

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION:

Housing (Scotland) Act 2014, Section 50(1)
First-tier Tribunal Housing and Property Chamber (Rules of Procedure)
Regulations 2017 ("the 2017 Rules"), Rule 95
The Letting Agent Code of Practice ("the Code of Practice")

Chamber Ref: FTS/HPC/LA/18/0746

The House at 12B West Kirk Street, Airdrie
("The Property")

The Parties:-

Mr Derek Ivimy, Broomlea Cottage, Heath Lane, Albury Heath, GU5 9DD
("the Applicant")

Letting Airdrie Limited trading as Location, Company number SC507545, 4d
Auchingramont Road, Hamilton, ML3 6JT
("the Letting Agent")

Letting Agent Registration Number: None

Tribunal Members:
Gillian Buchanan (Legal Member and Chair)
Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having reviewed whether the Letting Agent has complied with the Letting Agent Enforcement Order ("LAEO") in relation to the Property in terms of Section 50(1) of the Housing (Scotland) Act 2014 ("the 2014 Act") determined that (i) the Letting Agent has failed to comply with the LAEO, (ii) that notification of the failure to comply with the LAEO should be given to the Scottish Ministers in terms of Section 50(2) of the 2014 Act, and (iii) the matter should be reported to the Police for consideration for prosecution under Section 51(1) of the 2014 Act.

Background

1. By a determination dated 18 September 2018 the tribunal determined that the Letting Agent had failed to comply with the Code of Practice, namely –
 - Section 2, paragraph 26, 32(o) and 32(p);

- Section 7, paragraph 108; and
- Section 8, paragraphs 120, 124, 126 and 132.

The steps required by the LAEO were: -

To pay to the Applicant the amount of £793.47, as compensation for the loss suffered by the Applicant as a result of the failures to comply with the Code of Practice, that sum comprising:-

- £584.88 being client monies held by the Letting Agent and due to the Applicant; and
- £208.59 in respect of the delay, worry and inconvenience suffered by the Applicant.

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

- Following expiry of the period for the Letting Agent to comply with the LAEO, the tribunal reviewed whether the Letting Agent had complied with the LAEO.

By email dated 5 November 2018 the Applicant advised the tribunal that the Letting Agent had failed to comply with the LAEO and had been struck off the Register of Companies. The tribunal noted that the Letting Agent had been struck off the Register of Companies and dissolved on 6 November 2018.

The Letting Agent did not respond to the tribunal's enquiries as to compliance with the LAEO.

The tribunal determined that the Letting Agent has failed to comply with the LAEO.

- The tribunal considered what steps to take. In terms of Section 50(1) of the 2014 Act following the expiry of the period for compliance with the LAEO, the tribunal requires to review whether the Letting Agent has complied with an LAEO. In terms of Section 50(2), where the tribunal determines that a Letting Agent has failed to comply with an LAEO, the tribunal must serve notice of the failure on the Scottish Ministers.
- The tribunal has no explanation from the Letting Agent as to why the steps required in terms of the LAEO had not been complied with. The Letting Agent has not shown any indication of complying with the LAEO despite having had considerable opportunity to do so. The tribunal, after discussion, accepted that it was clear that the Letting Agent had failed to comply with the LAEO. Accordingly the tribunal is obliged to service notice of the failure on the Scottish Ministers and resolved to do so.
- The tribunal also considered the terms of Section 51 of the 2014 Act. Sub-section (1) specifies that a Letting Agent who, without reasonable excuse, fails to comply with an LAEO commits an offence. The Letting Agent has offered no excuse as to its failure to comply with the LAEO. Accordingly, in the circumstances, the tribunal is of the view

that an offence has been committed and therefore resolved to report the matter to the Police for consideration for prosecution.

Decision

6. The tribunal determined that in terms of the Act the Letting Agent has failed to comply with the LAEO. The tribunal determined to give notice of the failure to comply with the LAEO to the Scottish Ministers and to report the matter to the Police for consideration for prosecution.
7. The decision of the tribunal was unanimous.

Right of Appeal

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

Effect of section 63

9. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or

Gillian Buchanan

Signed

Date 15 November 2018

Legal Member & Chairperson