written representations, that this issue led to another tribunal awarding the tenant compensation of £500 in January 2020 (FTS/HPC/PR/19/2476). If the Letting Agent had not moved to a central hub, local staff could have gone in and measured for a replacement cooker at the start.

40. Ms Stewart said it was a long process but the Letting Agent was in constant communication with the Applicants throughout. GD wanted a replacement Aga. There were issues with gas and electrics in installing a new cooker instead of an Aga, and this delayed matters.

41. Responding to questions from the Tribunal about the delays in responding to the Applicants' queries regarding measurements etc., Ms Stewart said there had been a delay initially because the contractor that was instructed on 7th February 2020 was unable to carry out the work. She referred to several emails thereafter from the Letting Agent to the Applicants regarding various issues, including the electric supply and the cost of the cooker, and requesting updates as GD was without a cooker.

42. Ms Stewart said that the Letting Agent staff would never take the responsibility to measure up for a cooker. This would always be contracted out.

Shower

43. In their written representations, the Applicants complained that GD informed the Letting Agent that the shower in the main bathroom was not operational on or around 8th January 2019. The Letting Agent did not inform the Applicants until 13th March 2019. The Letting Agent procured a quote for a whole shower, when only a valve was required. Mr Clarke said this had a detrimental effect on the tenant and the Applicants, and another example of the Letting Agent's failure to resolve issues timeously. If, as claimed by the Letting Agent, the shower was included on the spreadsheet, Mr Clarke said he could have missed it as there were so many issues.

44. In her written submission, Ms Stewart said it was accepted there were delays in informing the Applicants in this regard, however, the Applicants were informed as part of the spreadsheet detailing issues. Ms Stewart said there were three or four other showers in the Property, and there were around 85 work orders for the Property. The shower valve was replaced before the repairing standard tribunal, however, the Letting Agent accepted there had been a delay in attending to the issue.

Windows

45. Mr Clarke said a quote had been provided for an issue with one window on 1st February 2019. The Applicants approved the work and provided payment on 7th February 2019. They discovered upon receipt of the tribunal papers pertaining to the repairing standard that the work had not been carried out.

46. Ms Stewart said it was accepted there were some failings in this regard. The works were instructed but were not chased up or carried out timeously.

Conservatory window handles

47. Referring to their written submissions, Mr Clarke said work to the window handles had been quoted for, then the Letting Agent recommended waiting until summer to carry out the work. The Applicants paid for the work and instructed the Letting Agent to have it carried out, then discovered upon receipt of the tribunal papers pertaining to the repairing standard that the work had not been carried out.

48. Ms Stewart said the Applicants instructed them not to proceed with this work until after the repairing standard application had been lodged.

Drains

49. Referring to their written submissions, Mr Clarke said a work order was raised on 7th February 2019 to replace drain covers. On the same day, the Applicants approved and paid for the work, then discovered upon receipt of the repairing standard tribunal papers that the work had not been carried out.

50. Ms Stewart said it was accepted there were some failings in this regard. The works were instructed but were not chased up or carried out timeously.

Application by GD – FTS/HPC/PR/19/2476

51. Mr Clarke said GD lodged a tribunal claim to recover all rent paid during the tenancy after the tenancy ended. The basis of the claim was that there was no functioning kitchen. At a case management discussion on 30th January 2020, both parties became aware they had been let down by the Letting Agent in the length of time taken to resolve issues. The chair of the tribunal suggested there were issues with the Letting Agent, and that, although it was unlikely GD would get the full amount claimed, he was likely to get some payment for his

inconvenience. Following settlement discussions between the parties, it was agreed that the Applicants (respondents in that case) should pay £525 to GD.

52. Ms Stewart said only the case management discussion decision was available in this case, and parties had agreed matters. There was no background information available and the Letting Agent had no role in the case.

Repairing Standard Application – FTS/HPC/19/0904

53. It was the Applicants' position that the Letting Agent failed to pass on the repairing standard application until after a 10 day window that would have allowed the Applicants to ask for a postponement of the inspection and hearing, as they were on holiday on the appointed date and would be unable to attend. Mr Clarke felt they might have been able to discuss matters with the tribunal members at the inspection, and matters might have been resolved more quickly. He was concerned that matters had been raised by the surveyor member that were not included in the application. The Letting Agent had appeared at the hearing on behalf of the Applicants.

54. Ms Stewart said that the Letting Agent received notification of the tribunal hearing set down for 28th May 2019 on 25th April 2019, however, the notification letter was dated 17th May 2019. The application was immediately passed to the Applicants on 25th April 2019. Ms Stewart referred to an email sent by Mr Clarke to the Housing and Property Chamber on 7th May 2019 asking for a postponement. She did not have any record of a response.

55. Mr Clarke clarified that his request for a postponement was considered and refused on 10th May 2019.

Losses suffered by Applicants

56. Mr Clarke addressed the Tribunal on the following losses claimed by the Applicants:

- (i) The difference between the cleaning costs before the commencement of the tenancy, and after the tenancy ended – £695;
- (ii) Travel and accommodation costs for five trips from their home to Aberdeen to deal with both applications made by GD. This included two visits to check repairs, one meeting with GD in Aberdeen and two repairing standard re-inspections. The Applicants considered these trips to have been necessary as a direct result of the Letting Agent's failures to perform their duties – £1250;
- (iii) Settlement amount made to GD in case FTS/HPC/PR/19/2476, which was a direct result of the Letting Agent's failures – £525;
- (iv) Legal costs for advice in case FTS/HPC/PR/19/2476, which costs were necessary due to the Letting Agent's failures – £1500;

- (v) Repayment of letting agent fees throughout the tenancy due to the Letting Agent's negligence and inefficiency – £1400;
- (vi) Loss of rent from lost tenant August to December 2018 – £4500;
- (vii) Loss of rent for six months after June 2019 caused by Letting Agent's failures and consequent delays in having the RSEO discharged – £9000.

57. Mr Clarke said the whole issue had caused distress and mental health issues. They had tried to resolve matters with the Letting Agent but eventually had to take it to the Tribunal.

58. Ms Stewart referred to section 48(8)(b) of the Housing (Scotland) Act 2014, which provides that, in making a Letting Agent Enforcement Order, any award of compensation has to relate to loss suffered as a result of a failure to comply with the Code. There must be causation between the failure and the loss. Ms Stewart made the following submissions:

- (i) The cleaning costs were not comparable;
- (ii) There was not enough clarity in the claim for travel and accommodation. There was no vouching and no dates provided. This should be disregarded by the Tribunal;
- (iii) This cost related to an extra-judicial settlement. There was a lack of supporting information. It should be disregarded;
- (iv) No vouching was submitted for these costs;
- (v) It was accepted there had been a failure in relation to the shower, windows and the drain covers. Otherwise, the Letting Agent had addressed all matters and it would not be justified to repay the management fees as claimed.
- (vi) The Letting Agent had not breached the Code in this regard;
- (vii) GD confirmed to the repairing standard tribunal that some matters had already been addressed but there were other matters found by the tribunal, including ongoing issues with damp and a downpipe. The Applicant's contractor had caused delays. The Applicants were unable to attend a reinspection in August 2019. The Covid-19 pandemic had caused further delays. Furthermore, when the tenant was served notice to leave the Property, the reason given was that the Applicants wished to sell the Property. It was not clear how they could then claim loss of rental income.

59. Mr Clarke said he had not realised he should have provided vouching. The Tribunal explained that it could ask for further documentation before making its decision, should that be necessary.

Alleged failures to comply with the Code

60. Mr Clarke submitted that his representations indicated that all paragraphs cited had been breached. He conceded that the Applicants had misinterpreted paragraph 29 in relation to the pre-tenancy checks, however, 29(d) was relevant to the repairing standard issue.

61. Ms Stewart submitted that, with the exception of paragraphs 85, 90 and 93, the Code had not been breached as claimed.

Findings in Fact

62.

- (i) The Applicants are co-owners of the Property.
- (ii) Parties entered into a contract in relation to leasing and property management services for the Property on 2nd May 2018.
- (iii) The Applicants signed a declaration on 2nd May 2018 stating that the Property met the repairing standard.
- (iv) The Letting Agent was under a duty to comply with the Letting Agent Code of Practice contained in the Schedule to The Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code”) from 31 January 2018.
- (v) Discussions took place between parties and a prospective tenant in August and September 2018. The prospective tenant was unable to provide the required information in regard to income to satisfy credit checks. The Applicants insisted that the tenancy agreement must be in the name of the prospective tenant’s company.
- (vi) During discussions with the Letting Agent, the prospective tenant mentioned that he owned and let three properties in Dundee. This information was not passed to the Applicants at the time. The prospective tenant chose not to proceed with the tenancy in September 2018.
- (vii) In December 2018, a prospective tenant (“GD”) indicated interest in the Property, providing the Letting Agent with a list of issues that needed attended to. The issues were notified to the Applicants by email dated 8th December 2018, and the Applicants agreed to have the issues addressed.
- (viii) On 11th December 2018, the Applicants paid £2275.50 to the Letting Agent in anticipation of works to be carried out.

- (ix) On 17th December 2018, the Letting Agent requested further sums from the Applicants, and was unable to provide an immediate reconciliation of sums when requested by the Applicants.
- (x) A further sum of £2178.55 was paid to account on 19th December 2018.
- (xi) A statement dated 31st December 2018, showed the balance on the account was £146.81.
- (xii) Monthly landlord statements were issued by the Letting Agent to the Applicants.
- (xiii) There was a total of around 85 work orders for various works to be carried out to the Property.
- (xiv) The Letting Agent failed to progress repairs to the shower in the main bathroom, a window and drains in the Property despite being instructed to do so by the Applicants.
- (xv) The Aga within the main kitchen in the Property was not in working order. There was a delay of around four weeks in providing GD with a replacement cooker.
- (xvi) The Letting Agent instructed Wise Property Care to carry out investigations into suspected damp in the Property.
- (xvii) Wise Property Care carried out a full survey of the Property, recommending required works at a cost of £7464.20.
- (xviii) The Applicants instructed their own contractor to remedy the damp and other issues at a cost of £1660 plus VAT. There were delays in carrying out the work due to poor weather.
- (xix) GD made an application dated 21st March 2019 to the First-tier Tribunal for Scotland (Housing and Property Chamber) to determine whether the repairing standard had been met.
- (xx) Following an inspection and hearing on 28th May 2019, a Repairing Standard Enforcement Order was put in place requiring the Applicants to take action in relation to penetrating dampness, replace cast iron downpipe, redecoration, flooring/kick boards in the kitchen, repair or replace games room floor, replace rotten door frame, repair or replace basement bedroom window and ensure effective drainage at doors at basement level.
- (xxi) Following a Notice to Leave served on GD, the tenancy ended on 23rd July 2019.

- (xxii) The Applicants advised the Letting Agents that they wished to market the Property for sale.
- (xxiii) The Property could not be let thereafter while the RSEO was in place. The RSEO was discharged in July 2020.
- (xxiv) The contractual relationship between the parties continued until February 2020.

Determination and Reasons for Decision

63. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

Paragraph 18 of the Code

64. Paragraph 18 states: *You must provide information in a clear and easily accessible way.*

The Tribunal did not find that the Letting Agent had failed to comply with this section of the Code. The information requested by the Applicants in relation to funds was provided as soon as it was available. The Tribunal accepted that Ms Bryce was not in a position to provide the information requested by the Applicants at the moment it was requested, but she did her best to provide the information in a clear and easily accessible way, by spreadsheet and landlord statements, as soon as possible thereafter. The Letting Agent provided clear information in relation to the repairing standard. Although the Tribunal accepted the evidence of Mr Clarke regarding the fact that there was discussion with the Letting Agent in advance of the let to GD, as to whether or not to include the basement flat, it was, ultimately, a decision for the Applicants as to the extent of the property to be let.

Paragraph 19 of the Code

65. Paragraph 19 states: *You must not provide information that is deliberately or negligently misleading or false.*

The Tribunal did not find that the Letting Agent had provided information that was deliberately or negligently misleading or false, by leading the Applicants to believe works had been undertaken. There was no deliberate or negligent action by the Letting Agent in this regard.

Paragraph 21 of the Code

66. Paragraph 21 states: *You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.*

67. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to progress works to the shower, drains and window in a timely way. The Tribunal did not accept the submission of the

Applicants that this paragraph was breached in relation to the issue of cleaning costs, as addressed below. The Tribunal did not accept that the Letting Agent had failed to identify appropriate tradesmen, obtain quotes and ensure work was carried out, with the exception of the shower, window and drains. The Tribunal did not accept the Applicants' position that the quality and credibility of tradesmen appointed by the Letting Agent was questionable, or that the tradesmen were being provided with 'a blank cheque'. The Applicants were notified of the instruction to Wise, and the Letting Agent was not responsible for the fact that Wise carried out a full survey on the Property, or for the subsequent delays.

Paragraph 27 of the Code

68. Paragraph 27 states: *You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.*

The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to keep the Applicants informed in regard to repairs required to the shower.

Paragraph 29(d) of the Code

69. Paragraph 29(d) states: *if you become aware in the course of your business that a property does not meet appropriate letting standards (e.g. repairing standard, houses in multiple occupation and health and safety requirements), inform the landlord of this*

The Tribunal did not find a failure to comply with this paragraph. The Tribunal found that the Letting Agent informed the landlord when it became aware that there may be an issue with the repairing standard at the point that the tribunal application was served upon it in April 2019. The matter of the repairing standard is addressed further below.

Paragraph 73 of the Code

70. Paragraph 73 states: *If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.*

The Tribunal did not find a failure to comply with this paragraph. There were no specific examples of a breach of legal obligations or the tenancy agreement.

Paragraphs 85, 90 and 93 of the Code

71. These paragraphs state:

85. If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing; annual gas safety inspections; Legionella risk assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.

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

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.

It was agreed by the Letting Agent that they had failed to comply with these paragraphs in relation to the window, shower and drain. The Tribunal did not find on the evidence before it that the Letting Agent had failed to progress repairs to the conservatory window handles, as it was not clear whether or not the Applicants had instructed the Letting Agent to delay the work.

Paragraph 120 of the Code

72. Paragraph 120 states: *You must be able to account immediately to them for all money held on behalf of clients.*

The Tribunal did not find a failure to comply with this paragraph. The Tribunal considered that, upon being asked for a reconciliation of sums, the Letting Agent provided the available information timeously. The Tribunal took into account the fact that the Letting Agent's accounting systems could only show actual outgoing sums where invoices had been received and paid, so it would not necessarily be possible to provide a full breakdown of income and expenditure at a particular point, where works had been quoted for, but not invoiced. The Tribunal accepted that Ms Bryce explained to the Applicants that they were holding the money in anticipation of expected works, the existence of which the Applicants were aware. This would satisfy 'accounting immediately' for money held. The fact that most of the money appeared to have been paid out by the end of December 2018 indicates that the sums were required over a short period for the necessary works, and were not held for an excessive period.

Repairing Standard

73. The Tribunal did not consider that the Letting Agent had failed to provide advice on the repairing standard. The information provided by the Letting Agent at the time of entering into the contract in May 2018, clearly states that the duty to ensure that a property meets the repairing standard is with the landlord throughout the tenancy, as required by the Housing (Scotland) Act 2006, and there is nothing in the contract between the parties that shifts that duty to the Letting Agent.

74. The Tribunal observed that it was unfortunate that the Letting Agent did not remind the Applicants of the duty, given the delay between the signing of the declaration and the letting of the Property. It would be prudent for any letting agent, when there has been a delay of months, as in this case, to ascertain whether the landlord continues to declare that the property meets the repairing standard, particularly when it must have been obvious to the Letting Agent at the time of showing the Property that there were issues. Had that happened in this case, matters may have taken a different course. However, it was not clear to the Tribunal that a failure to do this was a failure to comply with the Code or a breach of the contract between the parties.
75. The Tribunal also observed some ambiguity in the information provided and representations made by the Letting Agent. Ms Stewart said that the Letting Agents were not qualified to say whether a property met the repairing standard; however, the information provided to landlords states that the Letting Agent offers the service of carrying out a pre-tenancy inspection in relation to the repairing standard. It would follow, therefore, that the Letting Agent can and does make assessments in this regard, when requested by a landlord. In this case, the landlord did not request the pre-tenancy inspection.
76. While it was considered by the Tribunal to be reprehensible that repairs instructed by the Applicants were not carried out, and that those repairs formed part of the repairing standard application, the Tribunal noted that the application covered significant matters in addition to the window, drains and shower. The Tribunal considered it likely that, even if the window, drains and shower had been attended to timeously by the Letting Agent, GD would still have made his repairing standard application, therefore, the fact that an application was made could not be attributed entirely to failures on the part of the Letting Agent.
77. The Tribunal did not find that the Letting Agent had delayed in informing the Applicants of the repairing standard application. The fact that the tribunal refused the application to postpone the inspection and hearing was not attributable to the actions or inactions of the Letting Agent.

Losses

78. The Tribunal considered the losses claimed by the Applicants as follows:
- (i) **Cleaning** – the Tribunal did not consider that it had enough information before it to be able to make any findings or award of compensation in this regard. It was impossible to compare the pre- and post-tenancy position in relation to cleaning and costs on the available information. The limited information might suggest that the post-tenancy cleaning was less extensive than the pre-tenancy cleaning, but no photographs or reports were provided in this regard.
 - (ii) **Travel and accommodation costs:** The Tribunal did not find that the travel and accommodation costs claimed could be directly linked to the failures of the Letting Agent. To do so, the Tribunal would have had to

find that the Letting Agent was responsible for ensuring that the Property met the repairing standard, and that delays by the Letting Agent caused GD to make the repairing standard application to the tribunal, and that the failures of the Letting Agent delayed the discharge of the RSEO. As outlined above, the Tribunal did not find that to be the case.

- (iii) **Settlement sum in FTS/HPC/PR/19/2476:** The Tribunal did not find that this cost was a direct result of the Letting Agent's failures. The Tribunal noted that parties reached a settlement of their own accord. The Tribunal did not accept that the Letting Agent was negligent in relation to the matter of the replacement cooker, which was the only matter put forward to this Tribunal by the Applicants in relation to the case for compensation. It was clear that there was a significant amount of correspondence between parties on the matter of the replacement cooker, and that delays could not be attributed to any action or inaction of the Letting Agent.
- (iv) **Legal costs for advice in case FTS/HPC/PR/19/2476:** The Tribunal considered that it was a matter for the Applicants whether or not they sought legal advice in that case. The Tribunal did not find that this cost was linked to the negligence of the Letting Agent.
- (v) **Repayment of letting agent fees:** The Tribunal did not consider that the Letting Agent's fees should be refunded. With the exception of the specific breaches of the Code, the Tribunal considered that, in many ways, the Letting Agents provided a good service. There were a significant number of ongoing repair issues throughout the tenancy, and it would appear that the Letting Agent addressed most of those issues, slipping up in relation to the shower, the window and the drains.
- (vi) **Loss of rent August to December 2018:** The Tribunal did not find that the Letting Agent was responsible for the loss of the prospective tenant, and any prospective rental income, by failing to pass on the information regarding properties owned and let by the prospective tenant. While it was unfortunate that the information was not passed on immediately, there was nothing to suggest it would have made a difference to how matters turned out. The properties could have been mortgaged with no available income, the tenancy agreement was to be in the company's name and the properties did not appear to be held by the company, and the firm undertaking credit checks excluded rental income. On the information available, it is impossible to say that, had the information been passed on, there would have been no loss of rental income.
- (vii) **Loss of rent for six months after June 2019:** The Tribunal did not find that the Applicants lost six months' rent due to the Letting Agent's failures. There were several reasons that the RSEO was not discharged until July 2020, and these do not appear to have been the

fault of the Letting Agent. Furthermore, the Applicants indicated that they intended to sell the Property at this time.

Observations and Considerations

79. The Tribunal observed that the productions lodged by the Letting Agent were presented in a wholly inappropriate manner. The productions were not numbered, and most of them were not referred to, therefore, it was impossible to ascertain their relevance. The emails were repetitive and not in consecutive order, which made any comprehensive reading of them to be impossible.
80. The Tribunal considered the matter of whether further vouching was required in relation to the losses claimed by the Applicants. In view of its decision on the losses, it was decided that no further vouching was required.

Proposed Letting Agent Enforcement Order (“LAEO”)

81. Having determined that the Letting Agent has failed to comply with the Code, the Tribunal must make a LAEO. The Tribunal is required by section 48(7) of the Act to require the Letting Agent to take such steps as it considers necessary to rectify the failure. Section 48(8) provides that payment of compensation may be made by the letting agent to the Applicant as the Tribunal considers appropriate for any loss suffered by the Applicant as a result of the failure to comply with the Code.

The Tribunal determined to make an LAEO as follows:

- “1. The Letting Agent must write to the Applicants within 21 days of the issue of this Order to apologise for its failures to comply with the Code.
2. The Letting Agent must pay to the Applicant within 21 days of the issue of this Order the sum of £600 as compensation for the inconvenience and stress suffered by the Applicants due to the failures of the Letting Agent to comply with the Code.”

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member and Chairperson

25th November 2020