

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Decision and Statement of Reasons under Section 48(6) of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/19/2998**

**Flat 1, 8 Riverview Place, Glasgow G5 8EB ("Property")**

**The Parties:-**

**Peter Meyer, residing at the Property**

**("Applicant")**

**Drumwhirn Property Letting Ltd t/a Newton Letting ("Letting Agent")**

**Tribunal Members :**

**Joan Devine – Legal Member**

**David Fotheringham – Ordinary Member**

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Letting Agent has failed to comply with the Letting Agent Code of Conduct as required by section 46 of the Housing (Scotland) Act 2014. In all the circumstances the Tribunal proposes to make a Letting Agent Enforcement Order.

The Tribunal make the following findings in fact:

1. The Applicant is tenant of the Property having taken entry on 21 May 2019.
2. The Letting Agent proposed to carry out an inspection of the Property on 18 September 2019.
3. The Applicant did not consent to the Letting Agent carrying out an inspection of the Property on 18 September 2019.
4. The Applicant changed the locks to the Property on or about 17 September 2019.
5. Had the Applicant not changed the locks to the Property on or about 17 September 2019, the Letting Agent would have taken access to the Property notwithstanding the lack of consent from the Applicant.

6. The Applicant has not consented to the Letting Agent having access to the Property since the proposed inspection on 18 September 2019.
7. The Letting Agent has not taken access to the Property without the consent of the Applicant.

### **Introduction**

1. In this decision the Housing (Scotland) Act 2014 is referred to as "the Act"; the Letting Agent Code of Practice is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules".
2. Following on from the Applicant's application to the Tribunal which comprised documents received on 25 September 2019 ("the Application"), the Convener, with delegated powers under section 18A of the Act, referred the Application to the Tribunal on 9 October 2019. The Tribunal had available to it, and gave consideration to, the Application; written representation from the Letting Agent provided on 21 October 2019; further documents provided by the Applicant on 5 November and 4 December 2019 and the oral submissions made by the Parties at the hearing.

### **Hearing**

3. A hearing took place at the Glasgow Tribunals Centre on 12 December 2019. The Applicant attended on his own behalf. Ricardo Giovanacci attended on behalf of the Letting Agent

### **Basis of the Application**

4. The Applicant complained of non-compliance with the following sections of the Code: section 2 paragraph 16,17,19,20, 23 and 28; section 5 paragraphs 81,82 and 83; section 7 paragraph 111.

### **Summary of Submissions**

5. Mr Giovanacci told the Tribunal that the designation of the Letting Agent was Drumwhirn Property Letting Limited t/a Newton Letting.
6. Mr Meyer told the Tribunal:
  - he had taken entry to the Property on 21 May 2019.
  - in September 2019 he received a text from the Letting Agent saying that the Letting Agent would inspect the Property on 18 September 2019. The text said that if Mr Meyer was not in the Property the Letting Agent would use their keys to take entry.

- Mr Meyer said that the Landlord had been in the Property approximately 5 days before that with her daughter and an engineer. They had inspected every room.
- he was going on holiday to Holland on 18 September 2019. He did not wish the Letting Agent to access the Property while he was on holiday. He therefore changed the locks on 17 September 2019.
- he believed that the Letting Agent had attempted to take entry on 18 September 2019 and was unable to gain access.
- he received an email from the Letting Agent on 19 September asking for access to the Property. He replied refusing access.
- he has expensive equipment in the Property. He also has confidential court information such as transcripts. He did not want strangers accessing the Property.
- he did allow the landlord to enter the Property without him being in attendance prior to 18 September 2019. He referred the Tribunal to the print of text exchanges which he had lodged with the Tribunal. He said that he had produced the texts to show that he had a good relationship with the landlord and would allow access when he was not there.
- as regards the remedy sought Mr Meyer said that he was seeking compensation for the cost incurred by him of changing the locks. He also said that he had suffered stress and worry. He said that he continued to feel anxious and nauseous about being in the Property.

7. Mr Giovanacci told the Tribunal:

- a photographic inventory of the Property was prepared at the beginning of the tenancy.
- two inspections were carried out each year for all properties under the charge of the Letting Agent.
- the dates of the inspections are set out in the tenancy pack given to tenants at the commencement of their tenancy.
- text reminders are issued to tenants shortly before the date of the inspection.
- as regards the Property, an inspection was set for 18 September 2019. This date was set at the outset of the tenancy. The purpose of the inspection was to check over the Property. A photographic record would be taken of any damaged areas.
- the need for these inspections would have been discussed by the property manager, Charlene Adams, with Mr Meyer.

- after the text had been issued to Mr Meyer in September 2019 reminding of the date of the inspection he received an email from Mr Meyer saying that the date was not suitable.
  - he telephoned Mr Meyer and asked if the date could be re-arranged. In the course of the telephone conversation he explained why it was necessary to carry out inspections.
  - on 18 September 2019 his staff attended at the Property to carry out the inspection but were unable to gain access. He assumed that the locks had been changed.
  - the Letting Agent's general policy was that they would take access to a tenant's property even if access had been refused.
  - he contacted Mr Meyer on 15 October 2019 and asked to re-schedule the inspection. That request was refused.
  - the tenant information pack given to Mr Meyer would have included the dates of the inspections. He said that the Letting Agent carried out around 300 inspections per year of their properties. Charlene Adams dealt with this particular tenancy. It was extremely unlikely that she would have missed giving the tenant information pack to Mr Meyer.
  - he was concerned that Mr Meyer's attitude towards him was racially motivated. He made reference to the email from Mr Meyer to Mr Giovanacci dated 17 September 2019 timed at 2.29pm.
8. The Tribunal asked Mr Giovanacci to explain the wording of the texts that had been issued to Mr Meyer. He told the Tribunal that the texts would have said that the inspection would be carried out and there was no need for the tenant to be in attendance as the Letting Agent could gain access using their office keys. Mr Giovanacci told the Tribunal that if he received no reply to a text of that nature then the Letting Agent would take access to the Property.
9. The Tribunal asked Mr Meyer if he recalled receiving the tenant information pack which contained the notification of the dates for inspections. He said that he had no recollection of receiving the information pack with the dates.
10. Mr Meyer said that he had a number of questions for Mr Giovanacci. He proceeded to put those questions to Mr Giovanacci. In so far as they are relevant to a breach of the Code, the questions and answers are summarised as follows:
- Rule 17 – Mr Meyer said that it was his view that Mr Giovanacci continually saying that he could access the Property was not open and honest.

- Rule 20 – Mr Meyer asked Mr Giovanacci if it was reasonable to carry out an inspection when the landlord had been in only 5 days earlier and the tenant would be on holiday. Mr Giovanacci said that the landlord had asked him to carry out the inspection and he thought it was reasonable to do so. He said that the Letting Agent's procedure was to carry out two inspections each year.
  - Rule 23 – Mr Meyer asked Mr Giovanacci if Charlene Adams was aware of the Code. Mr Giovanacci said that he believed that she had done her job to the best of her ability.
  - Rule 28 – Mr Meyer asked Mr Giovanacci if he believed that the Letting Agent had been compliant. Mr Giovanacci said yes. He said that the only abusive communication was the racially abusive email received by Mr Giovanacci from Mr Meyer.
  - Rule 81 – Mr Meyer referred to an email dated 17 September 2019 which referred to "Michael" entering the Property. He asked if Michael was duly authorised. Mr Giovanacci said that he was authorised by the Letting Agent.
  - Rule 82 – Mr Meyer made reference to the final sentence of the Rule which notes that the Letting Agent must ensure that the tenant is present when the Letting Agent enters the Property. Mr Giovanacci noted that he did not actually access the Property when Mr Meyer was not present so the Rule had not been broken.
  - Rule 111 – Mr Meyer said that Mr Giovanacci repeatedly threatened to enter the Property although Mr Meyer would be away on holiday. He asked Mr Giovanacci if he regarded that as abusive. Mr Giovanacci said that he did not. He said it was Mr Meyer who had made racial comments. Mr Meyer said that the comments referred to as being racial were made as a joke.
11. At the conclusion of oral submissions Mr Giovanacci asked Mr Meyer if he would be willing to allow an inspection to be carried out by Mr Giovanacci or another member of the Letting Agent staff. Mr Meyer said no. Mr Giovanacci asked Mr Meyer if he would be willing to provide a copy of the key since the lock had been changed. Mr Meyer said no.

### **The Code**

12. The Applicant complained of non-compliance with the following sections of the Code : section 2 paragraph 16,17,19, 20, 23 and 28; section 5 paragraphs 81,82 and 83; section 7 paragraph 111.They provide as follows:

#### **Section 2**

16 – You must conduct your business in a way that complies with all relevant legislation.

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

19 – You must not provide information that is deliberately or negligently misleading or false.

20 – You must apply your policies and procedures consistently and reasonably.

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

28 – You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.

#### Section 5

81 – You must take reasonable steps to ensure keys are only given to suitably authorised people.

82 - You must give the tenant reasonable notice of your intention to visit the property and the reason for this. At least 24 hours' notice must be given or 48 hours' notice where the tenancy is a private residential tenancy, unless the situation is urgent or you consider that giving such notice would defeat the object of the entry. You must ensure the Tenant is present when entering the property and visit at reasonable times of the day unless otherwise agreed with the Tenant.

83 - If the Tenant refuses access, you, the landlord or any third party have no right to enter the property using the keys without a Warrant.

#### Section 7

111 – You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.

#### **Remedy Sought**

13. The Applicant sought compensation. He said that he had suffered stress and worry. He sought to recover the cost of £95 incurred by him to change the locks.

#### **Tribunal Findings and Reasons for Decision**

14. Having considered all of the information placed before it, the Tribunal determined that the issues complained of did constitute a breach of the Code. The Tribunal determined that there had been a breach of Rule 17 in that it

was not fair to insist on carrying out an inspection in the absence of a tenant and without their consent. The Tribunal determined that there had been a breach of Rule 20 in that it was not reasonable to access a property without the consent of the tenant. It was apparent to the Tribunal that it was the Letting Agent's usual procedure to take access to properties in the absence of a tenant and without their consent. This suggested to the Tribunal that all members of staff at the Letting Agent were not aware of and compliant with the Code. The Tribunal therefore determined that there had been a breach of Rule 23. The Tribunal determined that the Letting Agent insisting on carrying out an inspection in the absence of the Applicant and without his consent was a breach of Rule 28 and 111 of the Code in that it could be construed as intimidating. The Tribunal determined that there had been no breach of Rules 16, 19, 81, 82 and 83 of the Code.

#### **Letting Agent Enforcement Order**

15. The Tribunal makes a letting agent enforcement order in terms of the document annexed.

#### **Appeals**

16. 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

Joan Devine, Legal Member

7 January 2020  
Date

