



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/19/1739

Re: Property at 465A Old Shettleston Road, Glasgow G32 7JJ (“the House”)

Parties:

Mrs Louise Gray, 15 Corona Crescent, Bonnybridge, FK4 1GG (“the Applicant”)

Wolda Asset Management Limited t/a Contempo Property Renfrewshire, 123 Mirren Court, Renfrew Road, Paisley, PA3 4EA (“the Letting Agent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has failed to comply with paragraphs 26 and 108 of the Letting Agent Code of Practice under Section 46 of the Housing (Scotland) Act 2014.

Background

[2] This is an application dated 3rd June 2019 for a determination that the Letting Agent has failed to comply with paragraphs 21, 26, 32, 73, 75, 108 and 113 of the Letting Agent Code of Practice (“the Code”) brought in terms of Rule 95 (Application to enforce letting agent code of practice) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[3] The Applicant provided with her application copies of her notification to the Letting Agent of the failure to comply, evidence of service of the notification, and various correspondence and e-mails.

[4] A hearing was held on 10th October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was not represented. She was

accompanied by her husband, Mr Gray. The Letting Agent's Mr Stefan Wolda appeared, and was not represented.

[5] The Tribunal noted that neither party had lodged very much by way of communication and correspondence between them, and sought to identify and focus the real issues in dispute between them.

[6] The Tribunal and the parties discussed at length what matters were accepted, and what were not. The Applicant clarified that she no longer sought to insist on her compensation claim in respect of both increased mortgage payments and increased council tax payments, and solely sought a refund of all management fees charged by the Letting Agent for the past four years totalling £2,692.60.

[7] It became clear to the Tribunal that two matters were the real focus of the issues in dispute between the parties, and most if not all of the separate complaints of breach of the Code of Conduct related in some way to those matters:

- a) whether or not the Letting Agent had notified Scottish Power (electricity supplier to the Property) at the beginning and end of the tenancies from time to time of the change in the person responsible for paying the charges, and
- b) whether the Letting Agent had communicated effectively and properly with the Applicant advising her in relation to the letting of the Property from time to time, and in relation to dealing with enquiries and complaints made by the Applicant.

[8] Both parties referred to numerous e-mails and other correspondence which they had engaged in with each other, none of which had been produced to the Tribunal by either of them.

[9] The Tribunal explained that in order to reach a determination upon these issues, it needed to see the communications between the parties and assess those. The Tribunal considered it could not fairly reach a just decision without sight of the various communications both parties were referring to.

[10] In relation to the issue concerning the electricity supply difficulties, both parties advised the Tribunal that they had made extensive efforts to obtain information from Scottish Power, who had been unhelpful and uncooperative in dealing with their requests and enquiries. Neither party really knew what had gone wrong, as neither was able to obtain any useful information from Scottish Power despite their best efforts to do so.

[11] It appears that the Applicant was wrongly charged for electricity supply without her knowledge, and subsequently her non-payment of charges she knew nothing about resulted in damage to her credit rating.

[12] The Tribunal rose to consider these issues, and then resumed the Hearing.

[13] Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a Hearing.

[14] The Tribunal considered it to be reasonable to adjourn the Hearing in the whole circumstances in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[15] The Tribunal considered that it was in the interest of justice, and consistent with its overriding objective of dealing with the proceedings justly in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, to adjourn the Hearing for the purpose of obtaining further information, which is clearly capable of being obtained, to assist it in reaching a determination.

[16] The Tribunal indicated it would require Scottish Power Limited to provide information in terms of Rule 21 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended in relation to all account details, invoices, letters, e-mails, electronic or paper records, and any other records or communications made or received in relation to supply address 465A Old Shettleston Road, Glasgow G32 7JJ, being account number 16012848891 in the name of Mrs Louise Gray, and in particular disclosing the history of transfers of the account in respect of electricity supply between Mrs Louise Gray and other parties who were from time to time tenants of the property, in so far as within their possession and knowledge.

[17] The Tribunal also issued a direction to the parties to produce copies of all correspondence, e-mails, messages, file notes, inspection reports, letters and any other communications, whether held in paper form or electronic computer data form, relating to the parties' communications concerning the Property from 1st February 2015 to 8th August 2019, in so far as within their possession and knowledge; letters of consent or mandate, authorising and consenting to the release by Scottish Power Limited of all details relating to supply address 465A Old Shettleston Road, Glasgow G32 7JJ, being account number 16012848891 in the name of Mrs Louise Gray, and in particular of information disclosing the history of transfers of the account in respect of electricity supply between Mrs Louise Gray and other parties who were from time to time tenants of the Property; and for the Applicant to produce the Contempo Property paper file provided to her by the Letting Agent.

[18] The parties indicated that they considered that production of this information would assist the Tribunal in reaching a determination on this matter, and that they were both prepared to comply with the direction. The Letting Agent indicated that six weeks should be sufficient for it to locate, consolidate and compile the required information from its records, and the Applicant confirmed that she would also be able to meet with that timescale.

[19] The Tribunal clerk identified a date with the Tribunal members, and with the parties, of 16th December 2019, when all were available to attend a continued Hearing.

[20] A continued hearing was held on 16th December 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant again appeared, and was not represented. She was accompanied by her husband, Mr Gray. The Letting Agent's Mr Stefan Wolda again appeared, and was not represented.

[21] The Applicant had responded to the Tribunal's direction, and had lodged approximately 500 pages of communications relating to this dispute. She had also provided a mandate for Scottish Power as the Tribunal requested.

[22] The Tribunal had noted in advance of the Hearing that no response appeared to have been received from Scottish Power in relation to the Rule 21 letter sent to it, and made enquiries of the Tribunal's administration in that regard.

[23] After investigation, it was confirmed that due to administrative error, the letter had not been sent to Scottish Power. The Tribunal explained the position to the parties, and offered its apology for this error, which it appreciated would cause delay and inconvenience to both parties.

[24] The Tribunal considered for the same reasons previously given at the Hearing of 10th October 2019, that the information sought from Scottish Power is extremely important in relation to this application, and that it would not be fair or just for the Tribunal to reach any determination without that.

[25] Accordingly, for the same reasons noted above in relation to the adjournment of the Hearing of 10th October 2019, the Tribunal again adjourned the continued Hearing to allow the information sought from Scottish Power to be obtained.

[26] The Tribunal also clarified with the Applicant that although she had quite properly produced and lodged all of the historical communications in relation to this matter, she had not directed the Tribunal to which particular parts she relied on, nor had she set out or explained what she sought to demonstrate from any parts of the correspondence.

[27] The Applicant agreed to provide a written summary of her contentions and complaints providing identification of, and references to, the particular elements of the communications which she relies upon, and explaining what she seeks to demonstrate from those parts which she relies upon. She indicated that she would do that as soon as possible, and well in advance of the continued Hearing date.

[28] Mr Wolda indicated to the Tribunal that he wished to advise it of certain health issues which he suffers, but did not wish to do so in the presence of the Applicant or any other parties.

[29] The Tribunal advised Mr Wolda that it could not have private conversations with any party to proceedings in the absence of other parties. However, if a party, such as the Letting Agent, wished to submit medical information to the Tribunal, then such a party is welcome to do so, and the Tribunal would consider any such information having regard to medical confidentiality issues in relation to non-release of details to others.

[30] A further continued hearing was held on 14th February 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant again appeared, and was not represented. She was accompanied by her husband, Mr Gray. The Letting Agent's Mr Stefan Wolda again appeared, and was not represented.

[31] The Tribunal had noted in advance of the further continued Hearing that no response appeared to have been received from Scottish Power in relation to the Rule 21 letter sent to it, and made enquiries of the Tribunal's administration in that regard.

[32] After extensive investigation by the Tribunal's administration, it was confirmed that the Rule 21 letter had been sent to Scottish Power by Royal Mail recorded delivery letter.

[33] The Tribunal's administration confirmed through the Royal Mail track and trace service that the letter, rather oddly, was noted as having been collected from Royal Mail's G1-5 Delivery Office at Baird Street in Glasgow. The track and trace service stated that it has been collected at 8.03am on the 23rd December 2019 and signed for by "H Ahmed".

[34] Even more oddly, the only record for the letter was of its collection. The usual information provided regarding the letter's journey and failed attempted delivery were missing.

[35] It seemed extremely unlikely to the Tribunal that Royal Mail would have been unable to obtain a signature for the letter at Scottish Power's Headquarters Building when they attempted delivery, and that an employee of Scottish Power would have been sent to collect it from a delivery office some distance away.

[36] In those unusual circumstances, the Tribunal could not be satisfied that Scottish Power had received the Rule 21 letter.

[37] The Tribunal explained the position to the parties, which is most unfortunate in light of the previous history of this case. The Tribunal considered for the same reasons previously given at the Hearings of 10th October 2019 and 16th December 2019, that the information sought from Scottish Power is extremely important in relation to this application, and that it would not be fair or just for the Tribunal to reach any determination without that.

[38] Accordingly, for the same reasons noted above in relation to the adjournments of the Hearings of 10th October 2019 and 16th December 2019, the Tribunal again adjourned the continued Hearing to allow the information sought from Scottish Power to be obtained.

[39] The Tribunal arranged for a fresh Rule 21 letter to be served on Scottish Power by sheriff officers, to avoid any ambiguity about service, and anticipated that Scottish Power would respond in circumstances where a failure to do so would be a criminal offence.

[40] Scottish Power subsequently fully and helpfully responded to the Tribunal, and produced its entire file in relation to the accounts at the Property.

[41] As a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof, the setting of that continued Hearing was substantially delayed. The parties were subsequently notified with the details of a Tele-Conference and provided with dial-in details

The Hearing

[42] A further continued hearing was held on 12th October 2020 by Tele-Conference. The Applicant again participated, and was not represented. The Letting Agent's Mr Stefan Wolda again participated, and was not represented.

[43] The Applicant gave evidence, and largely and very helpfully took the Tribunal through the written summary of her contentions and complaints providing identification of, and references to, the particular elements of the communications which she relies upon in support of her complaints. As her position is fully set out in her written summary, the Tribunal will not repeat all the detail contained therein in its decision and statement of reasons.

[44] The main elements of the Applicant's complaint, however, are as follows.

[45] In relation to paragraphs 26 and 108 of the Code, the Applicant produced and referred to numerous e-mails between her and the Letting Agent over a six month period from January 2019 to July 2019. These related to requests for the Letting Agent to produce such items as a copy of the contract between the parties, copies of various inspection reports relating to the Property, a copy of the Letting Agent's written complaints procedure, and a copy of the Letting Agent's electronic file relating to the Property.

[46] The Applicant also produced and referred to her letter of complaint to the Letting Agent of 11th April 2019, and various e-mails in response from the Letting Agent until it produced a substantive response rejecting her complaint on 19th June 2019.

[47] The common theme to all the correspondence in this period was that the Letting Agent agreed to provide the information sought, and ultimately did so, but was very slow in its response taking weeks, and in some cases months, to fully deal with requests and produce what had been requested.

[48] In relation to paragraph 73 of the Code, the Applicant's evidence was that the contract between the parties provided that the Letting Agent was responsible for notifying utilities at the beginning and end of tenancies. It had failed to do this, as evidenced by the fact that the Applicant had discovered in January 2019 that her credit rating had been badly affected by a debit on a utilities account with Scottish Power which was in her name despite the fact that the period in question was one where a tenant was in occupation and should have been the account holder.

[49] The Tribunal noted from reading the file provided by Scottish Power, that the account appeared to have been transferred to the new tenant, Mr Dempster, in February 2015, but for reasons which Scottish Power themselves noted they were unable to explain, it had been transferred back into the Applicant's name, without her knowledge, some three weeks later.

[50] The Applicant's complaint in relation to paragraph 75 of the Code was the result of the Letting Agent failing to deal with the breach of the contract between the parties which is the subject of her complaint under paragraph 73 of the Code.

[51] In relation to paragraph 107 of the Code, the Applicant noted that the Letting Agent's registration number was not included in any of its documents and communications.

[52] Finally, in relation to paragraph 111 of the Code, the Applicant accepted that her view that the Letting Agent's Mr Wolda's style of communication was abusive, intimidating or threatening was entirely subjective.

[53] She explained that she felt a passage in an e-mail from the Letting Agent to her of 19th June 2019 was intimidating. That passage, which concerned the transfer of the utilities account back into the name of the Applicant in March 2015 read "I note from your complaint letter that you make reference to your mother making contact with Scottish Power to find out the procedure for starting a new account in your name. If any steps were taken by your mother to put the account in your name my company cannot be held responsible in relation to these."

[54] The Applicant further gave evidence that she felt that Mr Wolda's demeanour had been angry and intimidating when she attended the Letting Agent's office with her husband to collect keys and paperwork in July 2019, and at previous Hearings in this application on 10th October and 16th December 2019.

[55] Mr Wolda gave brief evidence in response. He confirmed that he had transferred his letting agent business to another, and no longer acted as a letting agent. He accepted that the Letting Agent's documents and communications did not include its registration number, explaining that he was not aware of the requirement that they should do so.

[56] Mr Wolda gave evidence that he had done his best for the Applicant to help her resolve the problem with the Scottish Power utilities account, but that there was little he could do when he was not the account holder. The account had been transferred to the new tenant in February 2015, and he was not involved in, nor was he aware of, its transfer back into the Applicant's name in March 2015. The Letting Agent had not breached the parties' agreement.

[57] Mr Wolda gave evidence that he had ultimately provided responses to the Applicant. He had sometimes been a little slow due to other work pressures, but he did not feel that these delays were excessive.

[58] Finally, Mr Wolda candidly admitted that he was prone to becoming slightly emotional when frustrated in his demeanour, and that he was forthright in his manner. However, he had never shouted or sworn at the Applicant, and he had never acted in a way which was abusive, intimidating or threatening towards her.

Statement of Reasons

[59] The Tribunal notes that the Applicant's application makes complaint in respect of paragraphs 21, 26, 32, 73, 75, 108 and 113 of the Code. The Applicant did not at the Hearing insist on her complaint in respect of paragraphs 21, 32 or 113. At the Hearing she did make complaint in respect of paragraphs 107 and 111.

[60] The Tribunal cannot deal with the complaints in respect of paragraphs 107 and 111, as they do not form part of the complaint originally laid out in the Application. In any event, the Tribunal was not persuaded that Mr Wolda's conduct was sufficient objectively to be considered abusive, intimidating or threatening.

[61] The passage relied upon by the Applicant in Mr Wolda's e-mail to her of 19th June 2019 did not appear to the Tribunal to be abusive, intimidating or threatening. It was simply a denial of liability in the outlined circumstances.

[62] Similarly, the Tribunal noted that Mr Wolda's personality is such that he is animated, forthright and assertive in stating his views, but the Tribunal did not consider him objectively to be abusive, intimidating or threatening.

[63] The Tribunal noted from the papers that the Letting Agent is correctly identified as Wolda Asset Management Limited t/a Contempo Property Renfrewshire. The parties confirmed and accepted that to be the correct designation of the Letting Agent.

[64] The Applicant sought to amend the application to correct the Letting Agent's designation, and Mr Wolda did not oppose that. In those circumstances, the Tribunal made an order substituting Wolda Asset Management Limited t/a Contempo Property Renfrewshire as Letting Agent in this application in terms of Rule 32 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[65] With regard to paragraphs 26 and 108 of the Code, the Tribunal accepted that the Letting Agent did ultimately respond to the Applicant's complaint, and to her various requests for information, but concluded that it had not done so within reasonable timescales and in line with the parties' agreement. The agreement did not provide any specific timescales for responding to enquiries, but did provide that complaints required to be acknowledged with three working days and responded to within ten working days.

[66] For example, the Applicant requested a copy of the parties' written contract on 29th January 2019. The Letting Agent finally provided that on 27th March 2019. The Applicant sent the Letting Agent a written complaint dated 11th April 2019. The Letting Agent after various acknowledgments did not respond until 19th June 2019.

[67] The Letting Agent's response times to the Applicant's enquiries and complaint varied from a few weeks to several months. The Tribunal did not consider those periods to be within reasonable timescales as provided in the Code, and accordingly considers that the Letting Agent is in breach of paragraphs 26 and 108 of the Code.

[68] Finally, in relation to paragraphs 73 and 75 of the Code, the Tribunal does not consider that the Letting Agent is in breach of those paragraphs with regard to notifying utilities at the beginning and end of tenancies.

[69] As earlier noted, the file provided by Scottish Power confirmed that the utilities account had been transferred to the new tenant, Mr Dempster, in February 2015. Whether that was done by the Letting Agent or Mr Dempster is unclear, but it was done. The cause of the Applicant's difficulties in that regard is not because the account

was not transferred into the name of Mr Dempster at the commencement of his tenancy, but rather that it was transferred back from his name into the Applicant's some three weeks later.

[70] Neither the file from Scottish Power, nor any information provided by the parties, sheds any light on how or why that took place. There is no evidence that the Letting Agent was responsible for that, nor that it was even aware that it had occurred. For that reason, the Tribunal does not consider the Letting Agent to be in breach of paragraphs 73 and 75 in that respect.

[71] The Tribunal has power to order that the Letting Agent pay to the Applicant such compensation as it considers appropriate for any loss suffered by the Applicant as a result of the failure to comply.

[72] The Tribunal considers that the Applicant has suffered financial loss as a result of the Letting Agent's failure to comply, in respect that she paid for a quality of service which she did not receive. She expended time, worry and effort seeking information in order to resolve the problems in relation to the Property for a period of about six months from January to July 2019.

[73] However, the Tribunal noted that the Letting Agent did continue to collect the rent and transfer that rent under deduction of its charges to the Applicant, and in some other respects did continue with its duties.

[74] The Letting Agent charged the Applicant £56.10 per month for its services. For the six month period in question, it charged the Applicant £336.60 in total. In the above circumstances, the Tribunal considers compensation of £150.00 to be reasonable.

Decision

[75] The Tribunal determined that the Letting Agent has failed to comply with paragraphs 26 and 108 of the Letting Agent Code of Practice, and will make a letting agent enforcement order requiring the Letting Agent to pay to the Applicant within fourteen days from the date of service of the letting agent enforcement order the sum of £150.00 as compensation for loss suffered by the Applicant as a result of the failure to comply.

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.

Legal Member/Chair

Date 4.11.20