



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014 and the First Tier Tribunal for Scotland Procedure Regulations 2017  
Chamber Ref: FTS/HPC/LA/19/2173**

**Parties:**

**Mrs Lynne Smith 39 Findhorn Erskine, PA8 6DX “the Applicants”**

**Belvoir 8 Silk Street Paisley PA1 1HG (the letting agent and “the Respondent”)**

**Tribunal Members:**

**Jan Todd, Chairing and Legal Member and Melanie Booth, Ordinary Member**

**Background**

**This was an application by the Applicants for compensation for alleged breaches of the Letting Agent Code of Practice, all in terms of Section 48 of the Housing Scotland Act 2014.**

**Section 48 of the Act states (so far as relevant to this application)**

**“Applications to the First Tier Tribunal to enforce the code of practice**

**(1) A tenant, a landlord or the Scottish Ministers may apply to the First Tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.**

**(2) A relevant letting agent is ...in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant**

**(3) An application under subsection 1 must set out the applicant’s reasons for considering that the letting agent has failed to comply with the code of practice.**

**(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.**

**(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.**

**(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.**

**(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a letting agent enforcement order) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.**

**(8) A letting agent enforcement order –**

**a) must specify the period within which each step must be taken**

**b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply**

**(9) References in this section to-**

**(a) a tenant include**

**(i) a person who has entered into an agreement to let a house and**

**(ii) a former tenant**

**(b) a landlord include a former landlord**

The Applicants by lease dated and commencing on 1<sup>st</sup> April 2016 let the subjects of let namely 40 Dalry, Beith to Ms Karin McColl and Mr John Elliot. The Respondents, Belvoir Lettings were the letting agents

The Applicant complains of alleged breaches by the Respondent of the following paragraphs of the Code of Practice namely paragraphs 17, 21, 73, 74, 90, 102 and 104. The Applicants are seeking compensation in the sum of £2,500 being the sum paid to the Respondents for managing the Property over the period of the lease in the sum of £71.28 per month, as well as an apology and a full review of their management procedures and obligations to the Landlord.

The Applicants had sent a Letting Agent pre notification letter to the Respondents setting out their complaints on 25<sup>th</sup> July 2019. The Respondents replied in detail to that letter by letter of 21<sup>st</sup> August 2019.

The Applicants then lodged their application alleging 7 breaches of the Code of Practice on 7<sup>th</sup> July 2019, together with a copy of the pre notification letter, copy of the Respondents response, and various e-mails between the Landlord and the Letting Agent.

Prior to the Hearing, the Applicant advised the Tribunal by letter dated 4<sup>th</sup> October 2019 that she would be unable to attend the Hearing fixed for 8<sup>th</sup> November giving detailed reasons for this. The Tribunal clarified if she wished to ask for a postponement but the Applicant advised she wished the hearing to proceed in her absence. The Tribunal noted that she had lodged a large number of photographs, e-mails and had

made written submissions and agreed it would be appropriate to proceed in her absence taking account of the written evidence.

The Tribunal also received and had regard to the detailed written representations from the Respondent including photographs, check out report, response to the notification letter and work sheets showing work requested for repairs to the Property.

The Tribunal also asked for and received prior to the hearing:

From the Respondents

- a succinct summary of the inspections
- Copies of e-mails showing communications with the Applicant over repairs noticed or requested by the tenant,

From the Applicants

- copies of any e-mails or other requests for work done on the Property and details of how this was actioned by the agent
- Any other evidence they wished to produce
- a copy of the Respondents terms and conditions
- and a copy of the tenancy agreement.

## **THE HEARING**

Ms Denise Rhodes, the owner and Director of the Respondent was present and gave oral evidence at the hearing. As previously advised the Applicant did not attend. The Tribunal however considered and took account of the large volume of written and photographic evidence it had before it during the hearing and when deliberating.

The following was discussed during the hearing:-

1. The Tribunal went through each of the complaints with Ms Rhodes and asked for her response.
2. The first complaint was regarding Rule 102 and 104 of Section 6 which deals with the ending of the tenancy. The Applicant is complaining that the agent failed to take a full final inventory of the Property as she forgot to bring a copy of the original inventory to the final inspection. The Applicant submitted that the agent requested that they take photographs of the state of the property and that this could cost them money in that when they try to claim money from the tenancy deposit scheme the photographs they took may be deemed inadmissible. In their pre notification letter they confirm that in fact the deposit company was not able to verify certain missing items and that this has in fact caused them financial loss.
3. Ms Rhodes advised that she did in fact take photographs herself, did prepare a check out report, and therefore had conducted a proper inspection for check out. She did however admit that she had forgotten the inventory and did not make a comparison afterwards. She also stated that she advised the landlord that any photographs they took would be inadmissible and she could not in fact remember telling them that they should do so although she does remember saying later that if they wanted to claim anything they should send

to her all the details including any photographs. Ms Rhodes admitted that she was slightly late to the inspection due to heavy traffic but was only a few minutes late, approximately 5 minutes she thought. Ms Rhodes could evidence the time of her first photograph which on her camera on her phone showed the first photograph at 10.15 am after some discussions with the tenant and landlord after her arrival.

4. Ms Rhodes in her response to the Letting Agent notification letter dated 21<sup>st</sup> August proposed £42 compensation for the following items the adjudicator could not rule on:-
  - a. Bird table
  - b. Garden bench
  - c. Ceiling light
  - d. Bedside lamp
  - e. Lampshade
5. Ms Rhodes confirmed she does not check electrical items and this is standard in the industry so offered no compensation for those items.
6. Ms Rhodes advised she has sent the sum of £42 being the compensation sum she felt was due applying the same principles as the adjudicator in tenancy deposit schemes, to the Applicant. She advised the Applicant acknowledged receipt with thanks.
7. The second complaint is that the Agent has breached Section 5 Rules 73, 74 and 90 in relation to the management and maintenance of the Property.
8. The Applicant alleges that the Agent has failed to fully manage their property over the last 3 years; that they paid for a full management service and have returned from abroad to a house that is in a state of neglect and disrepair. They are complaining that the Agent failed to report a strong odour and visible presence of black mould in several rooms, furniture and wood panelling. If it had been investigated earlier, the Applicant believes it would have saved a considerable amount of expense. When the floorboards were removed frogs were found in the sub floor because the house was so damp. The Respondent is also complaining the garden was completely overgrown and neglected and the house was in a general state of neglect.
9. Ms Rhodes has responded in detail in several e-mails and confirmed at the hearing that "hand on heart she had seen no sign of dampness or mould in her inspections since 2018". She did advise that the tenant had previously reported water ingress and damp and this had been reported to the landlord in the property inspection report in November 2016 and July 2017 when there were signs of water ingress on ceiling near kitchen. These were both reported to the landlord. Ms Rhodes confirmed that since 2017 and since the Letting Agent Code of Practice came into force in January 2018 there had been no complaint by the tenant of damp or mould and no sign of it on the Respondents walk through inspections of the Property which took place on 7<sup>th</sup> June 2018, 1<sup>st</sup> November 2018 and 14<sup>th</sup> February 2019. In addition Ms Rhodes advised that the landlord's husband had walked through the whole property a year before the tenants left he did not mention any sign of mould or dampness or raise any issue with the maintenance of the garden.
10. Ms Rhodes confirmed she had carried out inspections on a regular basis and reported all issues including handles missing off drawers so she advised she would have no reason not to raise any more serious issues. Ms Rhodes

categorically denied that the tenant had ever raised the issue of dampness or mould in 2018 or 2019 until they were leaving and had moved furniture away from the walls. Ms Rhodes asked the Tribunal to consider the photographs lodged by the Applicant which she advised predominately show the mould at the foot of the walls. She further advised this would have been covered up by the large items of furniture.

11. Ms Rhodes advised that during the tenancy she has issued 22 worksheets for repairs which she advised is a lot, but was probably because it was an old house, the tenant was good at reporting repairs and issues were picked up in property inspections.
12. The Tribunal asked Ms Rhodes if she had seen any issues with the sealant round the bath and she said she had not and that she would have noticed if there had been black marks there. She did advise that as Agent she would not lift the flooring on an inspection it was a walk through inspection only as set out in the Respondents terms of conditions.
13. The Third Complaint refers to section 2 overarching standards of practice.
14. The Applicant is alleging that the Agent acted in unprofessional and unfair manner towards them at the checkout. In particular she is alleging the Respondent arrived late and rushed the checkout inspection. The Agent told the tenant who was clearly worried about the condition of the property that there was black mould on the cream walls that the tenant had tried to cover with white paint; that it was “not your fault”. In addition the Applicant states that the Agent also, when noted that the dinner service had items missing in the tenant’s hearing said “you don’t want to claim for that do you can buy a dinner set from home bargains for £12.99”.
15. Ms Rhodes denies arriving very late she admits she was a few minutes late, that this was due to heavy traffic and that she apologised for this but that she then conducted a thorough check out inspection and was not rushing to leave. She spent time talking to the landlord about what the tenancy deposit scheme would find reasonable and manage the landlords expectations in terms of betterment and what the landlord might get compensation for. She advised she spent over an hour there and this would be reasonable.
16. Ms Rhodes states that the first comment has been taken out of context. That the tenant was very distressed when she arrived at the property and that she only advised that if the damp in the room they were examining turned out to be as a result of a latent or inherent problem with the building it would not be her fault. She advised this comment was made as the landlord and her husband, the tenant and the Agent were all standing looking at the mould which the tenant had tried to paint over. She confirmed she was trying to be fair to both landlord and tenant.
17. Ms Rhodes admits she made the comment about the plates because she was so shocked at the level of the Applicant’s anger and distress about the missing plates given the length of the tenancy, and that she spoke first without thinking. She cannot remember whether the tenant was present or not.

## FINDINGS IN FACT

1. The Respondents are relevant letting agents for the property the Applicants rent.

2. The Respondents did fail to bring a copy of the inventory to the check-out inspection,
3. The respondent was only a few minutes late to the inspection but carried out a thorough check out inspection including taking photographs.
4. The Respondent did not compare the inventory with the check-out inspection.
5. The Respondents have carried out regular property inspections as per their terms of business.
6. The Respondents have on the whole managed the property appropriately.
7. The Respondents did not see or smell any mould or dampness in the Property from 2018 until the tenant was due to leave.
8. There were previous reports by the Tenant of water ingress in the Property which were reported to the Landlords.
9. The Respondents reported to the Applicant on the state of the garden in the check-out report and the tenancy deposit scheme has adjudicated and awarded in respect of the garden.
10. The Respondent believes the garden was in seasonal state at the last inspection prior to the check out in February 2019 and reported this to the Applicant.
11. The Respondent admits that the lack of comparison with the inventory led to the adjudicator at the tenancy deposit scheme being unable to confirm certain items were missing.
12. The Respondent has offered and paid compensation in the sum of £42 to the Applicant for the items listed in her response to notification letter.
13. The Applicant has acknowledged receipt of the sum paid.
14. The Respondent arrived a few minutes late to the check-out inspection.
15. The Respondent did not rush the inspection and did take time and care and attention to do a proper inspection.
16. The Respondent did advised the tenant that if the mould was due to a problem with the building she was not to worry about it as it would not be her fault.
17. The Respondent did state to the Applicant at the check-out inspection “you don’t want to claim for that do you. You can buy a dinner set from home bargains for £12.99”.

## Reasons for the Decision

### The Claim

The Applicant makes 3 main heads of claim:-

That the agent by failing to bring a copy of the inventory of the property to the final inspection is in breach of Section 6 paragraphs 102 and 104 in that she did not make arrangements to return to the property later and carry out the inspection. That this resulted in several items which were damaged and missing being missed from the independent verification; that the landlords had to take photographs themselves and that this prejudiced the landlords in their tenancy deposit claim.

2. Inadequate management of the Property in breach of Section 5 paragraphs 73.74 an 90 of the Code. The Agent failed to report a strong odour and visible presence of black mould in several rooms in the house on furniture and wood panelling. If this had

been investigated earlier it could have saved us a considerable amount of money. When the floorboards were removed frogs were found in the subfloor the house was so damp. On several occasions we raised the problem with the garden requiring attention. On quitting the property the garden was completely overgrown and neglected. The house in general was in a state of neglect.

3. The Agents manner of conducting the check-out was unprofessional and unfair towards us. We believe the agent to be in breach of section of the code 17,21. She arrived late for the inspection and seemed in a rush to conclude it as soon as possible. She did not take the proper care and time to do a thorough inspection. The Agent told the tenant who was clearly worried due to the condition of the property (there was black mould on the cream walls that she had tried to cover with with paint and several items of furniture she had stored in a garden shed over the winter that were warped and mouldy). Don't worry its not your fault and then when I noted that the dinner service had items missing in the tenant's hearing "you don't want to claim for that, do you? You can buy a dinner set from home bargains for £12.99". Mrs Rhodes has subsequently insinuated that "the tenant was distressed due to the interaction between the three of you prior to my arrival" which is not true. Both in her presence and prior to her arrival we treated the tenant with the utmost kindness, despite our personal distress at the condition of our home."

The Letting Agent Code of Practice  
Section 2

**Section 17** states -

*"You must be honest open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)."*

**Section 21** states: - *You must carry out the services you provide to landlords or tenants using reasonable care and skill in a timely way."*

Section 5

**Section 73** *If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf you must provide these services in line with the relevant legal obligations the relevant tenancy agreement and sections of this code."*

**Section 74** *If you carry out routine visits/inspections you must record any issues identified and bring these to the tenants and landlords attention where appropriate (see also paragraphs 80-84 on property access and visits and paragraphs 85 to 94 on repairs and maintenance)*

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

Section 6

**Section 102** *If you are responsible for managing the check-out process you must ensure it is conducted thoroughly and if appropriate prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began.*

**Section 104** *You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared.*

18. The Tribunal found the Respondent to be entirely credible and an honest and reliable witness.
19. The Tribunal therefore found that the check-out process had been conducted on the whole appropriately. The Code specifically refers to a sufficiently detailed report that makes relevant links to the inventory and schedule of condition where one has been prepared before the tenancy began.. The Tribunal notes that the respondent failed to bring the inventory and to compare it with the check-out report. However she has apologised for her failure to bring the inventory and has offered and paid compensation for the missing items for which the adjudicator in the tenancy deposit case was unable to award any sums for. The Tribunal is satisfied therefore that there is no material breach of Section 6 of the Code and no need for an enforcement order or compensation.
20. With regard to the complaint that the Respondent has breached Section 5 of the Code in relation to management and maintenance. Again the Tribunal found from all the evidence presented that the Respondent has carried out inspections and actioned repairs and maintenance timeously and in accordance with their terms of Business. In particular the Tribunal accepted the evidence of the Respondent that she was not aware of the mould or dampness in the Property prior to the tenant discovering this on moving their furniture and that there was therefore no delay or lack of reporting this to the Landlord. There is no evidence of a report from the tenant complaining of dampness or mould and although the Applicant's contractor mentions that they are surprised that the Agent did not smell or see any sign of this there is no actual evidence that would suggest that they did. The Respondent appeared entirely credible and open in her evidence and the Tribunal accepted that she had not seen or failed to report any signs of mould or dampness.
21. The Respondent has admitted failing to bring the inventory to the check-out inspection and therefore failing to being able to compare this with the check-out report however as noted above the Tribunal notes that the Respondent has compensated the Applicant for the consequences of this breach and as such is satisfied any breach has been rectified and there is no material breach of this section of the Code which requires rectification.
22. With regard to the final complaint of a breach of Section 2 and in particular rule 17 "you must be honest open transparent and fair in your dealings with landlords and tenants including prospective and former landlords and tenants." The Tribunal found the Respondent's explanation of the comments



made by her regarding the mould in the Property to be credible and accepts that the comment that it was not the tenant's fault was only part of a more nuanced conversation around what the causes of damp could be and the Respondent was not being unfair to the Applicant in her comments.

23. The Tribunal does not accept the inspection was rushed and the fact the Respondent arrived slightly late would not constitute a breach of the Code.
24. The tribunal however does accept that comments in relation to the missing items from the dinner set do constitute a breach of Section rule 17 of the Code in that this comment is not in keeping with being fair to the Landlord and caused the Landlord distress.
25. The Tribunal determines that the Respondent should provide a written apology to the Applicant for her comments .The Tribunal considers this appropriate to rectify the failure and that no monetary compensation or review of procedures is required.

**The Respondent should note that failure to comply with an LAEO may constitute a criminal offence.**

**In terms of Section 46 of the Tribunals (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.**

Jan Todd

**Legal Member**

**Date 26 November 2019**