

# Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION:**

- Tribunals (Scotland) Act 2006, Section 46; and
- The First-tier Tribunal for Scotland Housing & Property Chamber (Procedure) Regulations 2017, Schedule Part 1, Rule 37.

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

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

**The Parties:-**

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

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

**Letting Agent Registration Number: LARN1903080**

**The Tribunal:-**

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

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having received from the Letting Agent and considered an application for permission to appeal the decision of the tribunal dated 15 October 2019, determined that permission to appeal should be refused all in terms of section 46 of the Tribunals (Scotland) Act 2014 and paragraph 37 of the Schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

## **Background**

1. Reference is made to the determination of the tribunal dated 15 October 2019 which determined that the Letting Agent had failed to comply with the Letting Agent Code of Practice ("the Code of Practice"), in particular:-
  - Section 2, paragraph 27;
  - Section 4, paragraphs 45, 46 and 70; and
  - Section 5, paragraph 85.

2. The tribunal therefore issued a Letting Agent Enforcement Order ("LAEO") setting out the steps the Letting Agent must take by the date specified in the LAEO including payment of compensation to the Applicant for his loss occasioned by the Letting Agent's failures. The steps required by the LAEO are:-

Pay to the Applicant the amount of £6,083.76, as compensation for the loss suffered by the Applicant as a result of the failures to comply with the Code, that sum comprising:-

- i. £183.70 being the costs incurred by the Applicant to "5<sup>th</sup> Gear Hire Drive" to facilitate moving to the House;
- ii. £1,520.06 being the costs incurred by the Applicant to "Doree Bonner" in removing from the House;
- iii. £230.00 being the costs incurred by the Applicant in installing and relocating a TV aerial at the House;
- iv. £150.00 being the pet deposit paid by the Applicant to the Letting Agent in terms of the Tenancy Agreement dated 1 February 2019 and retained by the Letting Agent;
- v. £1,500.00 being the rent paid by the Applicant to the Letting Agent in terms of the Tenancy Agreement dated 1 February 2019;
- vi. £2,500.00 in respect of the delay, stress, worry and inconvenience suffered by the Applicant.

The tribunal ordered that the payment specified in the LAEO must be paid over and completed within a period of 14 days from the date of service of the LAEO.

## Appeal

3. In terms of section 46 of the Tribunal (Scotland) Act 2014 ("the 2014 Act") a party aggrieved by a decision of the First-tier Tribunal must seek permission to appeal on a point of law only from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.
4. In terms of Rule 37 of Part 1 of the Schedule to The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Regulations 2017") an application for permission under section 46(3) of the 2014 Act must be made in writing and must:-
  - a. Identify the decision of the First-tier Tribunal to which it relates;
  - b. Identify the alleged point or points of law on which the person making the application wishes to appeal; and
  - c. State the result the person making the appeal is seeking.
5. By email dated 23 October 2019 the Letting Agent intimated its desire to appeal the determination of the tribunal dated 15 October 2019. The Letting Agent stated its grounds of appeal to be:-
  - a. That it did not deliberately mislead or withhold information from the Applicant. Instructions from the landlord were taken by the Letting Agent in good faith and the tribunal overlooked the letter from Falkirk Council dated 30 July 2018.
  - b. That the installation of an aerial is not necessary to live in the House and is not part of the repairing standards legislation. Paragraph 31 of the tenancy agreement

requires the Applicant to obtain permission from the landlord for the installation of a TV aerial and paragraph 34 states that the Applicant must not access the roof.

- c. The Rent Relief Order previously made in respect of the House was for 90% of the rent not 100%, therefore some rent is due.
- d. £1,500 of rent paid to the landlord in good faith before the Letting Agent was aware the Repairing Standard Enforcement Order ("RSEO") in respect of the House was still in place. This money should be recovered from the landlord not the Letting Agent.
- e. The Letting Agent believed the RSEO had been discharged from the information provided by the landlord and from the terms of correspondence from Falkirk Council.
- f. With regard to the relevant paperwork, the tribunal assumed the Applicant was telling the truth and the Letting Agent was trying to mislead the tribunal. The Applicant did not produce any evidence that the paperwork had not been handed over to them. The Letting Agent provided evidence of procedures being followed at that time and its evidence should have been preferred.
- g. The Applicant acted opportunistically in pursuing the application against the Letting Agent when the landlord was more at fault.
- h. The award made by the tribunal in favour of the Applicant is excessive given that the Applicant effectively did not pay any rent for the period of occupation of the House.

### **Decision and Statement of Reasons on Application for Permission to Appeal**

6. The tribunal has carefully considered the Letting Agent's application for permission to appeal the tribunal's determination dated 15 October 2019 and the grounds thereof.

Having considered the Letting Agent's application for permission to appeal the tribunal determined that the application should be refused as the application for permission:-

- i. fails to identify any point or points of law in the tribunal's decision; and
- ii. fails to state the result the Letting Agent is seeking,

as a result of which the terms of paragraph 37 of the Procedure Regulations 2017 and section 46 of the 2014 Act are not met.

The application for permission to appeal is therefore refused.

### **Right of Appeal**

- 7. A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the Upper Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Legal Member & Chair

Date

29 October 2019

