

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Statement of Reasons under Section 48(6) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/19/0333

Flat 0/1, 218 Allison Street, Glasgow G42 8RS ("House")

The Parties:-

Alina Munteanu, residing at the House ("Applicant")

Govanhill Law Centre, Samaritan House, Lower Ground floor, 79 Coplaw Street, Govanhill, Glasgow G42 7LG ("Applicant's Representative")

G4 Properties, 52 Albert Drive, Glasgow G42 8DN ("Letting Agent")

Tribunal Members :

Joan Devine – Legal Member

Gerard Darroch – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Letting Agent has failed to comply with the Letting Agent Code of Conduct as required by section 46 of the Housing (Scotland) Act 2014. In all the circumstances the Tribunal does not propose to make a Letting Agent Enforcement Order.

The Tribunal make the following findings in fact:

1. The Applicant entered into a tenancy agreement in respect of the House dated 16 May 2018 ("Tenancy Agreement").
2. The landlord in terms of the Tenancy Agreement is Robina Hussain (nee Rasul) ("Landlord").
3. In terms of the Tenancy Agreement the date of entry was 16 May 2018. The Applicant continues to occupy the House.
4. The Letting Agent entered into a letting and management service contract with the Landlord dated 4 May 2018 ("Service Contract").
5. The Letting Agent sent an email to the Landlord on 9 November 2018 stating that they wished to terminate the Service Contract.

6. The Applicant's Representative wrote to the Letting Agent on 13 November 2018, 5 December 2018 and 25 January 2019 noting a number of issues regarding the state of repair of the House.
7. On the instruction of the Landlord the Letting Agent has instructed repairs to the House in the course of March 2019 which have resulted in the boiler being replaced.
8. The Applicant has made an application to the First-tier Tribunal (Housing and Property Chamber) under the Housing (Scotland) Act 2006 in which the Applicant alleges that the Landlord has failed to comply with the duty to comply with the repairing standard in respect of the House. That application proceeded to a hearing in the week commencing 8 April 2019.

Introduction

1. In this decision the Housing (Scotland) Act 2014 is referred to as "the Act"; the Letting Agent Code of Practice is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Regulations".
2. Following on from the Applicant's application to the Tribunal which comprised documents received between 1 February 2019 and 5 April 2019 ("Application"), the Convener, with delegated powers under section 18A of the Act, referred the Application to the Tribunal on 20 February 2019. The Tribunal had available to it, and gave consideration to, the Application, written representation from the Applicant's Representative, a copy of the Tenancy Agreement, a copy of the Service Contract, copy emails provided by the Letting Agent and the oral submissions made by the Applicant's Representative and the Letting Agent at the hearing.

Hearing

3. A hearing took place at the Glasgow Tribunal Centre on 16 April 2019. The Applicant did not attend but was represented by Chris Waite from the Applicant's Representative. Imran Haq appeared on behalf of the Letting Agent

Basis of the Application

4. The Applicant complained of non-compliance with section 89, 90 and 91 of the Code.

Summary of Submissions

5. Mr Waite told the Tribunal that the Applicant had raised issues with the Letting Agent by letters from the Applicant's Representative dated 13 November and 5 December 2018 and 25 January 2019. The issues raised were:
 - there is no hot water in the property;

- the washing machine has broken;
 - the fridge has broken;
 - there are holes in the kitchen sink and it is leaking;
 - there is a cockroach infestation in the property; and
 - the wallpaper in the property is falling off the walls.
6. Mr Waite said that the Applicant had made a separate Application to the Tribunal in respect of non-compliance with the repairing standard. He said that a hearing took place before the Tribunal in the previous week and a Repairing Standard Enforcement Order had been granted. Mr Waite explained that the House was furnished when the Applicant took entry.
 7. Mr Waite said that the Applicant remained in occupation of the property. It was only in January 2019 that the Letting Agent told the Applicant's Representative that the Letting Agent was no longer managing the House. However, Mr Waite noted that emails received by him in the course of March 2019 in respect of the House had been received from the Letting Agent.
 8. Mr Waite explained that in or about 20 March 2019 the boiler in the House was replaced. This meant that the issue complained of in respect of the hot water had been resolved.
 9. As regards the other issues complained of, Mr Waite told the Tribunal that the washing machine was still not fixed. The issue in respect of the fridge had been resolved in that the Applicant had removed the defective fridge and replaced it with an alternative. The kitchen sink was still leaking. The cockroach infestation had been dealt with following intervention by the Environmental Health Department of the local authority. The issue complained of in respect of the wallpaper had been resolved.
 10. Mr Waite told the Tribunal that he had not received any response from the Letting Agent to the three letters which he had written.
 11. Mr Haq told the Tribunal that the Landlord's name was Robina Husain. Reference in correspondence to Robina Rasul was a reference to her maiden name.
 12. Mr Haq told the Tribunal that the Letting Agent was no longer managing the House. He said that the Applicant was in place as tenant when the Letting Agent was instructed by the Landlord. He understood that at that time there was already a case going on between the Landlord and the Applicant in respect of rent arrears. At the time of being instructed the Letting Agent put a new tenancy agreement in place between the Applicant and the Landlord. Mr Haq told the Tribunal that the Letting Agent carried out an inspection of the House in May 2018.
 13. Mr Haq told the Tribunal that the Letting Agent had difficulty in having the Applicant attend at the office of the Letting Agent. His understanding of the position in respect of payment of rent was that no rent had been paid since the Applicant had taken entry to the House in May 2018 other than one

payment of £500 which was made in March 2018. Mr Haq told the Tribunal that he had attended the House to try to meet with the Applicant and had found that other parties were in occupation.

14. The Tribunal drew Mr Haq's attention to the letter from the Applicant's Representative dated 13 November 2018. Mr Haq said that he forwarded the letter to the Landlord.
15. The Tribunal asked Mr Haq about the Letting Agent's procedure in respect of repairs. He said that if he received a report that repairs were required he would attend the property within 24/48 hours to investigate. He would then instruct the repairs unless the estimated cost was more than £100 in which case he would seek the approval of the Landlord to the repair being carried out.
16. Mr Haq told the Tribunal that he terminated the Service Contract by email on 9 November 2018. The Tribunal noted that the Service Contract provided that two months' notice was required. Mr Haq said that he had been discussing the situation with the Landlord prior to issuing the email of 9 November.
17. Mr Haq said that the Letting Agent usually deducts their management fee and the cost of repairs from rental received. In this case rental was not being received. As far as he was aware only one payment had been paid in respect of rent which was a payment of £500 in May 2018.
18. Mr Haq said that in January/February 2019 the Landlord contacted him saying that she required help with repairs at the House. Mr Haq said that the Letting Agent agreed to have contractors attend the House to provide estimates for carrying out necessary works. He said that the Letting Agent would arrange for the works to be carried out if the Landlord paid for the works in advance.
19. Mr Haq said that he arranged for a washing machine engineer to attend the House twice. The engineer reported to him that the washing machine had been fixed. Mr Haq understood that the engineer had encountered problems regarding access to the House. Mr Haq said that he did not have a contractor attend the House in respect of the sink as the washing machine engineer had said that there was nothing wrong with it. Mr Haq confirmed that an engineer had replaced the boiler at the House on or about 20 March 2019.
20. The Tribunal asked Mr Haq on what basis he was acting in March 2019 if he had terminated the Service Contract with the Landlord. Mr Haq said that he merely acted on behalf of the Landlord in co-ordinating the repairs. He confirmed that the Landlord paid the Letting Agent in respect of the co-ordination of the works. Mr Haq said that he was a director of a company called Handyman Landlords Limited.
21. The Tribunal asked Mr Haq when he told the Applicant's Representative that the Letting Agent was no longer managing the House. Mr Haq said that he thought that a member of staff may have telephoned the Applicant's Representative prior to January 2019.

22. Mr Waite said that all contact in respect of repairs carried out to the House in March 2019 had been with the Letting Agent. Mr Waite was unable to confirm to the Tribunal whether or not rent had been paid by the Applicant since May 2018. Mr Waite told the Tribunal that the Applicant had told him that she had made verbal complaints to the Letting Agent prior to 13 November 2018 in respect of the repairs which were required to the House.
23. Mr Haq told the Tribunal that he had attended the property and had been told by an occupant that the Applicant had returned to her country of origin. Mr Haq told the Tribunal that there were continual difficulties in the Letting Agent communicating with the Applicant.
24. The Tribunal asked Mr Waite to explain the remedy which the Applicant sought. Mr Waite confirmed, as noted in the Application, that the Applicant sought a reduction in the rental charge. He told the Tribunal that the Applicant lives in a house with her husband and four children. The conditions as regards the state of repair at the House have been unacceptable. Mr Haq said that he agreed that the Applicant was entitled to a rent reduction.

The Code

25. The Applicant complained of non-compliance with section 89, 90 and 91 of the Code. They provide as follows:

"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 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.

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

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

Remedy Sought

26. In the Application the Applicant said that she wanted the Letting Agent to reduce the rental charge to compensate for the unsuitable conditions at the House. At the hearing the Applicant's Representative restated this position.

Tribunal Findings and Reasons for Decision

27. Having considered all of the information placed before it, the Tribunal determined that the issues complained of did constitute a breach of the Code.

28. The Letting Agent had failed to comply with sections 89 and 90 of the Code in that they did not manage the repairs promptly and appropriately following intimation of the need for repairs in the letter from the Applicant's Representative dated 13 November 2018. The Letting Agent sought to terminate the Service Contract by email dated 9 November 2018. However, the Letting Agent did not inform the Applicant or the Applicant's Representative that this step had been taken until some point in January 2019. This was a breach of section 37(b) of the Code. The failure to tell the Applicant's Representative, in response to their letters issued between November 2018 and January 2019, that no steps would be taken by the Letting Agent were a breach of section 91 of the Code.
29. The Tribunal heard evidence that an application had been made by the Applicant to the First-tier Tribunal (Housing and Property Chamber) under the Housing (Scotland) Act 2006 ("2006 Act") in which the Applicant alleged that the Landlord had failed to comply with the repairing standard in respect of the House. The Applicant's Representative told the Tribunal that the application had proceeded to a hearing in the week commencing 8 April 2019 and that a repairing standard enforcement order ("RSEO") was to be made which detailed repairs to be carried out by the Landlord to the washing machine and the sink which were the two outstanding issues from the list of issues complained of by the Applicant. The decision following the hearing in respect of the repairs case was subsequently published on the Housing and Property chamber website and was dated 12 April 2019. The RSEO issued following the application under the 2006 Act dealt with the outstanding issues complained of by the Applicant in that it required the Landlord to carry out such works as were necessary to ensure that the kitchen sink was in a reasonable state of repair and proper working order and to carry out such works as are necessary to ensure the washing machine within the Property was in a reasonable state of repair and proper working order, all within 4 weeks of the date of service of the RSEO.
30. The remedy sought by the Applicant in the Application and at the hearing on 16 April 2019 was for a rent reduction. The Tribunal noted that a rent relief order can be granted in terms of section 26 of the 2006 Act following failure to comply with a RSEO. Section 27(2) of the 2006 states that the First-tier Tribunal may make a rent relief order only where it has decided that a landlord has failed to comply with a RSEO which has effect in relation to the house concerned. In the circumstances the Tribunal determined that it was not open to them to grant an order which effectively would be a rent relief order. The Applicant did not ask for compensation to be paid either in the Application or at the hearing. No submission was made by the Applicant's Representative regarding any loss that may have been suffered by the Applicant as a result of the Letting Agent's failure to comply with the Code.
31. Whilst the Tribunal determined that the issues complained of did constitute a breach of the Code, the Tribunal was unable to make a letting agent enforcement order. The remedy sought by the Applicant would be provided by the RSEO which was issued in terms of the application under the 2006 Act.

Proposed Letting Agent Enforcement Order

32. The Tribunal does not propose to make a letting agent enforcement order.

Appeals

33. In terms of section 46 of the Tribunals (Scotland) Act 2014 a homeowner or property factor 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.

J Devine

Joan Devine, Legal Member

7 May 2019

Date

