

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland Housing and Property Chamber under Section 48(6) of the Housing (Scotland) Act 2014 and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No 328)) ("the Procedure Rules") Rule 95

Chamber File Reference number: FTS/HPC/LA/18/3019

Parties:

Dr Susan McClean and Mr Fraser McClean, Hillview Strathaven, ML10 6RW (Applicants)

Donna Hanlon trading as Hanlon Clark, 8 Main Street, Strathaven, ML10 6AJ (Respondent)

Tribunal Members: Alison Kelly (Legal Member) and Anne Moore (Ordinary Member)

Background

On 9th November 2018 the Applicants lodged an application with the Tribunal seeking to enforce the Letting Agent Code of Practice against Donna Hanlon trading as Hanlon Clark, 10 Main Street, Strathaven, ML10 6AJ.

In their application the Applicants alleged breaches of paragraphs 18, 26, 105, 108, 120, 123, 124 and 125 of the Code of Practice.

They alleged that they had suffered loss in the amount of £900, being rental on a property for the months of August and September 2018.

They sought payment to them of this sum.

The Applicants had served a Letting Agent Code of Practice Notification letter on the Respondent on 6th November 2018. The recorded delivery track and trace indicated that it had been signed for by someone named Dawson.

Hearing

The Applicants appeared personally at the hearing. The Respondent did not appear and was not represented.

The Applicants told the Tribunal that they had engaged the services of Donna Hanlon as their letting agent, in connection with their property at 2A Townhead Street, Strathaven, in or around 2014. They were provided with a Statement of the Respondent's Terms and Conditions by email on 5th April 2014. Within the Terms and Conditions they undertook to transfer rent and produce landlord statements within 3 working days of receipt by direct transfer. Throughout the period their main point of contact was Jan Dawson, who worked in the letting agency office in Strathaven, but she would always tell them that she would need to speak to Donna Hanlon before making any decisions. The Applicants believes that Jan Dawson may be Donna Hanlon's mother-in-law. The Applicants believed that the firm may have changed names on several occasions, but they were never advised of this in writing, and they considered themselves to be contracted with Donna Hanlon, Hanlon Clark.

Mr McClean told the Tribunal that he frequently, throughout their dealings, had to chase the Respondents to provide rent statements and payments. Payment and statements were not provided unless he chased for them. Payments were never regular, and were never paid on the same date of each month.

Dr McClean provided a schedule of emails and calls.

On 6th April 2018 she telephoned and spoke to Jan Dawson regarding a lack of payment and statements since the end of 2017. Jan said she would attend to it.

On 30th July 2018 Dr McClean called again and spoke to Jan. Statements had still not been provided since the end of 2017. Some payments were made on 6th April 2018 but 4 months tent was still outstanding. Dr McClean requested a meeting with Donna Hanlon.

On 16th August 2018 Dr McClean emailed Donna Hanlon direct asking for a meeting. Ms Hanlon replied on 17th August 2018 apologising and arranging payment of some rent, but no statements. She arranged a meeting.

On 17th August 2018 Dr McClean emailed advising that they had decided to transfer to a different agent, Igloo, and requesting that all documents, keys, and deposit should be transferred to them.

On 20th August 2018 Dr McClean emailed again advising that rent payments were still missing and statements were required to aid with reconciliation. Dr McClean confirmed she was available for the meeting scheduled for the following day.

On 21st August 2018 Donna Hanlon replied confirming she had transferred further funds, and cancelling the meeting. Statements still had not been provided.

On 22nd August 2018 Dr McClean emailed Donna Hanlon again requesting statements.

On 23rd August statements were provided. There were not clear and did not assist. Copies of these statements were shown to the Tribunal. They were difficult to follow and, instead of one statement per month there were several statements in which

several months' payments had been grouped together.

On 24th August 2018 Dr McClean emailed Donna Hanlon confirming they had still not received the rent payment for August.

The Applicants told the Tribunal that during this time their new agents, Igloo, were also contacting Donna Hanlon for information, but she was not responding to them either.

Dr McClean visited the office and spoke to Jan Dawson, instructing her to transfer everything to Igloo immediately.

On 27th August 2018 Dr McClean again emailed Donna Hanlon asking her to be in touch urgently, but she didn't reply.

On 28th August 2018 Donna Hanlon emailed Igloo asking them to collect everything on Monday 3rd September 2018 at 11am.

Someone from Igloo attended on 3rd September, but they were provided with minimal paperwork and transfer of the deposit was not arranged.

On 7th September 2018 Dr McClean emailed Donna Hanlon requesting transfer of contact details for the tenant and her daughter. There was no reply.

On 10th and 12th September 2018 Dr McClean sent further emails, with no reply.

On 25th September 2018 Dr McClean emailed Donna Hanlon requesting payment of the August rent and the rent taken in September, which should have been paid to Igloo. She received no reply.

The Applicants had been reluctant to approach the tenant direct, as they knew she suffered from Alzheimer's disease, and her affairs were managed by her daughter. They did not want to cause unnecessary upset to the tenant. Igloo made contact and arranged for the rent to be paid to them in future.

The Applicants told the Tribunal that as at the date of the Hearing they had had no further contact from the Respondent, were still due the rent for August and September 2018, and had no idea if the tenant's deposit had been paid in to a Tenancy Deposit Scheme. They had never been provided with any written confirmation that it had been, and Igloo had not been able to arrange a transfer.

The Tribunal found the Applicants to be credible and reliable witnesses, and accepted their evidence in full.

Findings In Fact

The Letting Agent Code of Practice came in to force on 31st January 2018. All of the behaviour complained of by the Applicants occurred after that date and therefore falls within the Code. The following facts were found:

1. The Applicants contracted with the Respondent in or around 2014 to provide letting agency services for the Applicants' property at 2A Townhead Street, Strathaven.
2. The rent payable by the tenant was £450 per month.
3. The Respondent failed to respond to the Applicants' telephone calls and emails on a regular basis.
4. The Respondent failed to produce regular rent statements.
5. The Respondent failed to make rent payments to the Applicants regularly and on time.
6. The Respondent has not paid to the Applicants the sum due for rent for August and September 2018.

The Tribunal found that the Respondents breached their duties in terms of all of the paragraphs of the Code which were complained of, and which are as follows:

18. You must provide information in a clear and easily accessible way.

Statements which were provided eventually were not clear, and as they had to be requested multiple times, were not accessible.

26. You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.

The written agreement does not appear to deal with enquiries and complaints. The tribunal found that the Respondent did not respond to complaints at all, let alone with a reasonable timescale.

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.

The written agreement does not appear to deal with enquiries and complaints. The tribunal found that the Respondent did not respond to complaints at all, let alone with a reasonable timescale

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

Rental payments for August and September 2018 are still outstanding.

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

The statements provided do not show monthly reconciliation.

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).

Rental payments for August and September 2018 are still outstanding.

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.

Rental payments for August and September 2018 are still outstanding.

The Applicants had also complained that the Respondent had breached the following paragraph of the Code:

105. Where you manage the tenancy deposit on behalf of a landlord you must take reasonable steps to come to an agreement with the tenant about deposit repayment. Where agreement is reached you must make a claim to the relevant Tenancy Deposit Scheme.

This was found not to be relevant as the tenancy itself had not been brought to an end.

The Tribunal expressed concern regarding the security of the tenant's deposit, as the Respondents had not confirmed that it had been placed in a Tenancy Deposit Scheme.

The Tribunal also expressed concern that the Respondent did not appear to have applied for registration as a Letting Agent.

Decision

The Tribunal found that the Respondent had breached paragraphs 18, 26, 108, 120, 123, 124 and 125 of the Letting Agent Code of Practice.

The Tribunal further considered that, as a result of these breaches, the Applicants suffered loss in the amount of £900, being the rent for August and September 2018, and had also suffered loss, in the form of considerable inconvenience, having to expend time and effort attempting to communicate with the Respondent. The Tribunal decided to award payment of £1400, being the rent outstanding and compensation of £500.

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.

Alison Kelly

Legal Member of the Tribunal
Dated: 27th January 2019