



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 48 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/LA/19/2350

**Re: 5D Northburn Avenue, Airdrie, ML6 6PY
("the First House")
1/2, 170 Duror Street, Glasgow, G32 1NA
("the Second House")
2/1, 6 Ratho Drive, Glasgow, G32 1NA
("the Third House")
1/2, 14 Memel Street, Glasgow, G21 1LL
("the Fourth House")
(collectively "the Houses")**

Parties:

**Fiona Mairi Taylor, 57F Drumbathie Mansions, Drumbathie Road, Airdrie, ML6
6EW
("the Applicant")**

**CPM Glasgow Ltd, 180 Drumoyne Road, Glasgow, G51 4DX
("the Letting Agent")**

Tribunal Members:

**Joel Conn (Legal Member)
Leslie Forrest (Ordinary Member)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

Background

1. This is an application by the Applicant to enforce the Letting Agent Code of Practice ("the Code") in terms of rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"). The application was in regard to

paragraphs of Sections 5, 7 and 8 of the Code referred to below. The Applicant employed the Letting Agent in regard to the Houses.

2. The application was dated 25 July 2019 and lodged with the Tribunal on 26 July 2019. The application was accompanied with various emails as well as a Notification Letter dated 25 July 2019 to the Letting Agent setting out the paragraphs of the Code relied upon. In short, the Applicant complained that no rent had not been received for some time in regard to the Second, Third and Fourth Houses and that there was a small shortfall in rent received as well as issues with the deposit, access, and management of the First House.

The Hearing

3. On 5 November 2019, at a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Glasgow Tribunals Centre, we were addressed by the Applicant and, for the Respondent, by Colin Watt who introduced himself as a consultant to the Respondent.
4. The Applicant confirmed that the application was still insisted upon. Though her focus was understandably the rent that said believed was been held by the Letting Agent, her complaints regarding the management of the First House remained and, after some detailed discussion during the Hearing, she still insisted on those.
5. The Applicant and the Letting Agent's representative both confirmed that the Letting Agent's correct full name was "CPM Glasgow Ltd" (as it was designed as "CPM Ltd" in sections of the application. The Applicant sought the application to be clearly stated as against "CPM Glasgow Ltd" and, with no objection from the Letting Agent's representative we allowed this amendment.
6. The Applicant was well-prepared. She had lodged with the application a spreadsheet reconciling the rental payments received on the Houses and where payments and/or statements of the payments were missing. She updated that statement when providing written submissions by email on 21 September 2019. On that date she also provided a copy of the Sole Agency Agreement between the parties and leases for the Third and Fourth Houses. By email on 4 November she provided a further revised spreadsheet. She stated that the spreadsheet was first devised following a meeting with the Letting Agent's director, Carol Ann Doyle, in Summer 2019. She came prepared with further detailed workings supporting the spreadsheet which we did not require to consider during the Hearing (and which were not then lodged).
7. The Applicant showed significant patience with the Letting Agent, apparently willing to remain a client provided that the outstanding payments were remitted in early course and remittances made regularly thereafter.

8. In regard to the Houses she explained:

First House

- a) The First House was occupied by a tenant (Mr A) until late 2017. Mr A had left some disrepair and she said it was agreed that half his deposit, being £215, would be retained. She said she had never received these funds nor any credit in regard to them.
- b) The First House was then occupied by a tenant (Ms B) from late 2017 until July 2019. Around February 2018, the Applicant said that she visited the First House and found several issues with it. A floor had been put down in the living room without her consent (and on top of another floor the Applicant had recently laid) along with other unauthorised decoration. Ms B had removed a door to allow for this reflooring. She was also keeping pets without authority. The Applicant said that she informed the Letting Agent of her concerns about the condition of the First House.
- c) Ms B agreed a date to vacate the First House but then requested an extra week in order to clean the house before vacating it. The Applicant stated that she was informed of this by the Letting Agent who assured her that a further week of rent would be paid. The Applicant calculated this as £123.75 but she had never received this rent money.
- d) After Ms B left, the Letting Agent told the Applicant that the First House was in a poor state and that further unauthorised decoration – such as a bright red painted wall in the hallway. The Applicant spoke with the Letting Agent's Robert Sievewright who said: "We'll sort it out for you". The Applicant took that to be an undertaking to pay for the First House to be redecorated back to suitable neutral colours as it had first been let to Ms B. The Applicant was not clear as to what steps she thought the Letting Agent should have taken that could have avoided Ms B breaching the lease but, in answer to questions from us, it transpired that she lacked a clear understanding of what management steps (such as inspections) the Letting Agent had taken during the course of Ms B's lease and this limited her ability to critically assess the Letting Agent's performance as property managers of a problem tenant.
- e) Since Ms B left in July 2019, the Applicant said that she had repeatedly sought access to the First House but not received it until very recently (as detailed by the Letting Agent's representative; see below). Also, she had received no update on the deposit held in respect of Ms B, which she said was £445 and which she wished to retain at least part of (in consideration of the authorised redecoration). The Applicant stated that she had a handyman she regularly used and had not authorised the Letting Agent to carry out any work to clear the First House or to carry out any other remedial works as she would wish to use her own handyman.
- f) The Applicant said that no statement on rental received had been provided since June 2019.

Second House

- g) The Applicant believed this was on a long-term commercial lease to the Wise Group who had a government contract to house asylum seekers. Gross rent was £460 per month and the Applicant had received no payment for rent for the period from 18 June 2019 to present. She had not received any statements on the Second House since April 2018. The Applicant did not believe any deposit was held.

Third and Fourth Houses

- h) The Applicant had agreed long-term commercial leases to Orchard & Shipman who had held a government contract to house asylum seekers. Gross rent was £500 and £480 per month respectively. No deposits were due in respect of these leases. The leases provided to the Tribunal confirmed these details.
- i) The Applicant understood that the leases had transferred to a new facilities management provider for housing to asylum seekers; Serco. She had agreed to this at some point in the past. The Applicant had received no payment for rent for the period from 18 June 2019 to present and 1 August 2018 to present respectively. She said that no statements had been received since April and March 2019 respectively.
9. The Letting Agent's representative was ill-prepared for the Hearing. No response had been made by the Letting Agent to the initial complaint letter under the Code nor to the Tribunal. The representative came with no papers other than the Tribunal's letter notifying the Letting Agent of the date and time of the Hearing and stated that he was unaware of any details of the application having been sent to the Letting Agent other than that letter. (He did not, however, go as far as denying that the Letting Agent had received notification but simply not given it to him.) Further, he submitted that he had only recently started acting as a consultant.
10. Though the Letting Agent's representative said that he had been involved in a predecessor business of the Letting Agent, he had left it some time ago. He said that he had recently become involved to assist the Letting Agent's director with issues arising from the transfer of their management system. He was aware that the system was, at times, not properly populating its database with all payments received in and this was resulting in delays in remittances to landlord clients. He said he was aware of this because he was also a landlord client of the Letting Agent.
11. In regard to the specifics of the Applicant's complaint, the Letting Agent's representative was clearly aware of some aspects of it as he and the Applicant had been in contact since on or about 3 October 2019, when they met by chance and the Applicant had informed him of the application. The Letting Agent's representative was further acting for the Applicant in a separate capacity in regard to her placing the First House on the market and, in that capacity, had recently obtained access to the First House and inspected it. He described some difficulty in obtaining access, which he attributed to a broken lock. He said that he had eventually instructed a

- locksmith to take access on 1 November 2019. Having viewed the inside of the First House, he could confirm an internal door was off its hinges and some of the paintwork being “bold”. He was otherwise of the view that the condition was not bad for a property of its type and location, and that it was clean. Further, he was aware of the nature of the leases of the Second, Third and Fourth Houses. In all, though he was not in a position to respond on the specifics of the application, the Letting Agent’s representative was clearly well informed of the background circumstances that had given rise to the Applicant’s displeasure with the Letting Agent.
12. We provided the Letting Agent’s representative with an opportunity to try and call the director, Ms Doyle. We adjourned and he did so (apparently with the Respondent able to listen in on speakerphone). On returning he provided the following clarifications and updates:
- a) The Letting Agent disputed that it has undertaken to pay for redecoration of the First House.
 - b) He had no further information on the whereabouts of the deposits (either of Mr A or Ms B) for the First House but he did understand that certain deductions were to be made for work that the Letting Agent had undertaken.
 - c) He proposed that he take two weeks to understand the new computer system and, once he was familiar, he would take a further two weeks to reconcile payments, remit any credit balance to the Applicant, and chase any missed payments.
13. To this, the Applicant regarded the four week time-scale as reasonable in the circumstances but she expressed displeasure about any deductions for work at the First House, as she said none had been authorised.

Findings in Fact

14. The Applicant is owner of the Houses.
15. The Applicant engaged the Letting Agent’s predecessor Connect Property Management Ltd as their letting agent for the letting of the Houses in or around March 2016 under a Sole Agency Agreement (“the Agreement”).
16. In or around February 2019, the Letting Agent assumed agency for the Houses under the same Agreement.
17. The Letting Agent’s obligations under the Agreement included collecting monthly rent and remitting same promptly to the Applicant.
18. The First House was tenanted until on or about 9 July 2019.
19. The Second, Third and Fourth Houses were all tenanted as of Summer 2019.

20. The Letting Agent has not intimated to the Applicant that the tenancies of any of the Second, Third and Fourth Houses have ceased.
21. Despite requests such as the Notification Letter of 25 July 2019, the Applicant:
- a) was not provided access to the First House by the Letting Agent from 9 July 2019 until 1 November 2019;
 - b) has not received any response from the Letting Agent in regard to the Applicant's concerns about the Letting Agent failing to manage the First House;
 - c) has not received any reconciliation or statements on rent received (or not received) on the Houses since Summer 2019.
22. The Applicant provided notice to the Letting Agent of complaints under paragraphs 74, 75, 108, 112, 118, 119, 120, 123, 124, and 125 of the Code by her correspondence and particularly the Notification letter of 25 July 2019. The Letting Agent has not taken steps to remediate the breaches intimated in the Notification letter with the exception of providing access to the First House (absent any explanation as to the delay in providing access earlier).

Reasons for Decision

23. The Code includes the following provisions:

“Section 5: Management and maintenance

“73. 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.

“74. If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate....

“75. Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.

“Section 7: Communications and resolving complaints

“Communications...

“108. You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with

enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond. ...

...
"Complaints resolution

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

...
"Handling landlords' and tenants' money, and insurance arrangements

"117. In this section "client money" means money held or rent collected on behalf of a prospective tenant, tenant or landlord (including former tenant or landlord). This section only applies if you hold and handle client money.

"Section 8: Handling landlords' and tenants' money, and insurance arrangements ...

"Client accounts

"118. You must have robust and transparent written procedures for handling client money.

"119. You must keep adequate records and accounts to show all dealings with client money.

"120. You must be able to account immediately to them for all money held on behalf of clients. ...

"121. You must ensure you hold client money in one or more separate and dedicated client bank accounts with a bank or building society authorised by the Financial Conduct Authority, separate from your main business or private accounts.

"122. You must have written confirmation from any bank or building society where a client account is held that the following conditions apply:

- (a) that all money standing to the credit of that account is client money; and
- (b) that the bank or building society is not entitled to combine the account with any other account or exercise any right to set-off or counterclaim against money in that account for any sum owed to the bank or building society on any other of your accounts it holds.

"123. You must regularly record and monitor all transactions and reconcile these monthly as a minimum.

“124. You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).

“125. You must pay or repay client money as soon as there is no longer any need to retain that money. Unless agreed otherwise in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.

“126. You must hold a client money protection insurance policy unless you can demonstrate equivalent or greater protection through another body or membership organisation. You must give further details (such as the name of your provider, your policy number and a summary of the policy) to them on request.”

24. The Tribunal noted that the Notification letter was issued to the Letting Agent the same day as the application was lodged. Nonetheless, the Tribunal members noted that the Letting Agent did not raise any objection based on lack of notice or time to remediate and some significant time passed between submission of the application and its acceptance. In the circumstances, the Tribunal was satisfied to treat the Notification letter as adequate.
25. The Applicant, in line with the terms agreed in the Agreement, entrusted the Letting Agent to manage the letting of the Houses. A central element was that the Letting Agent would receive the rent and remit the balance, after fees and costs, to the Applicant promptly.
26. The failure to respond to the Notification Letter or the application, and the failure of the Letting Agent to send their representative properly briefed, all evidenced lamentably poor communication. The Applicant had shown significant focus in preparing her own reconciliations which the Letting Agent had not engaged with at all. Had no rental payments been received, the Letting Agent could have simply stated that. The failure to issue such statements would amount to a failure to remit balances, even if all that was due was a statement showing a nil balance. Further, though not raised by the Applicant, the failure to account for balances raises concerns with the Tribunal as to what other accounting obligations (such as proper client accounts and insurance) may be lacking. The Letting Agent has been trading for less than a year, and its registration is not yet processed and issued. The Tribunal can have no comfort that the Letting Agent's procedures and processes are in order without seeing further evidence.
27. The Tribunal was satisfied that several paragraphs of the Code relied upon had already been clearly breached by the Letting Agent. There were a number of issues where further information was required and further breaches may come to light from that information (or lack of information).

28. We were satisfied that It was open to the Tribunal to continue matters, or issue a Direction for further documentation and continue matters. We are issuing a Direction seeking the Letting Agent's complaints procedure, procedures for handling client money, and evidence of full compliance with the client account and insurance requirements. Further we are issuing a Direction seeking further information relating to Ms B's deposit. Though we could have issued a broader Direction, all remaining information required is more properly addressed through remediation of breaches under an Letting Agent Enforcement Order. Given the failure to engage with the Applicant or the Tribunal prior to the Hearing, the Tribunal is of the view that a LAEO is appropriate at this early stage in respect of the clear breaches in communication and accounting for payments (or nil payments) under paragraphs 108, 109, 119, 120, 123 and 124 of the Code.
29. We are allowing the four weeks requested by the Letting Agent's representative in respect of compliance with both the Direction and the LAEO.
30. Consideration of the potential breaches under paragraphs 73, 74, 75, 112, 118, and 125, and any compensation in general, are continued until after the period of compliance has expired. We have appointed the matter to a further Hearing to take place no earlier than four weeks from the issuing of the LAEO. We are further directing that the Letting Agent's director be present at all future Hearings except with leave of the Tribunal. It is not acceptable for the Letting Agent to be represented by a part-time consultant who lacks proper instruction.
31. At the further Hearing, if we see that further breaches have occurred, or we hold compensation is appropriate, we will consider whether the more appropriate disposal is a variation to the LAEO or an additional LAEO.

Decision

32. The Tribunal issues a Letting Agent Enforcement Order under paragraphs 108, 109, 119, 120, 123 and 124 of the Code with the remediation steps stated within the said LAEO to be undertaken within four weeks of service of the LAEO, and otherwise continues all remaining matters in the application to a Hearing on a date to be assigned.

Right of Appeal

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

6 November 2019
Date