

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision: Housing (Scotland) Act 2014 section 48 and the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, Rule 26

Chamber References: FTS/ HPC/LA/18/0517 and FTS/ HPC/LA/18/0908

Parties:

Mr Lindsay Chick, residing at 17 Morris Court, Bapchild, Sittingbourne, Kent ME9 9PL ("the first applicant")

Mr David Chick, residing at 104 Peregrine Drive, Sittingbourne, Kent ME10 4UP ("the second applicant")

and

Letting Hamilton Limited, incorporated in Scotland under the Companies Acts (SC507543) and having their Registered Office at 4d Auchingramont Road, Hamilton ML3 6JT and trading as Lets by Location / Location ("the letting agents")

Tribunal members:

David M Preston (Legal Member); and Ms Ann MacDonald (Ordinary Member) ("the tribunal")

Decision:

The tribunal found that the letting agents had failed to comply with the Letting Agent Code of Practice published on 31 January 2018 ("the code") and determined to issue a Letting Agent Enforcement Order ("LAEO").

Background:

1. By applications dated 6 March and 19 April both 2018 the applicants applied to the tribunal for determination that the letting agents had failed to comply with paragraphs 21, 26, 78, 79, 108, 112, 124 and 125 of the code. By Notices of Acceptance of Application dated 4 and 25 April 2018, legal members of the Tribunal with delegated powers so to do referred the applications to the tribunal.
2. By Direction dated 24 May 2018, the Chamber President directed that the two applications be heard together.

Hearing:

3. The hearing took place on 26 June 2018 within the Glasgow Tribunals Centre. Present at the hearing were: the first and second named applicants; and Mrs Chick, the first applicant's wife. There was no appearance by or on behalf of the letting agents.
4. The tribunal was satisfied that the letting agents had been duly advised of the basis and grounds for the application and of the date and place of the hearing. Notification of the first application was sent to the letting agents by recorded delivery on 27 April 2018 and notification of the second application was sent on 9 May 2018.
5. On 18 May 2018 the letting agents responded to the notification advising that they did not intend to attend the hearing but that they would submit written representations. The Direction, including confirmation of the date of the hearing was intimated to the parties on 24 May 2018.
6. The tribunal was satisfied that the letting agents had voluntarily waived their right to make representations beyond those contained in their email dated 22 June 2018. The tribunal was content to proceed on the written representations before it as well as the oral representations made by the applicants at the hearing.
7. By letter dated 22 March 2018 the first applicant lodged written representations together with a number of documents and emails referred to and on 19 April 2018, he lodged further representations and statements which had been received from the letting agent. On receipt, the letters of 22 March and 19 April 2018 together with enclosures were forwarded to the letting agents.
8. At the hearing the second applicant adopted the representations which had been submitted by the first applicant and presented six other statements which he had received from the letting agents. The tribunal was happy to accept the late lodging of these statements as they had been produced by the letting agents and accordingly there could be no prejudice by the tribunal considering them.

Evidence:

9. In reaching its decision the tribunal had regard to the written and oral representations of both the first and second applicants as well as the email dated 22 June 2018 from the letting agents.
10. By way of background the first applicant advised that between them, the applicants owned five properties which were managed by the letting agents. They had been clients of the letting agents for about 10 years. He explained that the letting agents had previously had a franchise from the firm of Martin & Co. and

when the franchise had ended they had remained with the letting agents. Over that period of time they had found the letting agents' method for accounting for rent to be poor compared to other agents with whom they had experience. Matters had become progressively worse, particularly over the past 18 months and the letting agents had failed to pay over the rents collected and had failed to chase rent arrears. They had to chase the letting agents before they were paid the rents collected. He said that they had terminated the agency in April 2018 and the letting agents had applied a termination fee at that time. The applicants objected having to pay the termination fee as they were of the view that the letting agent had been in breach of the agreement.

11. The first applicant said that they had never been provided with a copy of any contract between them and the letting agents. The tribunal noted that a copy of Landlord Terms and Conditions had been lodged by the first applicant, although the document was clearly incomplete. He said that there had been nothing further provided by the letting agents despite a number of requests, either by way of a complete copy of Terms of Business or any agreement between them.
12. The first applicant said that the letting agents had told him verbally that their policy was to account to landlords for rents received seven days after receipt. He said that even at that they had not received rents for significantly longer periods and then only when the applicants had chased the letting agents for an accounting.
13. The applicant said that the letting agents had stopped payments in January 2018 and no rent had been received since then, notwithstanding that they had both received statements from the letting agents covering the periods January to March 2018 which showed total sums due to the first applicant totalling £1860.93 and to the second applicant totalling £2009.40.
14. The letting agents would appear to have terminated any agreement between them and the applicants as of March 2018 by the deduction of the termination fees as shown on their statements for that month.
15. The applicants disputed elements of the statements provided:
 - i. 1 January 2018 - 21 Cairnwell Gardens:
Termination fee - £251.70 disputed
A charge of £91.75 in respect of repair to a grill in June 2016 had been questioned but no explanation or details of the account or reason for the delay had been given.
 - ii. 28 February 2018 - 37 Whistleberry Wynd:
Termination fee - £275.40 disputed.

- iii. 28 February 2018 - 25 Cairnwell Gardens:
Termination fee £283.50 disputed.
- iv. 29 January 2018 - 1 Wilkie Drive:
Gas Safety Certificate - £79. The second applicant had asked for a copy but had not received one.
- v. 23 February 2018 - 17 James Murdie Gardens:
Termination Fee £351- disputed

The applicants also objected to the application of the Management Fee since January 2018 as no meaningful management service had been provided.

16. The second applicant said that in the case of the tenancy at 1 Wilkie Drive the tenant had failed the credit check and, and unbeknown to him at the time, the letting agents had required the tenant to pay 6 months rent in advance but they did not account to him for the full payment. In addition after 5 months the letting agents had required a further 1 months rent in advance which, in effect gave them 2 months rent in hand, for which they had not accounted.
17. The applicants complained that the letting agents did not pursue adequately any outstanding rent. They referred to the situation outlined in the email dated 29 December 2017 timed at 20:10 (within Production 3) in relation to one tenant who had fallen into arrears. An arrangement had been reached for payment to the arrears at £50 per month but only one such payment was collected.
18. The applicants complained that the letting agents did not have an effective complaints procedure. They referred to their email dated 10 January 2018 (Production 5) which was marked as a formal letter of complaint to which they have not, as at the date of the hearing, had a satisfactory response.
19. During the hearing the applicants raised issues in relation to VAT registration of the letting agents and questioned whether the tenants' deposits had been properly lodged with a Tenant Deposit Scheme by the letting agents. As these matters had not [previously been raised, the tribunal advised that it could not deal with these issues as part of this applicaiotn.
20. The applicants maintained their positions in respect of the claims in section 5(d) of the application, namely:
 - Reply to communications in our reasonable time from - 48 hours
 - Give written notice when rent is not collected on time – 48 hours
 - Give written notice when arrears are not being collected as agreed – 48 hour max

- Complaints procedure needs to be working – our complaint sent 10 Jan 2018 has had no response as of 19 April 2018 despite a reminder.
- Make payment to landlord of rent money collected in a realistic timeframe max of seven days after collected.
- Provide prompt statements that give full and accurate information.
- Stop ignoring calls or using 'blocking' tactics such as, 'we are preparing your account and payment will follow' or 'banking limits have been reached'
- Answer emails/telephone/requests for payments with an accurate date
- The agent should make a full repayment of fees for the months that they have failed to transfer money within their own targets – seven working days after rent received, even though they are too long.
- Pay over all money currently held with reason for delay
- Release us from letting agreement without penalty as they have reached so many times

21. The tribunal pointed out that many of these requests would have been negated by the termination of the agreement. The applicants said that they were concerned that the letting agents should not be operating in such a fashion and that they maintained their requests to prevent these things from happening to others.

22. The email from the letting agents dated 22 June 2018 acknowledged that the applicants were owed rent moneys but no explanation for the delay in making payment was provided. It provided an explanation regarding a software programme installed two years ago which had caused them problems. They said that they had fully explained this to the applicants. They submitted a number of what they regarded as abusive and defamatory emails and posts from a Facebook page created by clients other than the applicants. They said that they had obtained legal advice to the effect that they could retain monies due to such clients and had written to another landlord accordingly. They asked that the hearing be re-arranged to enable them to restructure their business and put proposals to the applicants to resolve the position with them. They provided no details of any proposals.

Findings and Reasons:

23. The tribunal is only able to make findings in relation to the code since its inception on 31 January 2018. It can however have regard to the behaviour of the letting agents prior to that date to establish a course of conduct. In respect of the payments to the applicants relative to statements which pre-date 31 January 2018 the tribunal considers that the letting agents' breaches of the code in that respect are on-going and have continued subsequent to that date.

24. The tribunal considered the applicants' position that they sought an order against the letting agents in relation to the matters outlined in section 5(d) of the application in an effort to ensure that others who may deal with the letting agents do not experience the same problems. The tribunal concluded that in terms of section 48(7) of the Act it can only "...require the letting agent to take such steps as the tribunal considers necessary to rectify the failure..." As the business relationship between the parties had been terminated there were no effective steps which could be taken in terms of the Act.

25. The tribunal was satisfied on the oral evidence of the applicants and on the written evidence provided and in the absence of any contradictory evidence that the letting agents had failed to comply with the code.

26. In particular:

i. Paragraphs 21 and 26:

The letting agents failed to respond to emails; telephone enquiries and complaints from the applicants. The documents and emails lodged by the applicants demonstrated this failure.

ii. Paragraphs 78 and 79:

No evidence was produced by the letting agents to demonstrate that they had informed the applicants of late payments of rent. The only evidence of the agreement between the parties was the 3 pages of a document entitled 'Landlord Terms and Business' lodged by the applicants. The tribunal accepted the evidence of the applicants that no details copy of any agreement or terms of business had ever been produced, either before or after 31 January 2018. The tribunal accepted the evidence of the applicants that the letting agents had failed to ensure that payments of overdue rent were pursued adequately.

iii. Paragraphs 108 and 109:

The tribunal was satisfied with the evidence of the applicants that the complaints procedure had failed to produce any result despite a clear indication on the email of 10 January 2018 that they were invoking the complaints procedure. The tribunal found that although that complaint was dated 10 January 2018 the failure persisted up to the date of the hearing.

iv. Paragraphs 124 and 125:

The tribunal was satisfied that the letting agents had failed to account timeously to the applicants for the rent money due to them and had failed to pay any money due to them, notwithstanding the issue of the statements to the applicants. The letting agents had acknowledged this breach in terms of their representations contained in the email of 22 June 2018.

27. The tribunal did not consider that the suggestion of proposals from the letting agents which was not produced until very shortly before the hearing was realistic or would in any way resolve the issues between the parties.
28. The tribunal noted that the letting agents do not appear to be registered under the Act as at the date of the hearing. The tribunal attached no significance to this fact in reaching its determination.
29. Having determined that the letting agents have failed to comply with the code it is required by section 48(7) to order the letting agent to take such steps as it considers necessary to rectify the failure.
30. In assessing the level of compensation to be paid to the applicants the tribunal took account of the terms of section 48(8)(b) of the Act which provides that the loss suffered by the applicant is as a result of the failure to comply. The tribunal assess that the sum of £500 is a reasonable sum to compensate them for the time and inconvenience of having to continually chase the letting agents for payment of the sums due to them. They have also been denied access to the money properly due to them, notwithstanding that the letting agents were in possession of the advance rent paid in respect of 1 Wilkie Drive
31. In relation to the applicants requests for the letting agents to make changes to their business practices the tribunal determined that it can only deal with the issues between the parties and as the business relationship has been terminated these steps are not relevant to the resolution of the letting agents' failures. The tribunal noted that the letting agents did not appear to have made any changes to their business practices since the code came into operation.
32. The tribunal accepted the applicants' representations that they should not be required to pay the management fees detailed in the Statements which were received by the applicants in April 2018. These Statements were all received after 31 January 2018. It agreed that the applicants should neither be required to pay for: the repair to the grill in June 2016 in respect of 21 Cairnwell Gardens as per the Statement dated 1 January 2018; nor the Gas Safety Certificate in respect of 1, Wilkie Drive, where no details or copy had been provided.

33. Having given consideration to such steps the tribunal requires the letting agents to:

- i. Formally terminate the agency with the applicants.
- ii. Pay to the first applicant the sum of £2928 being the total rent due to him in accordance with (One) the Statements dated: 28 November 2017; 28 January 2018; and 28 February 2018 in respect of 37 Whistlebery Wynd; (Two) the Statements dated: 1 January 2018; 29 January 2018; and 26 February 2018 in respect of 21 Cairnwell Gardens; and that without deduction of the termination fees and management fees detailed in the said statements or the repair to the grill in June 2016 in 21 Cairnwell Gardens.
- iii. Pay to the second applicant the sum of £4304 being the total rent due to him in accordance with (One) the Statements dated: 23 January 2018; 23 February 2018; and 23 March 2018 in respect of 17 James Murdie Gardens; (Two) the Statements dated: 29 January 2018; and 28 February 2018 in respect of 1 Wilkie Drive; and (Three) the Statements dated: 28 February 2018 in respect of 25 Cairnwell Gardens; and that without deduction of the termination fees and management fees detailed in the said statements.
- iv. Deliver a copy of the Gas Safety certificate obtained in respect of 1 Wilkie Drive to the second applicant.
- v. Pay to the applicants the sum of £250 each by way of compensation for the inconvenience and effort occasioned by them in chasing the letting agents to carry out their duties.

34. The tribunal considers that these steps can reasonably be undertaken and delivery of the sums made to the applicants within a period of two weeks.

David Preston

.... Chairman

15 July 2018