

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

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**  
**In an Application under section 48 of the Housing (Scotland) Act 2014**

**By**

**The Church of Scotland General Trustees, 121 George Street, Edinburgh EH2 4YN (“the Applicant”)**

**Realter Ltd, Hallcroft, Corsock, Castle Douglas, Kirkcudbrightshire DG7 3DJ;  
Gary Wardell, c/o Keller Williams, Centrum Buildings, 38 Queen Street,  
Glasgow G1 3DX; and Mike Mason c/o Keller Williams, Centrum Buildings, 38  
Queen Street, Glasgow G1 3DX (“the Respondent”)**

**Re: The Manse, Kirkton, Dumfries DG1 1ST  
 (“the Property”)**

**Chamber Ref: FTS/HPC/LA/19/2802**

**Tribunal Members:**

John McHugh (Chairman) and Frances Wood (Ordinary (Housing) Member).

**DECISION**

**Realtor Ltd has failed to comply with the Code.**

The decision is unanimous.

**We make the following findings in fact:**

- 1 The Applicant is the owner of The Manse, Kirkton, Dumfries DG1 1ST ("the Property").
- 2 It holds the Property for the benefit of the Kirkmahoe Parish Church.
- 3 Bob McBride is the Session Clerk there.
- 4 In around September 2016, Mr McBride approached Mr Mike Mason of Realter Ltd with the request that they make arrangements for the leasing of the Property.
- 5 A tenant was found by Realter Ltd.
- 6 Realter Ltd drew up a short assured tenancy agreement which was signed on 6 October 2016.
- 7 The Landlord was noted as Mr McBride.
- 8 Realter Ltd operated at the material times as a professional letting agent.
- 9 Realter Ltd acted as letting agent in respect of the tenancy of the Property.
- 10 Realter Ltd 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 from 31 January 2018.
- 11 The tenant provided a tenancy deposit of £750 to Realter Ltd on 29 September 2016.
- 12 Realter Ltd did not place the deposit in an approved tenancy deposit scheme.
- 13 Realter Ltd did not supply terms of business to the Applicant.
- 14 The Applicant has, by its correspondence, including that of 8 August 2019, notified the Respondent of the reasons as to why it considers that the Respondent has breached its obligation to comply with the Code.

**Hearing**

A hearing took place at Riverside House, Edinburgh on 8 January 2020.

The Applicant was represented by its in house solicitor, Susan Killean and called Bob McBride as a witness.

The Respondent was not represented at the hearing.

## **Introduction**

In this decision we refer to the Housing (Scotland) Act 2014 as “the 2014 Act”; the Letting Agent Code of Practice contained in the Schedule to The Letting Agent Code of Practice (Scotland) Regulations 2016 as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the Applicant. No documents had been lodged by the Respondent.

## **Preliminary Matters**

The application has been brought against three parties: Realter Ltd; Mike Mason and Gary Wardell. Mr McBride has given evidence that all of his dealings were with Mr Mason who he understood to be the Office Manager of Realter Ltd. He had had no involvement with Mr Wardell, whose existence had only become apparent to him in more recent times when he had sought to resolve the problems which had arisen.

A question arises as to the correct identity of the person who should be the Respondent in this case. In terms of section 48(2) of the 2014 Act, that person should be the person who was appointed by the landlord to act as letting agent. The Tribunal considers that the appropriate Respondent in this case is Realter Ltd since

Mr McBride's evidence and such limited paperwork as is available points to this being the case. We do not consider that there is any basis for personal liability to attach to Mr Mason, who appears only to have been acting as an employee of Realter Ltd or to Mr Wardell whose only involvement was in his role as the sole director of Realter Ltd.

The Tribunal notes that there is an application for Realter Ltd to be struck from the Register of Companies. Realter Ltd has not engaged in the process at all. Mail from the Tribunal addressed to the Realter Ltd's address has been returned.

## **REASONS FOR DECISION**

### **The Legal Basis of the Complaints**

#### **The Code**

The Applicant complains of failure to comply with Sections 17; 21; 23; 29; 32; 33; 37; 62; 107; 120; and 124 of the Code.

The elements of the Code relied upon in the application provide:

"...17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)...

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

...23. You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property...

... 29. In your dealings with potential landlord clients you must:

#### **Services provided and fee charges**

- a) provide clear and up-to-date written information about the services you provide and the charges (inclusive of taxes) for them;...

... 32. Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out:

**Core services** a) the services you will provide to that landlord and the property they relate to. For example, tenant introduction, lettings service and full management service;

**Duration** b) the duration of the agreement and the date it commences;

**Authority to act** c) a statement about the basis of your authority to act on the landlord's behalf; d) where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing repairs to the property and the purchase of replacement goods; e) situations in which you may act without checking with the landlord first, for example urgent repairs;

**Fees, charges and financial arrangements** f) your management fees and charges (including taxes) for your services, and your processes for reviewing and increasing or decreasing this fee; g) how you will collect payment including timescales and methods and any charges for late payment; h) that where applicable, a statement setting out details of any financial interest in providing third-party services (for example, commission for using certain companies, products or services) is available from you on request;

**Tenancy deposits** i) if a tenancy deposit is to be taken, who will lodge the deposit with one of the approved schemes;

Communication and complaints j) that you are subject to this Code and give your clients a copy on request. This may be provided electronically; k) how you will communicate (including the use of electronic communication<sup>(3)</sup>) with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries; l) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond; m) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure;

Conflict of interest n) a declaration of any conflict or potential conflict of interest; Professional indemnity insurance o) confirmation that you hold professional indemnity insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

Handling client money p) if you hold client money, how you handle clients' money; confirmation that you hold client money protection insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

How to change or end the terms of business q) clear information on how to change or end the agreement and any fees or charges (inclusive of taxes) that may apply and in what circumstances. Termination charges and related terms must not be unreasonable or excessive...

...**33.** You and the landlord must both sign and date your agreed terms of business and you must give the landlord a copy for their records. If you and the landlord agree, this can be done using electronic communication including an electronic signature...

...**37.** When either party ends the agreement, you must: a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed, you must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill. b) if tenants are still living in the managed property or properties, inform the tenants you will no longer be acting as an agent for the landlord and inform them of the landlord's name and contact details if these have not already been provided, or where relevant, those of any new agent. You must also inform the tenants of any resulting changes that affect them...

...**62.** If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the landlord; type; length of tenancy where it is a short assured

tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on taking care of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number...

... **66.** If you lodge tenancy deposits on a landlord's behalf, you must ensure compliance with the legislation...

...**107.** You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act...

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

... **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)."

## The Matters in Dispute

### **Factual Background**

The Applicant is the owner of the Property. They hold the Property for the benefit of the local congregation, Kirkmahoe Parish Church. Bob McBride is the Session Clerk there.

In September 2016, Mr McBride approached Mr Mike Mason of Realter Ltd with the request that Realter Ltd arrange to find a tenant for the Property and deal with the leasing arrangements. Mr McBride had experience of using Realter Ltd's services in respect of an unrelated property.

On 7 September 2006, a Dr Qayyum became the tenant of the Property and entered into a short assured tenancy drawn up by Realter Ltd dated 6 October 2006. The Landlord was wrongly recorded in that document as being Mr McBride.

The tenant paid a deposit of £750 to Realter Ltd at the inception of the lease. The tenant remains in occupation, paying rent of £750 per month.

There came to be delays in rent being passed by Realter Ltd to the Applicant. The last payment was made in respect of October 2018. By April 2019, having received no rent from Realter Ltd for the five month period November 2018 to March 2019, direct contact was made with the tenant who evidenced that she had been paying all rent due to Realter Ltd. It therefore appeared that Realter Ltd had failed to pass the rent received to the Applicant. Mr McBride went to the offices of Realter Ltd only to find they had moved out. In around April 2019, Mr McBride identified that Mr Wardell was a director of Realter Ltd and traced him to an office in Glasgow. He challenged Mr Wardell and was advised by him that any issues which had arisen were the responsibility of Mr Mason.

We found Mr McBride to be entirely credible and reliable and accepted his evidence.

### Lease Terms

The Applicant complains of a breach of Code section 62 because of the wrong recording of the landlord's name in the tenancy agreement. However, this failing occurred before the inception of the Code and so we find no breach to have occurred.

### Terms of Business

Mr McBride confirmed that no terms of business had ever been provided. There is no evidence to the contrary. In the circumstances, we find there to have been a breach of Code sections 29a); 32 and 33.



### Ending the Agreement

The agreement was brought to an end by the disappearance without explanation of Realter Ltd and by the Applicant then commencing direct relations with its tenant. Realter Ltd took no steps at all at this time to deal with the ending of the relationship and they are accordingly in breach of Code section 37.

### Client Accounts

Realter Ltd has retained five months' rent of £3750 and the deposit of £750 paid to them by the tenant. They have accounted for none of that to the Applicant. They have ignored the Applicant's demands for payment of same or for an explanation as to the position. Realter Ltd is therefore in breach of Code sections 120 and 124.

### Deposit

The Applicant complains that Realter Ltd has failed to place the tenant's £750 deposit into an approved scheme. The deposit was paid by the tenant to Realter Ltd. The Respondent has checked with the three approved providers and all have confirmed that they do not hold it. Realter Ltd has retained the deposit without explanation. We find a breach of Code section 66 to have been established.

### Registration

Realter Ltd has failed to intimate its registration number. That would appear to be because the business has not registered as a letting agent. The obligation upon Realter Ltd is, however, in terms of section 107 of the Code only to include its registration number in all relevant documents and communications. However, Realter Ltd appears to have issued no written communications since the inception of the Code, so we have identified no breach in this respect.

### Overarching Standards

We consider that Realter Ltd has not behaved in an open, honest and transparent manner, contrary to Code section 17, nor has it provided its services using reasonable care and in a timely way, contrary to section 21 in respect of its failures in relation to the failings identified above under the headings Lease Terms; Terms of Business; Ending the Agreement; Client Accounts and Deposit.

## **Observations**

Realter Ltd appears to have had at all relevant times as its sole director, Gary Wardell. Realter Ltd and Mr Wardell have failed to acknowledge correspondence from the Applicant and the Tribunal and have completely failed to engage in the current process. The failings of Realter Ltd which have been established in this application are of the utmost seriousness. The attention of those in the Scottish Government responsible for letting agent registration will be drawn to this decision with a view to them giving appropriate consideration to any future application for registration by Realter Ltd or by any other business with which Mr Wardell is associated.

## **LETTING AGENT ENFORCEMENT ORDER**

In terms of section 48(7) of the 2014 Act we will make a letting agent enforcement order (“LAEO”). The terms of the LAEO are set out in the attached document.

We have a wide discretion as to the terms of the LAEO we may make. In this case, we consider it appropriate to order Realter Ltd to make a payment to the Applicant of £4500. This reflects the fact that the Applicant has been left without the five months' rent payments retained by Realter Ltd and that Realter Ltd have retained the tenants' deposit which the Applicant will have to return to the tenants in due course.

## **APPEALS**

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.

**JOHN M MCHUGH**

**CHAIRMAN**

**DATE: 10 January 2020**