

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Housing (Scotland) Act 2014 Section 48 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26

Chamber Ref: FTS/HPC/LA/18/0719

The Parties:-

Mr Lukasz Kaszubowski, residing at 13/14 Lower Granton Road, Edinburgh, EH5 3RU (“the Applicant”)

Albany Lettings Limited, incorporated in Scotland under the Companies Act (registered number SC291569), 168 Bruntsfield Place, Edinburgh, EH10 4ER (“the Letting Agent and Respondent”)

Tribunal Members:-

Patricia Anne Pryce	-	Chairing and Legal Member
Elaine Munroe	-	Ordinary Member (Housing)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having made such enquiries as it saw fit for the purposes of determining whether the Letting Agent has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that, in relation to the present Application, the Letting Agent has not complied with the Code of Practice and determined to issue a Letting Agent Enforcement Order (“LAEO”).

The tribunal makes the following findings in fact:

- The Applicant was the tenant of the property as noted above from 23 August 2017 until 31 May 2018.
- The Applicant was the joint tenant of the property along with Miss Paulina Stefanska.

- The property was let to the Applicant and Miss Stefanska on behalf of the owner of the property by the Respondent who acted in its capacity as a Letting Agent.
- The property is located on the third and top floor of a blond sandstone tenement.
- The property is a one bedroomed flat consisting of a kitchen, living room and bathroom.
- The Applicant paid rent of £495 per calendar month by way of rent for the property.
- The Velux window located in the bedroom of the property remained in a state of disrepair throughout the duration of the Applicant's tenancy of the property and was not replaced until June 2018.
- The Velux window caused cold draughts and excessive noise in the bedroom of the property during the duration of the Applicant's tenancy of the property.
- The Applicant incurred higher heating costs as a result of the prolonged state of disrepair of the property.

The tribunal makes the following finding in law:

- The Respondent is a relevant letting agent to whom the Code applies from 31 January 2018.

Following on from the Applicant's application to the First-tier Tribunal (Housing and Property Chamber), which comprised documents received on/between 26 March and 26 April, both 2018, the Legal Member with delegated powers of the Chamber President referred the application to a tribunal on 2 May 2018.

Introduction

The tribunal had available to it and gave consideration to: the Application by the Applicant as referred to above; representations submitted by the Letting Agent and oral submissions made by both parties at the hearing.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 19, 21, 23, 26, 27, 46, 68, 69, 71, 84, 90, 91, 108, 112 and 113 of the Code which are referred to for their terms.

Hearing

A hearing took place in George House, 126 George Street, Edinburgh on 8 August 2018.

The Applicant attended on his own behalf. Miss Paulina Stefanska also attended as a witness.

The Respondent was represented by Mr Tom Ferrington and Mr Jamie More, who are respectively employed as the General Manager and the Property Manager of the Respondent.

Preliminary Issues:-

The Respondent confirmed that there was no objection to Miss Stefanska remaining in the room and providing evidence during the conduct of the hearing.

Section 19

The Applicant submitted that the Respondent knew that the Velux window located in the bedroom of the property was not working properly before he moved into the flat but that the Respondent had failed to tell him about the issue with the window. In short, the Respondent had misled the tenants as the true condition of the window had not been revealed to the tenants before they moved in.

Mr. More for the Respondent replied that he had conducted an inspection of the property before the Applicant had moved in and had noted that there was an issue with the Velux window. He had instructed the contractor, Raymond, to attend at the property and fix the window. Mr. More submitted that the contractor had attended at the property. The contractor did not advise that he had been unable to fix the window. Mr More had not carried out a further inspection of the property after the contractor had attended at the property and had therefore assumed that the property had been fixed.

The tribunal noted that the complaint in this instance arose from events in August 2017. The Code did not come into force until 31 January 2018. In any event, the tribunal noted that the Respondent had a reasonably held belief that its contractor had carried out the instructed repair to the window.

Given this, the tribunal finds that the Respondent had not failed to comply with Section 19 of the Code.

Section 21

The Applicant referred to his application and submitted that the Respondent had failed to communicate in a timely way about a number of issues. The Applicant referred to his initial complaint about the Velux window. He had made this in August 2017 and required to phone the Respondent three times to get this resolved. In the meantime, he and Miss Stefanska had to endure a window that was not wind tight. The wind whistled and created cold draughts. In addition to the cold and noise of the wind, they had also suffered interrupted sleep due to the noise from outside. They

endured this suffering for the whole of their tenancy, impacting hugely on their ability to enjoy the property.

It was a matter of agreement between the parties that the window remained in a state of disrepair until the end of the tenancy. The window was not replaced until June 2018.

The Applicant complained that the Respondent had not provided him with an update about the window and when it would be fixed. The last update he had received was an email on 19 March 2018. He did not receive a further update thereafter.

Mr Ferrington confirmed that he had not provided the Applicant with a further update. He explained that he had done this deliberately as he felt it would be galling after all that the Applicant had required to go through for the Applicant to hear that the window was going to be replaced when the Applicant had already arranged to leave the property.

Mr Ferrington queried whether this amounted to a failure to comply with Section 21. He opined that the Respondent had used "reasonable care and skill in a timely way". He referred to the written representations of the Respondent which demonstrated the difficulties which the Respondent had encountered in trying to obtain a replacement Velux window. He advised that it had taken around four weeks after ordering for the window to arrive. The first contractor proceeded to attend the property in March 2018 only to discover that scaffolding would be required in order to install the new window. This caused a further delay.

Mr More accepted that he had not been proactive enough in reporting back to the Applicant the difficulties which the Respondent was encountering in sourcing and fitting the replacement window. He accepted that the Applicant required to send reminder emails to prompt updates from the Respondent.

The tribunal noted that most of the events complained about arose prior to the 31 January 2018 and therefore prior to the commencement of the Code. However, the tribunal noted that the Respondent failed to communicate and provide an update to the Applicant about the window from 19 March 2018 until the end of the tenancy on 31 May 2018. To that end, the tribunal noted that the Respondent had failed to exercise reasonable care and skill when carrying out its services.

Given the foregoing, the tribunal finds that the Respondent failed to comply with this section of the Code.

Section 23

The Applicant referred to the terms of his application and further submitted that the Respondent breached this part of the Code by allowing a contractor to attend at the property in August/September 2017 without being accompanied by an employee of the Respondent. The Applicant complained that arrangements had been made during a phone call with Mr More. The Applicant thought that Mr More was going to attend the property with the contractor. The Applicant and Miss Stefanska were

concerned that the contractor appeared to have accessed rooms in the property for no reason.

Mr More explained that his understanding of the phone call was that he had to ensure that there were keys available for the contractor to gain entry to the property. At no point had he agreed to attend the property with the contractor. However, he accepted that there may have been a misunderstanding and that, in future, it would be good practice to confirm in writing (whether by text, email or letter) the arrangements for access to properties to avoid such misunderstandings.

The tribunal notes that the events complained of took place before 31 January 2018 when the Code was not in force.

Given this, the tribunal finds that the Respondent did not fail to comply with Section 23 of the Code.

Section 26

The Applicant relied on the initial complaints he had made to the Respondent in September 2017 to establish this breach of the Code. Miss Stefanska specifically referred to the complaint the Applicant had made by email on 1 September 2017. The Respondent had taken 15 days to acknowledge this email. She submitted that this was far too long. A reminder was also sent on 12 September 2017.

Mr More agreed that this delay was too long.

The tribunal notes that the events complained about to establish this failure to comply occurred in September 2017 and prior to the commencement of the Code.

Given this above, the tribunal finds that the Respondent did not fail to comply with Section 26 of the Code.

Section 27

The Applicant submitted that he relied on the same facts to establish this breach as he had for the breach of Section 19 of the Code.

The Respondent relied on the same representations in response to this.

The tribunal notes that the Applicant relied on events which had occurred in advance of the commencement of the Code.

Given this, the tribunal finds that the Respondent did not fail to comply with Section 27 of the Code.

Section 46

The Applicant submitted that he relied on the same facts to establish this breach as he had for the breach of Section 19 of the Code.

The Respondent relied on the same representations in response to this.

The tribunal notes that the Applicant relied on events which had occurred in advance of the commencement of the Code.

Given this, the tribunal finds that the Respondent had not failed to comply with Section 46 of the Code.

Sections 68, 69 and 71

The Applicant helpfully conceded that he was not insisting on these breaches as the circumstances upon which he had intended to rely all arose prior to the commencement of the Code.

Given this, the tribunal finds that the Respondent had no failed to comply with Sections 68, 69 and 71 of the Code.

Section 84

The Applicant sought to rely on the attendance of the contractor unaccompanied at the property in August/September 2017 as a result of the misunderstanding which arose from the phone call he had with Mr More about access.

The tribunal noted that these events took place in advance of the Code coming in to force.

Given this, the tribunal finds that the Respondent had not failed to comply with Section 84 of the Code.

Section 90

The Applicant relied on the three phone calls it took for him during the first week of his tenancy of the property in August 2017 to get the contractor to attend and close the Velux window.

Mr More opined that the turnaround time of a week was not excessive but that it could have been quicker.

However, once again, the tribunal notes that the circumstances with which the Applicant sought to establish this breach took place in August and September 2017 in advance the commencement of the Code.

Given this, the tribunal finds that the Respondent had not failed to comply with Section 90 of the Code.

Section 91

The Applicant referred to the period of two and a half months at the end of his tenancy of the property wherein the Respondent did not provide him with an update about the replacement of the Velux window.

Mr Ferrington had previously accepted that he had not provided an update to the Applicant during this period. However, he submitted that this did not amount to a breach of Section 91. He considered that he had discretion as to whether or not he provided such an update.

The tribunal notes that Section 91 states that “You **must** (*sic*) inform the tenant of the action you intend to take on the repair and its likely timescale”. The tribunal considers that the wording of this Section of the Code did not afford the Respondent any such discretion.

Given this, the tribunal finds that the Respondent had failed to comply with Section 91 of the Code (although it notes that the same facts which established this failure to comply also established the failure to comply with Section 21 of the Code as noted above).

Section 108

The Applicant sought to rely on the initial complaint about the window he made in 2017 along with the failure of the Respondent to have a mattress removed from the property in a timeous fashion. The Applicant submitted that he had required to purchase a new mattress on 2 January 2018 as the previous one which had been provided by the Landlord was of poor quality. He stated that the Respondent had taken so long to arrange for the removal of the old mattress that he had to arrange this himself with the local council. However, the Applicant could not say if this had occurred on or after 31 January 2018.

Mr More submitted that he had arranged and paid for the removal of the mattress but that this had not been actioned by the council. He accepted that it had taken longer than he had hoped. However, he had proactively arranged for the Landlord to pay for the cost of a replacement mattress despite the fact the Applicant had purchased this without the prior consent of the Landlord.

The Applicant accepted this.

The tribunal notes that the Applicant could not state when these events occurred and if they had happened after the commencement of the Code.

Given this, the tribunal finds that the Respondent did not fail to comply with Section 108 of the Code.

Sections 112 and 113

The Applicant accepted that the Code was not in force when he entered into the tenancy and the business relationship he had with the Respondent. The Applicant also accepted that he had provided to the tribunal a copy of the Respondent's complaints procedure.

The tribunal notes that the Applicant in effect conceded that he no longer wished to rely on establishing these two alleged breaches.

Given this, the tribunal finds that the Respondent did not fail to comply with Sections 112 and 113 of the Code.

Compensation

The tribunal invited parties to address it on the issue of compensation which the Applicant sought.

The Applicant and Miss Stefanska submitted that they had to endure a long and very hard winter with a window in their bedroom which was not wind tight and which caused their bedroom to be so cold they had required to remove their mattress to the living room in order to try and sleep. They had required to move furniture from the living room into the bedroom to make room for the mattress. The draughts from the window had affected the whole property. The Respondent had not offered them alternative solutions pending the replacement of the window. The Respondent had not offered them an alternative property nor had an offer of reduction in rent been offered. The Applicant and Miss Stefanska had been too scared to leave the property early in case they had incurred financial penalties. They had paid £495 every month for rent. They had incurred large heating bills as a result of the draughts from the window. In addition, they had suffered through lack of sleep and comfort. The Applicant considered that £3,000 was appropriate in terms of compensation.

Mr Ferrington accepted that the Applicant had suffered during his tenancy in the property. His view was that, if the tribunal found that breaches of the Code to be established, then £1,000 would be an appropriate figure for compensation. The Applicant had had use of the property throughout the period.

The tribunal considered these submissions in respect of compensation and in light of Section 48 of the 2014 Act. The tribunal noted that the situation with the window had lasted for the whole duration of the Applicant's tenancy of the property. The tribunal accepted that the Applicant had incurred far higher heating costs than if the window had been in a reasonable state of repair and in proper working order. This had not been disputed by the Respondent. The tribunal also accepted that the Applicant and Miss Stefanska had endured a level of discomfort and disturbed sleep, matters which were not challenged by the Respondent. However, the tribunal notes that the Respondent did attempt to resolve this issue, albeit there were delays and a lack of communication on the part of the Respondent.

In light of the foregoing, the tribunal finds that the sum of £2,000 is an appropriate sum by way of compensation.

In light of its findings, the tribunal requires the Letting Agent to:-

Within 28 days of the date of communication to the Respondent of the property factor enforcement order, the Respondent must:-

1. Pay to the Applicant the sum of £2,000.
2. Provide documentary evidence to the tribunal of the Respondent's compliance with the above Letting Agent Enforcement Order by sending such evidence to the office of the First-tier Tribunal (Housing and Property Chamber) by recorded delivery post.

The Respondent should note that failure to comply with an LAEO may constitute a criminal offence.

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.

P Pryce

Legal Member and Chair

8 August 2018

.....

Date