

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

### **STATEMENT OF DECISION:**

**Housing (Scotland) Act 2014, Section 48(6)**  
**First-tier Tribunal Housing and Property Chamber (Rules of Procedure)**  
**Regulations 2017 ("the 2017 Rules"), Rule 95**  
**The Letting Agent Code of Practice ("the Code of Practice")**

**Chamber Ref: FTS/HPC/LA/18/0746**

**The House at 12B West Kirk Street, Airdrie**  
**("The Property")**

### **The Parties:-**

**Mr Derek Ivimy, Broomlea Cottage, Heath Lane, Albury Heath, GU5 9DD**  
**("the Applicant")**

**Letting Airdrie Limited trading as Location, Company number SC507545, 4d**  
**Auchingramont Road, Hamilton, ML3 6JT**  
**("the Letting Agent")**

**Letting Agent Registration Number: None**

### **Tribunal Members:**

**Gillian Buchanan (Legal Member and Chair)**  
**Mary Lyden (Ordinary Member)**

### **DECISION**

- 1. The Letting Agent has failed to comply with The Code of Practice, in particular:-**
  - Section 2, paragraph 26, 32(o) and 32(p);**
  - Section 7, paragraph 108; and**
  - Section 8, paragraphs 120, 124, 126 and 132.**
- 2. The Tribunal issued a Letting Agent Enforcement Order ("LAEO") setting out the steps the Letting Agent must take by the date specified in the LAEO; including payment of compensation to the Applicant for his loss occasioned by the Letting Agent's failure.**
- 3. The Tribunal will notify the Scottish Ministers that the Letting Agent has failed to comply with the Code of Practice.**
- 4. The decision of the Tribunal is unanimous.**

## STATEMENT OF REASONS

### Background

5. The Letting Agent carries out letting agency work in Scotland.
6. As at 3 September 2018 the Letting Agent had not yet joined the Register of Letting Agents in Scotland in its company name or trading name. All those currently carrying out letting agency work (as defined by section 61 of the 2014 Act) must have applied to join the Register by 1 October 2018.
7. The Code of Practice sets out the standards all those doing letting agency work must meet. The Code of Practice came into force on 31 January 2018. The Letting Agent's duty to comply with the Code of Practice arises from that date.

### The Application

8. On 28 March 2018 the Applicant lodged an application with the Tribunal in terms of section 48 of the 2014 Act and Rule 95 of the 2017 Rules, to enforce the Code of Practice ("the Application"). In the Application the Applicant named the Letting Agent as "Location" being Mr Kenneth Stenhouse, 83 Cadzow Street, Hamilton, ML3 6DY ("Location").
9. The complaint in the Application was specified with reference to the following sections and paragraphs of the Code of Practice, namely: –
  - i. Section 2, paragraph 26;
  - ii. Section 3, paragraph 32(i), 32(o) and 32(p);
  - iii. Section 4, paragraph 66;
  - iv. Section 5, paragraph 74;
  - v. Section 7, paragraph 108; and
  - vi. Section 8, paragraphs 119 to 121, 123, 124, 126 and 130-132.
10. The Applicant's reasons for considering that there has been a failure to comply with the specified paragraphs are that the Letting Agent: –
  - i. is withholding 2 x 4 weekly housing benefit payments received by the Letting Agent on 29th January 2018 and 26th February 2018 respectively both in the sum of £332.32 which ought to have been paid to the Applicant after deduction of the Letting Agent's fees at 10% plus VAT.
  - ii. has failed to lodge the tenant's deposit of £360 with one of the approved tenant deposit registration schemes and has failed to provide evidence of lodging.
  - iii. has paid rent erratically and generally only after being chased by the Applicant several times by telephone.
  - iv. failed to provide rent statements on a regular basis without being chased by the Applicant.
  - v. failed to keep adequate records and accounts to show all dealings with client money.

- vi. has failed to report regularly, record and monitor all transactions and reconcile these monthly as a minimum.
- vii. has failed to account immediately for all money held on behalf of the Applicant.
- viii. has failed to ensure the Applicant's money is available to him on request and is given without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).
- ix. has failed to provide evidence that the tenant's deposit had been registered with an approved tenancy deposit scheme.
- x. and staff employed by the Letting Agent have been unable to confirm that the Letting Agent is a member of any letting agent mandatory register scheme.
- xi. has failed to carry out regular property inspections with the last documented inspection report being received by the Applicant in July 2015. Such inspections should be carried out at six monthly intervals.
- xii. has failed to respond to enquiries and complaints within reasonable timescales largely in connection with non-payment of rent.

11. The Applicant therefore sought:-

- i. That the tenant's deposit of £360 be paid into an approved tenancy deposit scheme;
- ii. That the sum of £584.88 be transferred to his bank account; and
- iii. That appropriate compensation be paid.

12. On 18th April 2018 a legal member of the First-tier Tribunal with delegated powers of the Chamber President considered the Application and referred the Application to the Tribunal.

13. A hearing on the Application was fixed for 26th June 2018 at the Glasgow Tribunals Centre, 28 York Street Glasgow G2 8GT.

14. On 18 June 2018 the Tribunal issued a Notice of Direction under Rule 16 of the 2017 Rules in terms of which "Location" was required to provide to the tribunal the following: –

- i. Confirmation of whether "Location" is the trading name of a company, a partnership or an individual.
- ii. In the event that "Location" is the trading name of a company, the full name of the company as registered at Companies House and the company registration number.
- iii. In the event that "Location" is the trading name of a partnership, the partnership name and address and the full names and addresses of the partners thereof.
- iv. In the event that "Location" is the trading name of an individual, the name and address of that individual.

- v. Confirmation of whether or not "Location" or the company, partnership or individual trading as "Location" as appropriate is registered or has applied to be registered as a Letting Agent and, if so, the registered name and Letting Agent Registration Number.
- vi. Confirmation of the name of the Tenancy Deposit Scheme into which "Location" has paid the deposit of £360 paid by the Applicant's Tenant, Debbie McLean and the date of payment into that Scheme and the reference number allocated thereto.
- vii. The name of the provider of the client money protection insurance or equivalent protection through another body or membership organisation, the policy number therefore and a copy of the summary of the policy.
- viii. The name of the provider of professional indemnity insurance or equivalent protection through another body or membership organisation, the policy number therefore and a copy of the summary of the policy.

The information required in terms of the Notice of Direction was sought to be lodged with the Tribunal no later than midday on Monday 25th of June 2018.

"Location" did not respond to the Notice of Direction.

15. At the hearing on 26th June 2018 the Applicant was present. "Location" was neither present nor represented. After hearing from the Applicant the Tribunal made the following orders:-

- i. In terms of Rule 32(1) of the 2017 Rules, to substitute the following person as the Letting Agent in the Application, namely:-  
  
"Letting Airdrie Limited trading as Location, Company number SC507545, 4d Auchingramont Road, Hamilton, ML3 6JT".
- ii. To give notification of the Application to Letting Airdrie Limited in terms of Rule 9 of the 2017 Rules.

16. A further hearing on the Application was assigned to take place on 3 September 2018 at the Glasgow Tribunals Centre.

17. The Letting Agent was notified of the hearing by the Tribunal by letter dated 5 July 2018.

18. At the hearing on 3 September 2018 the Applicant was in attendance by telephone conference. The Letting Agent was neither present nor represented.

### **Summary of the Applicant's submissions and evidence**

19. On or around 29th November 2012 the Applicant entered into a contract with "Location" for the letting and management of the Property. The contract between the Applicant and "Location" stated that "Location is a trading name for Scotlet Properties Ltd" stated to have its Registered Office at 4d Auchingramont Road, Hamilton, ML3 6JT and registered in Scotland with company number SC425757.

20. On 15th January 2014 the Property was leased by "Location" to a tenant, Debbie McLean

("the Tenant"), and a Short Assured Tenancy Agreement was signed. In terms of the Tenancy Agreement the Tenant required to pay to "Location" a deposit of £360 and make rental payments by standing order into the bank account of "Location" in the name of "Scotlet Properties Ltd T/as Location".

21. The Applicant was aware that Scotlet Properties Limited had been wound up in around September 2015 and had been dissolved on around 20th February 2018.
22. In late 2015 the Applicant was advised by Lisa Williamson of "Location" that the management of the Property was to be taken over by Letting Hamilton Ltd. This information was provided orally by telephone. No new terms and conditions were entered into between the Applicant and Letting Hamilton Ltd. The Applicant believed some form of business or asset transfer had taken place between Scotlet Properties Ltd and Letting Hamilton Ltd.
23. From late 2015 onwards, all rent statements received by the Applicant from "Location" were stated to be in the name of the Letting Agent, namely "Letting Airdrie Limited T/as Location". The Applicant produced to the Tribunal at the hearing on 26 June 2018 a Statement of the Letting Agent dated 29th January 2018 addressed to the Applicant in respect of the Property. In the Statement the Letting Agent is stated to be trading as "Location" from "69 Graham Street, Airdrie, North Lanarkshire, ML6 6DE, SCOTLAND". The Statement refers to rent of £332.32 being paid, to a management fee at 10% plus VAT being deducted from said rent and an amount of £292.40 being due to the Applicant.
24. No new terms and conditions were entered into between the Applicant and the Letting Agent. The Applicant understood there to have been a business of asset transfer in favour of the Letting Agent but had no documentation to produce to the Tribunal to substantiate that claim and agreed that the Applicant's position involved some speculation as to the arrangements between the various entities with which he had been dealing.
25. In January 2018 the Applicant first started making enquiries as to whether the deposit of £360 paid by the Tenant had been lodged into a tenancy deposit scheme. The Applicant had become suspicious as a consequence of the Letting Agent having failed to pay to the Applicant timeously housing benefit received by the Letting Agent under deduction of the Letting Agent's management fee.
26. Ultimately the Applicant contacted the three approved tenancy deposit schemes in March 2018 to enquire as to whether or not any of those schemes held the Tenant's deposit in respect of the Property and was advised in writing by each scheme that no deposit was held for the Property and for the Tenant.
27. The Applicant repeatedly asked the Letting Agent to confirm that the deposit had been lodged with an approved scheme and to provide evidence thereof. The Letting Agent consistently refused to respond.
28. The Applicant had been advised by Gillian Herron, a member of the Letting Agent's staff, that the net rent due to the Applicant should be received by him 10 days after payment of housing benefit to the Letting Agent by the local authority. The Letting Agent repeatedly failed to adhere to that commitment.
29. The Applicant produced to the Tribunal a letter dated 15th May 2018 from North Lanarkshire Council addressed to the Tenant noting payments of housing benefit made for

the period from 3<sup>rd</sup> February 2014 to 25th February 2018. The Applicant also produced to the Tribunal a Schedule that he had prepared covering the period from 29th January 2014 to 8 March 2018 which illustrated that housing benefit payments received by the Letting Agent on 29th January 2018 for the period 1st January 2018 to 28th January 2018 and received by the Letting Agent on 26th February 2018 for the period 29th January 2018 to 25th February 2018 each in the sum of £332.32 remained outstanding and due to him under deduction of the Letting Agent's management fee of 10% plus VAT.

30. The Applicant terminated the Letting Agent's contract in April 2018.
31. The Applicant subsequently instructed Blackwell & Abode Scotland to take on the future management of the Property with the Tenant. The Applicant also instructed Blackwell & Abode to use his own funds held by them on account to pay a sum of £360 into an approved tenancy deposit scheme, namely Letting Protection Scotland, in lieu of the Tenant's deposit that ought to have been paid into such a scheme by the Letting Agent.
32. The Applicant produced to the Tribunal evidence of his attempts to communicate with and obtain explanations and answers from the Letting Agent. The Letting Agent failed to respond to the Applicant's enquiries. In particular, by letter dated 16 March 2018, also sent to the Letting Agent by email on 17 March 2018, the Applicant sought by 26th March 2018 payment of outstanding rent, a copy of the certificate relative to the lodging of the Tenant's deposit in an approved tenancy deposit scheme, damages and compensation, and copies of the Letting Agent's certificates of insurance cover for Professional Indemnity and Client Money Protection insurance with confirmation that all client monies are held by the Letting Agent in a dedicated client account. The Letting Agent failed to respond.
33. The Applicant complained that the last documented attempted to inspect the Property was on 8 July 2015 which had not been carried out to be due to the Tenant having lost a baby. The Applicant believed the industry standard for property inspections to be six monthly and that no subsequent inspection had been undertaken.
34. The Applicant asked the Tribunal to award in his favour a sum of £360 in respect of the Tenant's deposit, £584.88 in respect of the unpaid rent, and compensation for the Letting Agent's failure to comply with the Code of Practice.

## **Findings of Fact**

35. The Applicant is the landlord of the Property.
36. The Letting Agent carries out letting agency work in Scotland.
37. The Letting Agent has not yet joined the Register of Letting Agents.
38. On or about 29th November 2012 the Applicant entered into a contract with Scotlet Properties Limited trading as "Location" for the letting and management of the Property. Scotlet Properties Limited then had its Registered Office at 4d Auchingramont Road, Hamilton, ML3 6JT and was registered at Companies House with company number SC425757.
39. On or around 15th January 2014 Scotlet Properties Limited on behalf of the Applicant entered into a Short Assured Tenancy Agreement with the Tenant relative to the Property. The Tenant paid to Scotlet Properties Limited trading as "Location" a sum of £360 by way

of a deposit.

40. Scotlet Properties Limited failed to pay the Tenant's deposit into an approved tenancy deposit scheme.
41. The agreement between the Applicant and Scotlet Properties Ltd contained no statement as to the frequency of inspections of the Property.
42. Scotlet Properties Limited was wound up on or around 14th September 2015 and was dissolved on or around 20th February 2018.
43. From on or around late 2015 the Property was being managed for the Applicant by the Letting Agent.
44. The Applicant had no written contract with the Letting Agent.
45. The Letting Agent did not receive the Tenant's deposit.
46. The Letting Agent had no obligation to pay the Tenant's deposit of the equivalent thereof into an approved tenancy deposit scheme.
47. The Letting Agent has failed to pay to the Applicant sums due to him relative to housing benefit payments of £332.32 received by the Letting Agent from North Lanarkshire Council on each of 29th of January 2018 and 26 February 2018 under deduction of the letting agents management fee of 10% plus VAT.
48. The Applicant terminated the Letting Agent's contract in April 2018.
49. The Applicant now instructs Blackwell & Abode Scotland to manage the Property.
50. The Applicant has utilised his own funds to pay a sum equivalent to the Tenant's deposit of £360 into an approved tenancy deposit scheme, namely Letting Protection Scotland.
51. The Applicant has sought from the Letting Agent explanations and answers relative to the Tenant's deposit and outstanding sums due to him. The Applicant has also sought copies of the Letting Agent's certificates relative to its Professional Indemnity Insurance and Client Money Protection Insurance arrangements.
52. The Letting Agent has failed to communicate with or respond to the Applicant's enquiries.
53. The Applicant has been put to delay, worry and inconvenience as a consequence of the Letting Agent's actions.

## **The Code of Practice**

54. The Tribunal accepts that the Applicant has made enquiries of and complaints to the Letting Agent to which the Letting Agent has failed to respond within reasonable timescales in breach of **Section 2, paragraph 26** and **Section 7, paragraph 108** of the Code of Practice. In particular, in the period after 31 January 2018 (the date upon which the Code of Practice came into effect) the Applicant sent the following to the Letting Agent:-

- An email on 12 February requesting documentation relative to the Tenant's deposit scheme registration, rent received by the Letting Agent and due to the Applicant and an explanation of apparent errors in monies received and paid by way of housing benefit; and
- A letter and email dated 16 and 17 March respectively requesting documentation relative to the Tenant's deposit scheme registration, rent received by the Letting Agent and due to the Applicant, an explanation of apparent errors in monies received and paid by way of housing benefit, and copies of the Letting Agent's certificates relative to its Professional Indemnity Insurance and Client Money Protection Insurance.

The Letting Agent failed to respond.

55. The Tribunal accepts that, having been asked by the Applicant by letter and email dated 16 and 17 March 2018 respectively, the Letting Agent has failed to confirm to the Applicant that it holds Professional Indemnity Insurance or equivalent protection to another body or membership organisation and has failed to provide any details thereof at the Applicant's request in breach of **Section 3, paragraph 32(o)** and **Section 8, paragraphs 132** of the Code of Practice.
56. The Tribunal accepts that, having been asked by the Applicant by letter and email dated 16 and 17 March 2018 respectively, the Letting Agent has failed to provide to the Applicant confirmation that it holds Client Money Protection Insurance or equivalent protection through another body or membership organisation and has failed to provide details thereof at the request of the Applicant in breach of **Section 3, paragraph 32(p)** and **Section 8, paragraph 126** of the Code of Practice.
57. The Tribunal accepts that the Letting Agent has failed to account immediately to the Applicant for all money held on his behalf in breach of **Section 8, paragraph 120** of the Code of Practice.
58. The Tribunal accepts that the Letting Agent has failed to ensure that the Applicant's money is available to him on his request and is given without unnecessary delay in breach of **Section 8, paragraph 124** of the Code of Practice.
59. The Tribunal does not accept that the Letting Agent has received the Tenant's deposit of £360 or otherwise had any obligation to lodge an equivalent sum with an approved tenancy deposit scheme. Accordingly the Tribunal does not find the Letting Agent to be in breach of Section 3, paragraph 32(i), and Section 4, paragraph 66 of the Code of Practice.
60. The Tribunal did not have any evidence before it to reach any conclusion that the Letting Agent had any obligation to carry out routine inspections of or visits to the Property. Accordingly, the Tribunal does not find the Letting Agent in breach of Section 5, paragraph 74 of the Code of Practice.
61. The Tribunal did not have any evidence before it to reach any conclusion that the Letting Agent had failed to keep adequate records and accounts to show dealings with clients' money or that it had failed to hold client money in one or more separate and dedicated client bank accounts or that it had failed to monitor and record all transactions and reconcile monthly as a minimum. Accordingly the Tribunal does not find the Letting Agent in breach of Section 8, paragraphs 119, 121 and 123 of the Code of Practice.

62. The Tribunal did not have any evidence before it to reach any conclusion that the Letting Agent had failed to have or maintain adequate Professional Indemnity Insurance appropriate for the Letting Agent's level of income and type of work on a full liability basis. The only evidence is to the effect that the Letting Agent failed to answer the Applicant's requests for details to be provided. Accordingly the Tribunal does not find the Letting Agent in breach of Section 8, paragraphs 130 and 131 of the Code of Practice.

## Decision

63. As the Tribunal has decided that the Letting Agent has failed to comply with the Code of Practice, the Tribunal is required to make a Letting Agent Enforcement Order ("LAEO") in terms of Section 48(7) of the 2014 Act. Said LAEO requires the Letting Agent to take the steps the Tribunal considers necessary to rectify the failures within the specified period.

64. The Tribunal considers that it is appropriate for the Letting Agent to pay compensation to the Applicant comprising repayment of client monies held plus compensation for delay, worry and inconvenience.

65. The Tribunal therefore orders the Letting Agent to pay to the Applicant:-

- i. The outstanding client money in the sum of £584.88; and
- ii. In respect of the delay worry and inconvenience suffered by the Applicant as a result of the Letting Agent's failure to comply with the Code of Practice the Tribunal considers the sum of £208.59 to be an appropriate amount of compensation.

The Letting Agent is ordered to pay the foregoing sums to the Applicant within 14 days.

## Appeals

An applicant or letting agent 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.

Signed Gillian Buchanan

Date  
18 September 2018