



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

Reference number: FTS/HPC/LA/25/0651

The Parties:

Miss Hope Gaffney, 1 1F2 Roseburn Place, Edinburgh, EH12 5NP (“the Applicant”)

Gregor Fortune Property Ltd, Suite 27 Bonnington Bond, 2 Anderson Place, Edinburgh, EH6 5NP (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) Ahsan Khan (Ordinary Member)

Decision and Reasons

The First Tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. By Application dated 17th February 2025, the Applicant sought that the Tribunal make a lettings agent enforcement order, the application suggesting that the letting agent had failed to comply with paragraphs 87, 89, 90, 91 and 93 of The Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code”).
2. The tenants named in the lease of the flat at 11F2 Roseburn Place, Edinburgh, EH12 5NP (“the Property”) are the Applicant, Miss Hope Gaffney, and Mr Lyle Posenato. The application to the Tribunal, however, proceeds in the name of Miss Hope Gaffney alone. The application proceeds on the basis that
 - a communal security entrance door had been damaged and not repaired timeously

- as a result, the Property rented by the Applicant and another was broken into with various items having been damaged or stolen
 - the mortice lock of the door to the property was not secure as “the key we were provided with” was faulty
 - the Respondent did not effectively communicate in relation to repairs
3. In relation to the alleged liability on part of the letting agent for the break in, the application states
“the police also noted that the property would have been more of a target due to the insecure exterior entrance”
 and
“we also believe that the letting agent has liability for the break in due to the repairs not being carried out, so we are seeking compensation for the losses incurred”
4. The Respondent submitted representations to the Tribunal on 21st July 2025 intimating that he intended to participate in the Case Management Discussion and providing information suggesting that any repairs required had been dealt with in a timely manner.

CASE MANAGEMENT DISCUSSION ON 22 AUGUST 2025

5. A Case Management Discussion was assigned to be conducted by teleconference at 10:00am on 22nd August 2025. Neither party participated, nor was either represented.
6. In advance of the Case Management Discussion and following the representations being presented by the Respondent, the Applicant forwarded an email to the tribunal on 4th August 2025 stating: -
“we do not wish to submit any written representations, nor attend the case management discussion. All the evidence submitted previously was appropriate and relevant, we have nothing additional to add at this stage.”
 Thereafter, a further email was received from the Applicant, dated 7th August 2025, in which it was stated
“Unfortunately, as I advised, I am unable to attend the case management hearing due to work commitments”.
7. The Respondent did not participate as the date had been mis-diarised within his office, Mr Gregor Fortune believing it was to be conducted the following Friday.
8. The Tribunal adjourned the Case Management Discussion. In a written note issued by the Tribunal it was stated that at the adjourned Case Management Discussion the Tribunal will require to be addressed in relation to:-
- The terms of **s16(5) of the Housing (Scotland) Act 2006**, having regard to the steps apparently taken by the Respondent to provide

consent, on behalf of the landlord, for arrangements to be made for what appears to be a communal repair,

- The basis upon which it is asserted the Respondent is liable for the criminal actions of an unknown person,
- The issue with the mortice lock, and further information as to any other locks upon the entrance door to the Property.

9. The note issued by the Tribunal also stated the Applicant should not assume the Tribunal will proceed on the basis of the statement within the application that

“the police also noted that the property would have been a target due to the insecure exterior entrance”

and the comment within a subsequent email to the Tribunal in which it is stated

“the police stated the damaged exterior door would have been a factor in the break in”.

CASE MANAGEMENT DISCUSSION ON 30 MARCH 2026

10. The Applicant did not participate in the Case Management Discussion. Previous correspondence to the Tribunal, however, stated she wished the Tribunal to proceed on the basis of her written representations. Mr G Fortune of Gregor Fortune Property Limited attended on behalf of the Respondent. Mr Fortune had previously provided written representations to the Tribunal. The Tribunal, however, requested that he address it orally to provide further information.

Break in at the Property

11. In relation to the break in at the Property, which involved damage to the front entrance door of the flat itself, Mr Fortune disputed that there had been any error or failing on the part of the letting agents. It was explained that his organisation uses a system called FixFlo, which is used by many letting agents, to enable tenants to report faults and to keep track of everything reported and done thereafter. He explained that, on this occasion, the tenant reported the break in, but it was not reported as an emergency. It was reported as a joinery problem. Had it been reported as an emergency it would have received an immediate response. Because it was reported as a joinery problem, however, it did not receive an immediate response. The report made by the Applicant came to the telephone of Mr Fortune, but he was unable to deal with it immediately. He did speak to the Applicant the following morning and arranged for a tradesman to attend to repair the door and make it secure.

Entrance door to the Property

12. Mr Fortune advised that, on the Monday following the report being made, he personally attended at the Property. He attended at 8.30pm for the convenience of the Applicant. It was only at that time he was made aware that

there had been any issue with one of the keys for the mortice lock on the front door of the flat. There were two tenants. Two keys had been issued to the tenants. One of the keys worked well. Mr Fortune accepted that the other key was “temperamental” in that it did not always work. He had a spare key for the Property. He provided that to the Applicant at that time.

13. Mr Fortune advised that the door to the flat had a mortice lock – which was operative although he accepted one of the keys was “temperamental” and a separate yale lock which was in working order.
14. In relation to this particular aspect of the claim, he did not accept any fault. He was not aware of any issue with the key for the mortice lock until after the Property had been broken into and that matter was dealt with swiftly thereafter.

Communal entrance door

15. In relation to the communal entrance door to the flatted Property, Mr Fortune accepted there was an issue which was initially reported to his organisation by one of the other proprietors in the block. There had been common repair matters which required to be attended to previously and one of the proprietors tended to “take the lead”, make the necessary arrangements for any repairs, obtain consent from other proprietors and ingather necessary funds. Mr Fortune advised, and provided documentation to the Tribunal to confirm, that his organisation communicated with the landlord and swiftly obtained consent for the repair work to be authorised and for the proportionate share of the cost to be paid by the letting agents on behalf of the landlord. Thereafter, however, there was a delay in the work actually being undertaken as it was a communal repair and other proprietors within the block – there are 12 properties in total within the block - required to provide consent and make payment of their proportionate share of the cost of the works.
16. The Tribunal noted that, in terms of s16(5) of the Housing (Scotland) Act 2006, a landlord is not considered to be in breach of its repairing duty in the event works are required to common parts and the landlord does not have the necessary consent to proceed with the work. The Respondent, in relation to instructing this particular repair, is acting on behalf of the landlord

Communication with tenants

17. In relation to communication with the Applicant, Mr Fortune accepted that his organisation had not communicated with the Applicant as effectively as it might have and acknowledged the Applicant’s “understandable frustration” at that.

The Code

18. In relation to the various paragraphs of the Code alleged to have been breached, Mr Fortune summarised matters as follows:-

Paragraph 87 – If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents, if that is part of the service) and for giving contractors access to properties for emergency repairs.

- his organisation does have a system in place for dealing with repairs, including emergencies. At the commencement of any tenancy a member of his organisation meets the tenants at the relevant Property and explains that system. In relation to this tenancy, his colleague did that. In relation to a suggestion within the Applicant's submissions that the system had not been explained Mr Fortune disputed that. The Applicant, of course, was not present to provide any further information in that regard.

Paragraph 89 – When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

- the repair to the communal entrance door was approved by the landlord. Any delay in the repair being effected was due to a delay on the part of other proprietors within the tenement block.
- In relation to the repair required to the front door of the Property, this was necessitated by a break in at the Property on 7 February 2025, this was dealt with swiftly.

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

- the repair to the communal door was dealt with but there was a delay. The letting agents "hands were tied by other proprietors" who required to provide consent and payment for the work to be undertaken.
- In relation to the repair required to the door of the flat after the break in, that was dealt with immediately the full circumstances were made known to Mr Fortune.

Paragraph 91 – You must inform the tenant of the action you intend to take on the repair and its likely timescale.

- In relation to the repair to the front door of the flat, that was dealt with swiftly and the Applicant was aware of that.

- in relation to the communal door repair, it was accepted that information in relation to the arrangements for the repair and the timescale had not been shared and that could have been done.

Paragraph 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.

- Mr Fortune accepted that there could have been more effective communication in relation to the repair required to the communal door.
- Mr Fortune pointed out that, following the break into the Property, there was effective communication with the Applicant in relation to both the repair to the front door of the flat and also the communal entrance door.
- He accepted that, in relation to the communal entrance door, his organisation “maybe could have communicated better”.

19. The Tribunal adjourned to consider its decision. Having done so, the Tribunal found there had been a breach of paragraphs 91 and 93 of the Code. The Tribunal did not find there to have been a breach of paragraphs 87, 89 or 90.

REASONS FOR DECISION

20. **Paragraph 87** of the Code states as follows:-

If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents, if that is part of the service) and for giving contractors access to properties for emergency repairs.

21. This paragraph states “***If*** emergency arrangements are part of your service”. There was no information before the Tribunal to enable it to conclude that emergency arrangements were part of any service contract agreed between either the Applicant and the Respondents or the landlord and the Respondents. On that basis alone, the Tribunal was unable to find a breach of this paragraph established. Separately, however, this paragraph merely requires letting agents to have procedures in place for dealing with emergencies. It is clear, whatever the terms of any agreement between the various parties may have been, that there were procedures in place for dealing with emergencies.

22. **Paragraph 89** provides as follows: -

When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

23. Again, this paragraph provides that, when a repair is intimated, the letting agent “must manage the repair in line with your agreement with the landlord...”. The Tribunal had no information before it to enable it to determine the terms of any agreement between the landlord and the Respondent. In any event, the Application to the Tribunal was made by a tenant rather than the landlord. In the circumstances, the Tribunal did not have any information to enable it to conclude that this paragraph of the code had been breached.

24. **Paragraph 90** provides as follows: -

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

25. Again, this paragraph refers to “written procedures”. The Tribunal had no information before it to enable it to determine what written procedures were in place.

26. Separately, however, the information before the Tribunal indicated that, following the break in at the Property on 7 February 2025, the necessary repairs to the front door of the Property were dealt with promptly and appropriately. In relation to the repair to the communal entrance door, those were dealt with but, clearly, not as swiftly as the Applicant would have wished. The Tribunal, however, required to have regard to the terms of s16 of the Housing (Scotland) Act 2006 and, in particular, s16(5). S16 provides as follows (with s16(4) & (5) emphasised):-

16 Exceptions to landlord's repairing duty

(1) The duty imposed by section 14(1) does not require—

(a) any work to be carried out which the tenant is required by the terms of the tenancy to carry out,

(b) any work to be carried out for which the tenant—

(i) is liable by virtue of the tenant's duty to use the house in a proper manner, or

(ii) would be so liable but for any express undertaking on the landlord's part,

(c) the house to be rebuilt or reinstated in the event of destruction or damage by fire or by storm, flood or other inevitable accident, or

(d) the repair or maintenance of anything that the tenant is entitled to remove from the house.

(2) The exception made by subsection (1)(a) applies only if the tenancy concerned is—

(a) for a period of not less than 3 years, and

(b) not determinable at the option of either party within 3 years of the start of the tenancy.

(3) Where the terms of a tenancy are not agreed until after the tenancy starts, the tenancy is, for the purposes of subsection (2), to be treated as starting on the date of agreement.

(4) A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.

(5) For the purpose of subsection (4), in relation to any work intended to be carried out to parts owned in common with other owners but where a majority of the owners has not consented to the intended work, a landlord is to be treated as lacking necessary rights.

27. In the circumstances, no breach of this paragraph could be established.

28. **Paragraph 91** provides as follows: -

You must inform the tenant of the action you intend to take on the repair and its likely timescale.

29. In relation to the damage to the main entrance door of the Property following the break in, this was dealt with promptly and the Applicant was made fully aware of the steps being taken to deal with this.

30. In relation to the repair to the communal entrance door, while this was being dealt with, there was a failure to communicate effectively with the Applicant and, in particular, to advise of the likely timescale of the repair. In that respect, a breach of paragraph 91 of the code was established.

31. Paragraph 93 provides as follows: -

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.

32. Again, in relation to the repair to the communal entrance door, there was a delay in carrying out the repair, that being caused by the need for the consent of and payment from numerous other proprietors within the tenement block. The paragraph, however, requires the letting agent to advise the Applicant of the delay along with the reason for it. There had been a failure to comply with this paragraph in that respect.

Compensation

33. The Application to the Tribunal sought compensation for loss and damage to personal possessions occasioned as a result of the break in to the Property. The Tribunal did not accept that the Respondent had any liability for costs incurred by the Applicant as a result of the criminal actions of an unknown person. Separately, the Tribunal did not have information before it to enable it to conclude that, had the repair to the communal entrance door been carried out earlier, a break in would not have occurred.
34. Having determined that the code had been breached in relation to paragraphs 91 and 93, the Tribunal required to consider the issue of compensation as requested by the Applicant. The Tribunal concluded that the breaches which were established were bordering on de minimis. The breaches established related only to a failure to effectively communicate with the Applicant in relation to repairs which were being arranged for the communal entrance door rather than any failure to either instruct or ensure the repairs were carried out. Appropriate steps had been taken in relation to the arrangements for the repair. The failure to communicate did not, of course, result in any delay in the repair being effected nor did it contribute to the criminal actions of another person.
35. Having regard to all the circumstances, and in particular the limited nature of the breaches established the Tribunal determined that compensation in the sum of £50.00 should be ordered.

DECISION

36. The Tribunal, having found a breach of paragraphs 91 and 93 of the code to be established, requires to make a letting agent enforcement order. Such an order will be made requiring Gregor Fortune Property Limited to make payment to the Applicant in the sum of £50.00.

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.

Virgil Crawford, Legal Member

30 March 2026