

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 ("the Procedure Rules") Rule 95

Chamber Ref: FTS/HPC/LA/19/0180

Re: Property at 40 Lachlan Crescent, Erskine, PA8 6HJ ("the Property")

Parties:

Executor of the Late Carol Osborne, Mrs Thomasina Osborne, Flat 6, 8 Arran Place, Clydebank, G81 2PT ("the Applicant")

Vanilla Square, 711 Great Western Road, Botanics, Glasgow, G12 8QX ("the Respondents")

Tribunal Members: Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision: (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Letting Agent has failed to comply with paragraphs 19, 32, 40, 107, 108, 112, 113, 119, 123, 124 and 125 of the Letting Agent Code of Practice under Section 46 of the Housing (Scotland) Act 2014.

Background

1. On 16 January 2019 the Applicant lodged an application with the Tribunal seeking to enforce the Letting Agent Code of Practice against Vanilla Square, Letting Agents, 711 Great Western Road, Botanics, Glasgow, G12 8QX.
2. In her application the Applicant alleged breaches of paragraphs 19, 32, 40, 77, 78, 107, 108, 112, 113, 119, 123, 124 and 125 of the Letting Agent Code of Practice.
3. She alleged that she had suffered loss of one month's rent for the period 20 November 2018 until 19 December 2018. She also alleged that the tenant deposit which had been paid to the Respondent by the tenant had not been refunded to the tenant after the end of tenancy. She submitted that the

Applicant and the tenant now had a private residential tenancy agreement from 20 December 2018.

4. She therefore sought,
 1. Deposit to be refunded or made available to deposit; and
 2. One month's rent to be paid to the Applicant.
5. The Applicant had provided with her application copies of her notifying the Respondent of the failure to comply, evidence of email service of her notification, and various correspondence and emails including a copy of the her late daughter's Will.
6. On 25 March 2019 the Tribunal made an information request to parties, seeking from the Applicant a copy of bank statements showing to tending to show rental payments made; a copy of any contract with the letting agents; a copy of the tenancy agreement; and any relevant written correspondence from the letting agents in relation to the deposit or rental payments; and from the Respondent copies of their procedures in relation to holding deposits; rent handling; handling client money; and complaints procedures.
7. By letter of 3 April 2019 the Applicant confirmed that she had never recieved a contract from the Respondents; she had never received a copy of the tenancy agreement; she had never received any correspondence in relation to the deposit paid by the tenant; and she submitted bank statements in relation to the property managed by Vanilla Square.
8. The Respondents failed to lodge any of the documents requested. They also did not submit any written representations.

Hearing

9. The Applicant appeared by herself. There was no appearance from the Respondents and they were not represented.
10. The Applicant advised that she appeared as the Executor for her late daughter's estate, she rented out the property as requested by her late daughter and the rental funds are placed into an account for the benefit of her late daughter's children, who are the beneficiaries. Her daughter had requested that she rent out the property before she had passed away for the benefit of her children. She had therefore duly discharged her daughter's wishes.
11. She advised that she had contacted Vanilla Square in around February 2017 and arranged for them to act as her letting agents. Reference was made to two emails dated 7 and 17 February 2017 which would appear to constitute "terms of business" between the parties.

12. She advised that to begin with there appeared to be no problems with the Respondents; the rent money was paid into her grandchildren's bank account on the 20th of each month. However, after a while the rent was not being paid into the account on a regular basis, and she found that she had to spend a great deal of time chasing the Respondents up with phone calls and emails, and then going to her bank to see if the money had been lodged in the account. She felt at one point that she was on "speed dial" to the Respondents. She advised that the office staff that she spoke to would tell her that they would need to speak to the managing director and they could not authorise payment. She said it was time consuming to have to chase up the rent. She advised that she did believe that all rent had been paid, except for the final rental payment which had been paid for the month 20 November 2018 until 19 December 2018, and which has never been paid into her grandchildren's bank account
13. She advised that she had never received a copy of the tenancy agreement or any other contractual documentation, and while she presumed that rent was to be paid on the 20th of month, she does not know what the tenant agreement stipulated as to when rent should be paid.
14. In November 2018 she decided that she had had enough of the Respondents and their poor service. She therefore contacted the tenant to advise her that she was no longer using the Respondents as her letting agents. She asked the tenant to deal direct with her in the future. The tenant had contacted the Applicant and agreed that she would do so. The tenant advised however that she had made the rental payment to the Respondents for the November to December rent.
15. The Applicant advised that she contacted Vanilla Square around this time to advice that she was dissatisfied with them. She had had to contact them frequently for the October rent and she had indicated in one email that she would need to go elsewhere for a letting agent.
16. She advised that she had had no response from the managing director to her complaints about her general dissatisfaction and also, in relation to the outstanding rent.
17. The tenant then tried to get her tenancy deposit back from the Respondents and they advised her that this was the landlord's responsibility. The Applicant advised that this was the first she had heard about any deposit being taken from the tenant. The Respondents had not provided her with any information about this. She advised that the tenant then sought assistance from the Citizens Advice Bureau and she eventually had her deposit returned by the Respondents, however it had taken quite a while. She also advised that the tenant had told her that the deposit had not been put into a tenancy deposit scheme.
18. She confirmed that she was no longer seeking an order regarding repayment of the tenancy deposit.

19. She submitted that she did not consider that the Respondents had done anything to earn the management fee and she therefore wanted an order to be made for the final full rental payment due with no deductions.
20. She advised that her dealings with the Respondents had been stressful for her, she was 79 years old; she had had to deal with the loss of her daughter; and care for and support her grandchildren who now lived with her; she had wanted the Respondents to manage the rental of the property for her with no fuss, however the time and effort that she had to put into chasing them up to ensure that the rental was paid was stressful and very time consuming. She said she had been more concerned about the money as it was in fact her grandchildren's money.
21. She said that she was never directed to any complaints procedures when she raised concerns. She was not advised that rental money was being paid late, or when she could expect to see the rental payments after it had been received by the Respondents.
22. Monies had been deducted from the rent for safety checks, Pat testing, electrical checks and smoke alarms, she advised that she did not receive any documents about these matters; she also did not receive any verbal advice as to what had happened in the testing and installation of these items.
23. The Tribunal found the Applicant, Mrs Thomasina Osborne to be a credible and reliable witness and accepted her evidence in full.

Statement of Reasons

24. It appears clear that the Respondents were acting in its capacity as the Applicant's letting agent in the period after January 2018 and therefore the Letting Agent Code of Practice applies to the Respondents in this matter, as it came into force with effect from 31 January 2018.
25. The Tribunal considers that the Respondents are in breach of the following paragraphs:-
26. With regard to paragraph 19 we consider that they did provide information which was deliberately or negligently misleading or false. Emails were sent to the Applicant indicating that payment of rent had been authorised for payment, however payments were not thereafter received until the Applicant had chased these up with the Respondents. In addition the tenant appeared to have been told that it was the landlord's responsibility to repay the tenancy deposit, even though the Applicant had never been advised anything about the deposit which had been taken from the tenant and held by the Respondents.
27. With regard to paragraph 32, this paragraph relates to a terms of business letter, while a formal terms of business letter does not appear to have been provided to the Applicant, we think that the emails sent to her on 7 and 17 February 2017 would constitute a terms of business of sorts. Paragraph 32

provides that a terms of business requires that *"if a tenancy deposit is to be taken, we will lodge the deposit with one of the approved schemes"*, as the tribunal consider that the two emails constitute the "terms of business" and further, as we consider that the tenancy deposit should have been lodged with an approved scheme even if late, then therefore this paragraph has been breached once the regulations came into force in January 2018. The obligation to lodge the deposit does not appear to ever have been discharged during the course of the tenancy when the Respondents acted as the letting agents and further, the Applicant did not receive any notification about it.

28. With regard to the paragraph 40, the Applicant advised that she was never made aware of the Respondent's registration number and we consider that they have therefore breached the terms of this paragraph, as it does not appear that they took all reasonable steps to ensure that the registration number was included in all property communications.
29. We do not know if paragraph 77 was breached as this relates to providing tenants with rent statements on request. We have not therefore found a breach of this paragraph.
30. We also do not know if there is breach of paragraph 78 as it is not clear if the rent was not paid timeously, we note that the Applicant advised that she was not informed that rent had been paid late by the tenant. We have not therefore found a breach of this paragraph.
31. Paragraphs 107 and 108 relate to communication and from the evidence provided by the Applicant we have found that the Respondents have breached those paragraphs. It appears to us that the requirement to respond quickly and as fully as possible was not complied with by the Respondents. The Applicant advising that she had to continually chase them up to get rental paid and further, that she has had no response at all to the final months' rent which is still due and outstanding.
32. Paragraphs 112 and 113 relate to complaints resolution again we have found the Respondents to be in breach of these paragraphs, it is clear that the Applicant was not provided with any written complaints procedure, and further it also appears that she was not provided with any verbal advice as to how her complaint would be dealt with.
33. We consider that the Respondents have breached paragraphs 119 and 123 (keeping adequate records and accounts; and regularly recording and monitoring all transactions and reconciling these monthly as a minimum). We note that the Statement of Account as at 5/7/2017 shows a sum deducted of £444.00 for paramount electrical remedial works, the Applicant advised however that she has no knowledge as to what these works were for. Given that she received no other information from the Respondents other than the documents which she lodged; and as the Respondent has failed to provide any evidence to support their acting's; then we consider that their duties under these paragraphs have been breached.

34. We have found that paragraphs 124 and 125 have been breached in relation to the failure to pay rent timeously; the failure to pay the last month's rent to the Landlord; and the delay in repaying the tenancy deposit.

Decision

35. The Tribunal determined that the Respondents have failed to comply with paragraphs 19, 32, 40, 107, 108, 112, 113, 119, 123, 124 and 125 of the Letting Agent Code of Practice and will make a letting agent enforcement order requiring the Respondents to:-

1. To pay the Applicant the sum of £795.00 in respect of rent owed to the landlord;
2. To pay to the Applicant the sum of £444.00 in respect of a deduction from the rental account for works which the Applicant did not agree to or know about; and
3. To pay to the Applicant the sum of £895.00 in compensation for the loss suffered as a result of the said failures.

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.

M Barbour

Melanie Barbour Legal Member

24. 4. 19

Date