



**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**

Chamber Ref: FTS/HPC/LA/19/0948

Parties:

Mr Jose Manuel Gomez Gonzalez, 13 Hoggan Way, Loanhead, EH20 9DG (“the Applicant”)

Belvoir Edinburgh, 28-28A Dundas Street, Edinburgh, EH3 6JN (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with paragraphs 90,91,93 and 112 of the Letting Agent Code of Practice.

Background and Preliminary Matters

On 20 March 2019 the Applicant lodged an Application with the Tribunal seeking a determination on whether the Respondent had failed to comply with the Letting Agent Code of Practice (the Code).

In the Application, the Applicant alleged that the Respondent had failed to comply with paragraphs 89,90,91,93, 94,112 and 113 of the Code.

The Applicant complained that he had suffered economic loss as full rent had been paid for the rental of the property in which the Respondent was the letting agent, which for a period had no useable main shower, an unsafe balcony and what he described as an unsafe mouldy ensuite bathroom. He indicated in the Application that he was of the view that the total rent should be returned as he said the flat was not compliant with the Repairing Standard in Scotland. He indicated that this had been the situation since April 2017. In the Letting Agent Notification letter and at the

Hearing he confirmed that he was seeking compensation, and stated at the Hearing that due to the failure to carry out repairs he felt that he had paid rent for a flat which was not in the condition it ought to have been in as certain amenities could not be used or were unsafe, and his claim for compensation was a request for refund of all of the total rent paid.

Prior to raising the Application it was not disputed that the Applicant had served a Letting Agent Code of Practice Notification letter on the Respondent. This letter referred only to alleged breaches of paragraphs 89,90,91,93 and 112 of the Code.

At the Hearing on 26th July 2019 it was explained to both parties that section 48 (4) of the Housing (Scotland) Act 2014 clearly stated that the Tribunal could consider only alleged breaches of the Code which had been intimated to the Letting Agent. In this matter the Letting Agent Notification letter served mentioned alleged breaches of paragraphs 89,90,91,93 and 112 only. The Tribunal advised parties that it could not therefore consider alleged breaches of paragraphs 94 and 113 of the Code.

The Tribunal further explained to parties that it had jurisdiction over matters arising or ongoing with effect from 31st January 2018, the date when the Letting Agent Code of Practice came into force. It was confirmed at the Hearing that both parties understood that matters which may have arisen and been resolved before this date could not be considered by the Tribunal.

The Application was set down for a Hearing on 31 May 2019. The Tribunal had received no response to the Application from the Respondents by 30th May 2019 and emailed the Respondent in order to ascertain if they would be attending the Hearing. The Respondent indicated that they would attend and had sent certain documents by post which the Tribunal had not received. These were emailed in advance of the Hearing. On 31st May the matter called for a Hearing but could not proceed as certain documents which the Tribunal requested from the Respondent were not available on that day. The Hearing was adjourned until 26th July 2019. The Tribunal issued a Direction to parties in terms of section 16 of Schedule 1 to the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and this was complied with in advance of the Hearing on 26th July 2019.

Hearing

At the Hearings on 31st May and 26th July, both 2019 the Applicant represented himself and the Respondent was represented by Miss Lorraine Doig who has worked as Maintenance and Compliance Manager at Belvoir Edinburgh since October 2018. She explained that Belvoir Edinburgh is a business franchise and the franchisee and Director is a Mr Andrew Jack. A Mr Ross Young is the general manager of Belvoir Edinburgh.

Parties were in agreement that the Applicant had rented the property since June 2015 and the tenancy had ended in March 2019. A second tenant had been permitted to live at the property during the period that the Applicant had lived there although he had not signed the tenancy agreement. This tenant a Mr Paul Ballantine gave evidence to the Tribunal on 26th July.

The Applicant had lodged his application, documents setting out his complaint, photographs of the property, a series of e mails, a tenancy agreement and minutes of lease. The Respondent lodged a terms of business agreement referring to the property between the landlord and Ryden Lettings, papers relating to the property checkout procedure dated 27 March 2019, a number of invoices and quotation requests variously addressed to plumbing and electrical contractors and a request for a damp survey. The final papers lodged were records from the Respondent's database which showed information by way of actions taken in respect of the property.

The Tribunal was advised by Miss Doig on behalf of the Respondent on 31st May at the first Hearing set for this Application, that there appeared to be no service agreement between Belvoir Edinburgh and the landlord of the property. She indicated that Belvoir had bought over the business of Ryden Lettings some years before,(she could not say exactly when this had taken place) and the agreement between Belvoir Edinburgh and the landlord of this property was governed by the Ryden terms of business agreement which the Respondent produced in advance of the Hearing on 26th July 2019 in response to the Tribunal's Direction. Miss Doig for the Respondent advised that although the Ryden agreement referred to a complaints procedure(between Ryden and the landlord) she was not aware of Belvoir Edinburgh having any written complaints procedure and this is referred to below. The terms of business agreement lodged appeared to relate to all matters concerning a tenancy and specifically in relation to this application covered management of the property during the tenancy and in the management section specifically referred to repairs.

Miss Doig on behalf of the Respondent accepted that Belvoir Edinburgh were letting agents engaged to manage this property on behalf the landlord during the period of the tenancy of the Applicant.

At the commencement of the Hearing the Tribunal advised the parties of the content of paragraphs 89,90,91,93 and 112 of the Letting Agent Code of Practice.

Miss Doig on behalf of the Respondent denied all of the alleged breaches of the code except for a breach of paragraph 112, which states that the letting agent must have a clear written complaints procedure. This breach was accepted and she explained that Belvoir Edinburgh had no such written procedure and the working procedure for complaints was that these went ultimately to Mr Young the branch manager if these could not be resolved at a lower level. Miss Doig explained that if Mr Young, the general manager could not resolve a complaint then the option existed to take it to Mr Jack the director and franchisee.

Miss Doig did mention that the terms of business agreement referred to a written complaints procedure but there appeared to be nothing in place for those who were tenants in properties managed by Belvoir Edinburgh to allow them to know how to complain in respect of Belvoir Edinburgh itself.

Evidence for the Applicant

Mr Gomez gave evidence in support of his application and referred to the issues which he was raising.

He had lodged the initial short assured tenancy agreement which he had signed along with a number of minutes of let extending the tenancy agreement at the property for successive six-month periods. The tenancy agreement appeared silent on the role of Belvoir Edinburgh in respect of the property and Mr Gomez indicated that he had received nothing advising him of their role but had always dealt directly with them and not the landlord, and although he couldn't point to a specific reason for it, his clear belief was that if he had any issues with the property he was to contact Belvoir Edinburgh to have these dealt with.

Mr Gomez referred to a timeline of events in giving his evidence.

He referred to some repairs to a shower in the property which had been a concern in 2017 and were repaired in April of that year. The Tribunal indicated that it had no jurisdiction to deal with this issue as it had been resolved prior to the Letting Agent Code of Practice coming into force. The Applicant accepted this.

The Applicant referred to a leak of water under the kitchen sink. He had first reported this in 2017 and he said it had resulted in a wooden board under the sink rotting. This meant he could not store cleaning and supplies under the sink and these had to be stored elsewhere, he indicated that despite raising this matter a number of times with Belvoir that the board was not repaired until December 2018. It was accepted that the leak under the kitchen sink itself had been repaired in 2017.

The Applicant indicated that in 2017 he had reported that the balcony at the property which was accessed from the living room was unsafe. He referred to the fact that the balcony, which was wooden, was rotting, with loose beams. The issues related to the area where a person would stand on it and also the wooden structure which formed what appeared to be a wooden fence with gaps, around the balcony area where one would stand. He indicated that he did not feel safe stepping on it and was concerned it would become loose. He also referred to some of the wood in the fence area as "rotting". He referred the Tribunal to photographs he had lodged which were numbered 3 – 6, and 8-14 and showed the areas of concern. He reported the issues as far back as an inspection in April 2017. He allowed his cat to go onto it but both he and his flat mate Mr Ballantine did not use it as they did not trust it to hold their weight. This was a problem for the Applicant as he indicated the Tribunal that he always rented a property with either a garden or a balcony as he is a smoker and as he was not permitted to smoke inside he wanted to have outdoor space in order to smoke and he could not do so in this property due to the state of the balcony. He indicated he would have used a balcony every day for this purpose but as he could not had to make the trip outside the flat each time he wanted to smoke.

The Applicant indicated that he had persisted in raising the balcony issue with the Respondents every few months either by phone or by email with the member of staff who was there before Miss Doig. He said that his queries were unanswered by this individual but that Lorraine Doig had at least responded to him. Despite contractors

attending nothing had been done and the balcony had been unusable other than to allow the cat onto it since prior to the coming into force of the code in January 2018.

This issue was of clear concern to the Applicant as he repeated that he had paid for a property with a balcony and he said, for a lengthy period during his occupation this could not be used.

By far the biggest concern for the Applicant was the condition of the main bathroom at the property which was used by the permitted tenant Mr Ballantine. Mr Gomez used the en-suite bathroom which had a shower and was accessed through the bedroom he occupied. The main bathroom used by Mr Ballantine had a bath and shower.

Around April 2018 the Applicant advised that he became aware that there was a leak from the bath/shower in the main bathroom at the property into the flat below and that this had been reported by the occupants of that flat, as water was coming into their property and according to Mr Gomez their ceiling was falling down. He said that plumbers came to the property on three occasions and in June 2018 he indicated that he and Mr Ballantine were told to stop using the shower/ bath in the main bathroom as it appeared to be the source of the leak. He confirmed that from 7th June 2018 until they vacated the flat in March 2019 the bath / shower in the main bathroom was not useable. This meant that for Mr Ballantine to shower he required to access the en suite bathroom in the bedroom where Mr Gomez slept. They were not a couple and when Mr Ballantine was working as a chef he worked shifts, but this meant that he could not shower when Mr Gomez was asleep in his room. He said that this was inconvenient for them. He added further that for some time when they lived at the address Mr Ballantine had been ill and unable to work as he was suffering from bowel cancer and had undergone chemotherapy. He indicated that the Respondents were aware of Mr Ballantine's ill health and Mr Gomez felt the Respondent had been unsympathetic to their situation throughout regarding this issue, something which he said that he found "shocking".

Mr Gomez advised the Tribunal that he had been aware that the repair of the leak involved an insurance company and he felt he was patient knowing that this might cause a delay. He phoned Belvoir Edinburgh in October 2018 and spoke to Susan who dealt with maintenance and repairs before Miss Doig took that over. Mr Gomez indicated that he had received no contact on the matter of the leak since July 2018. He said that he had a conversation with the general manager Ross Young on these issues and he had explained the complaints procedure to him.

At this stage Mr Gomez said he complained about all of the issues before the Tribunal to Mr Young by email and was told him that if he "wasn't happy" he could go to the Director. Mr Gomez felt that Mr Young had effectively refused to allow his complaint to progress to the level of the Director in a subsequent email and that his behaviour was "unprofessional".

Mr Gomez indicated that some 2 weeks before they vacated the property in March 2019 they were asked for access to fix the leak in the bath/shower in the main bathroom. Mr Gomez said that he refused access as there was little point in this being fixed just as he was about to leave. Even if the matter was being dealt with by insurance at the landlord's request he felt that more could have been done by the

Respondents to alleviate the situation and to keep him informed, He felt that he did not receive updates and was only spoken to when he raised the issue every few weeks or months.

The final issue raised by the Applicant was the issue of mould on the ceiling and walls of the ensuite bathroom in the bedroom used by Mr Gomez. He said this was first raised in April 2017 at an inspection. He produced photographs of this which he said had been taken shortly before he moved out of the property in March 2019. These appeared to show blackened areas in areas on a wall/edge of ceiling in the en suite bathroom. Mr Gomez indicated that these photographs were of extensive areas of mould. He did not know what the problem was but said that he had repeatedly reported the mould by email and phone as part of the ongoing issues. He had asked he said for the walls to be cleaned and treated as he felt there was a damp problem. He said that it was unpleasant going into the bathroom and pointed out that from June 2018 until March 2019 this was the only bathroom which had a functioning shower as he and Mr Ballantine had been advised early in June 2018 to refrain from using the bath / shower in the main bathroom due to the apparent leak.

In December 2018 it appeared that a surveyor had been requested by the Respondents to carry out a damp survey in the en suite bathroom. Mr Gomez indicated that he was never shown any report as a result of this visit but the surveyor who attended advised Mr Ballantine that there was a problem with the fan as it was not extracting air from the room but simply recirculating air from the ceiling. Mr Gomez said he had not known prior to this that there was an issue with the fan and had simply asked for the mould to be cleared and the bathroom repainted. His evidence was that nothing followed after the visit of the surveyor and no action was taken on the issue of the mould before they vacated the property. During the period of occupation he said that the mould in the en suite bathroom made the room unpleasant to enter and bad for their health although he produced no evidence to support this suggestion regarding his health.

Mr Ballantine gave evidence to the Tribunal and confirmed that the balcony had been regarded by both he and Mr Gomez as being of concern since they had moved into the property and he confirmed that they felt they could not use it due to its state. He confirmed that he had been present at most of the property inspections carried out and that the fact that the balcony was damaged had been reported on a number of occasions.

He further confirmed that there was what he thought was black mould in the ensuite bathroom which he had required to use to shower as the other bathroom shower could not be used due to the leak there. He found the situation vexing at the time he said and it had carried on for some considerable time.

Respondent's Evidence

Miss Doig was the only witness for the Respondent and she gave a response to all of the issues raised by the Applicant.

As far as the rotten board under the kitchen sink was concerned Miss Doig was not able to say why this had not been fixed for so long but did not accept that this had

led to any particular inconvenience as the property had a big kitchen and there was she said plenty of storage for products, which were usually stored there. She also pointed out that the main issue here, the leak from the sink had been rectified as far back as 2017. She had lodged a request for quotation for repairing this board, which had been prepared in April 2017. There were also two requests for a quotation dated 5 and 10 December 2018, each of which included reference to replacing rotten wood under the sink. There was no explanation offered as to why nothing had apparently happened between the code coming into force on 31st January 2018 and the quotations in December 2018.

Miss Doig accepted that Belvoir Edinburgh had not been as quick to deal with the balcony as they should have been. From the papers lodged by Miss Doig it was clear that this had been actioned in the form of a request for a quotation to replace a rotten balcony beam in April 2017 and then there appeared to be nothing thereafter until 11 October 2018 when an estimate for required work was provided by D.J. Sands Property and Joinery Care. There were then two requests for quotations dated 5th and 10th December 2018 and a third piece of correspondence which appeared to be a work order dated 13 December 2018 addressed to Paragon trade Services. Despite these it was not at all clear why the balcony repair did not take place during Mr Gomez's tenancy.

The issue of the leak in the main bathroom at the property was addressed by Miss Doig. She had produced papers to show that the Respondent had addressed this to the best of their ability and said that the delay had been caused by the landlord wishing to claim for this repair on his insurance policy and there being a delay between the loss adjuster, a property factor and the insurance company. She produced emails sent by Susan Buchanan her predecessor and sent by her regarding the insurers. She said that part of the problem was that property factors who dealt with the entire building were involved and the matter of the insurance company instructing the work was essentially outwith the control of the Respondent. Miss Doig accepted that for a period whilst the leak in the main bathroom was to be dealt with there was no correspondence with the Applicant and she had apologised in an email for the poor service. In her evidence she said that she did not accept that the service was poor, she had apologised because Mr Gomez thought the service was poor. Miss Doig was unable to produce the messages which she said would have been sent to the landlord along with his confirmation that he wished to deal with the matter through his insurance policy. She was adamant that the landlord had decided to deal with the leak by way of his insurance and this was what had caused the delay. She pointed to the fact that access to effect this repair had been sought in March 2019 but this had been refused by Mr Gomez.

As far as the mould issue in the ensuite bathroom was concerned Miss Doig pointed out that the inventory for the flat when the Applicant took up occupation had referred to "slight mould" there. She accepted that what was on the photographs lodged by Mr Gomez was not slight mould. This had been brought to the Respondent's attention by the Applicant as there was a request for a damp survey sent to an address in Rosewell (the recipient was not mentioned) dated 20 December 2018. In this request the mould is described as "significant". In the checkout documentation she lodged which had been prepared by another company there is reference to "severe black mould type to ceiling and walls requires urgent attention". The issue

appeared still to be in need of attention after the Applicant left the property as there was within the property log produced by Miss Doig an entry dated 25th April 2019 requesting that the landlord put the Respondent in funds to proceed with a quotation in respect of damp in the bathroom. The quotation and damp survey were not produced to the Tribunal.

The Tribunal Makes the following findings in fact and law:

The Respondent has failed to comply with paragraphs 90,91,93 and 112 of the Letting Agent Code of Practice but is not in breach of paragraph 89.

Reasons for Decision

The Tribunal accepted the evidence of the Applicant and the witness Paul Ballantine which appeared credible on all the issues raised. To a large extent the Tribunal also accepted the evidence of Miss Doig for the Respondent but there were areas where she simply did not know the position regarding the property or did not have access to the information and this perhaps was not surprising given that she had not worked with the Respondent from the period when the code came into force until October 2018. The Applicant himself stated that Miss Doig was the only person who responded to him and he said she had at least tried to help him.

Paragraph 89 of the Code

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.

In respect of this Application the terms of business agreement between the landlord and Ryden which was taken over by the Respondent simply indicates that day to day repairs should be reported by the tenant and property management would instruct a contractor to attend. It also indicates that repairs up to £200 exclusive of VAT could be instructed without reference to the landlord.

In respect of the issues complained of by the Applicant contractors did appear to have been instructed albeit in some cases with considerable delay. However the agreement with the landlord is silent as to timescale for the repairs and accordingly the Tribunal finds that the Respondent is not in breach of this paragraph.

Paragraph 90 of the Code

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

In this area the Tribunal had no hesitation in finding the code was breached in so far as the repairs were not dealt with promptly having regard to their nature and urgency. The Tribunal cannot make a finding as to whether the repairs were dealt with in line with written procedures as no written procedures in this area were produced or made known to the Tribunal during the Hearing. The Tribunal formed the view having heard Miss Doig's evidence, that no such written procedures existed outwith the terms of business between Ryden Lettings and the landlord which agreement was taken over by the Respondent.

It was clear from the evidence of the Applicant that the required repairs to the balcony, the board under the kitchen sink and the mould in the ensuite bathroom were not dealt with promptly and in the case of the mould and balcony were not dealt with at all during the Applicant's tenancy. The Tribunal does not find that the Respondent breached this paragraph of the code in relation to the leak from the bath/ shower in the main bathroom as it appeared clear from the evidence that the delay in having that matter dealt with appears to have for the most part outwith the control of the Respondent and lay with the delays caused by the matter being dealt with by the landlord's insurance and subsequent delays involving factors, loss adjusters and the insurance company itself.

Paragraph 91 of the Code

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

The Tribunal found that the Respondent breached this paragraph of the code in respect of the repairs required to both the board under the kitchen sink and more significantly in respect of the damaged balcony and mould in the en suite bathroom. It was clear that when the Applicant raised these issues either at inspections, by email or by phone little happened until Miss Doig took over maintenance at the Respondent's business. Even then when contractors were instructed to give quotations for work there was little or no follow up with the Applicant advising him what was to be done and when this would occur.

As far as the leak in the main bathroom was concerned the Tribunal accepted that the progress and nature of this repair was outwith the control of the Respondent until March 2019 when they were advised that the insurance company had advised that the contractor could go ahead with the repairs and as a result they cannot be said to have breached this paragraph of the code in respect of that repair.

Paragraph 93 of the Code

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

The Tribunal had no hesitation in finding that the Respondent is in breach of this paragraph of the code in respect of the required repairs at the property to the mould, the balcony and the board under the kitchen sink. Communication with the

Applicant after he reported a required repair was generally absent and the Tribunal formed the impression that he required to keep pressing matters before anything was done. Even then it has to be noted that despite his repeated contacts there was no repair to the balcony or the mould during his tenancy.

The Tribunal also finds the Respondent had breached this paragraph of the code in relation to the leak in the main bathroom. Although the repair was ultimately dealt with by an insurance company and the Tribunal accepted that the delay in this repair was outwith the control of the Respondent, nevertheless it was clear that the Respondent did not inform the Applicant of the reasons for the delay until he pressed the matter in October 2018.

Paragraph 112 of the Code

112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business

The Tribunal found that the Respondent is in breach of this paragraph of the code. Miss Doig for the Respondent accepted at the outset of the Hearing that the Respondent had no complaints procedure in place.

Decision

The Tribunal found that the Respondent had failed to comply with paragraphs 90,91,93 and 112 of the Letting Agent Code of Practice. The decision was unanimous. The Tribunal is therefore required by s48(7) of the Housing (Scotland) Act 2014 to make a Letting Agent Enforcement Order (LAEO). In terms of section 48(8) that order must specify the period within which each step must be taken and may provide that the Respondent pay compensation to the Applicant for any loss he has suffered as a result of the failure to comply with the Code in question.

Order

The Tribunal determines that the Respondent ought to carry out the following within 30 days of intimation of this decision and the LAEO.

1. Lodge with the Tribunal a copy of the Respondent's written procedures for the following:

- (a) The handling of complaints
- (b) The handling of repairs

Compensation

The Applicant submitted that he has suffered loss as a result of the Respondent's failure to follow the Code. He stated that he was seeking return of all of the rent paid at the property. He said the property had not been safe and had not met the Repairing Standard. He had quantified the total rent that he was seeking to have returned in the sum of £14,800, to reflect the fact that it was increased from £750 per month to £800 per month sometime around the start of 2018. He stated that he always rented property which has a balcony or other outside space as he was a smoker and required to use it to smoke and that was why he had taken this property as it had a balcony. He stated that he could not use the balcony from the time that the letting agent code of practice came into force, at the end of January 2018 until he vacated the property on 26 March 2019. He was concerned that he had required to use a mouldy ensuite bathroom and he was seeking compensation in respect of this matter from the coming into force of the letting agent Code of Practice up to 26 March 2019. This was made worse he said by the fact that from June 2018 until March 2019 when the property was vacated the ensuite bathroom contained the only working shower in the property which could be used by both the applicant and the other tenant. The applicant said it was unpleasant going into the bathroom due to the extent of the black mould on the walls. He also complained that a great deal of time had been taken to fix a wooden board under the kitchen sink which meant he could not use the cupboard for storage.

On behalf of the respondent Miss Doig submitted that the applicant's claim for return of the total rent paid was excessive. She said that she accepted that he was without the use of the balcony and that it would have been unpleasant to have to use the bathroom in its mouldy state. As far as the board under the kitchen sink was concerned she submitted that the applicant had suffered no loss as a result of this as there were several other storage areas within the kitchen.

The Tribunal must observe that it cannot as a matter of law consider the Repairing Standard and its application against any party except a landlord. It also cannot make a rent relief order against a letting agent which appeared to be what it was being asked to do by the Applicant. It could however consider compensation where the Applicant had suffered loss as result of a Letting Agent's failure to comply with the Code.

In respect of the Board under the kitchen sink the Tribunal accepted that there was no actual loss to the Applicant by its being out of use for a lengthy period as he had access to other storage facilities within the kitchen.

In relation to the loss of amenity in relation to the balcony this was for a period of over 13 months and was of importance to the Applicant as he wished to use it to smoke and could not. The Tribunal took the view that in terms of the total amenity available to the Applicant in terms of the property itself this amounted to a loss of the overall amenities in the amount of 10 % given that there was a clear requirement on the part of the Applicant to use this on a daily basis. The sum appropriate here is £1100 being approximately 10 % of the rent paid between end January 2018 and 26 March 2019.

As far as the mouldy ensuite bathroom is concerned the Tribunal accepted that this would have been highly unpleasant to use and that the mould, in the papers lodged by the Respondent is variously described as “significant” or “severe” and for a period contained the only useable shower at the property (between June 2018 and 26 March 2019) which meant that both the Applicant and the other tenant required to use it. The appropriate sum by way of compensation for this issue, taking into account that it had to be used for a period of around 9 months as the other shower was not able to be used due to a leak, is £1000.

The Tribunal makes no award in respect of the main bathroom shower / bath being out of use for some 9 months as the Tribunal did not find that this had occurred due to a breach of the Code by the Respondent.

The Tribunal decided to award compensation in the following amounts:

1 An order that the Respondent pay the Applicant £1100 being the loss incurred due to loss of use of the balcony at the property for a period in excess of 13 months due to the Respondent’s failure to comply with the Code.

2. A order that the Respondent pay to the Applicant the sum of £1000 to reflect that the ensuite bathroom at the property(which contained the only useable shower for around 9 months) had significant black mould on its walls and ceiling for a period in excess of 13 months due to the Respondent’s failure to comply with the Code.

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.

Valerie Bremner

26th July 2019

Legal Member/Chair

Date