



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 (Act) and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No.328)) (Rules)

Chamber Ref: FTS/HPC/LA/19/3593

Re: Property at 26 Seymour Green, Westwood, East Kilbride G75 8EP (“the Property”)

Parties:

Ms Deborah Dick (“the Applicant”)

Angel Homes LTD (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the Tribunal) determined that the Respondent has not complied with paragraphs 16, 18, 19, 21, 85, 90 and 91 of the Code of Practice for Letting Agents (Code) as required by the Act and issues a Letting Agent Enforcement Order (LAEO).

Background

This was an application under section 48 of the Act and Rule 95 alleging various breaches of the Code of Practice for Letting Agents and seeking to enforce the Code against the Respondent.

The Tribunal had regard to the following documents:

1. Application received 4 November 2019;
2. Email exchange between Applicant and Respondent from 6 March 2019 to 1 November 2019;
3. Respondent’s agents written submissions dated 23 December 2019;
4. Applicant’s Written Response to Respondent’s Submissions of 23 December 2019;

5. Additional documents from Respondent dated 12 February 2020;
6. Parties Submissions on expenses.

The case had called previously for a Hearing on 24 January 2020. The Hearing had not gone ahead due to the Respondent's agents not being in a position to proceed. The Hearing had been adjourned and Parties invited to make written submissions under Rule 40 in respect of whether costs should be awarded. Both Parties had lodged written submissions.

Hearing

Laura Simpson, Director of the Respondent attend the Hearing on its behalf together with the Respondent's Solicitor. The Applicant appeared in person and represented herself.

The Tribunal set out the procedure to be followed at the outset and identified the documents and productions that would be referred to.

The Applicant asserted a breach of paragraphs 16, 17, 18, 19, 20, 21, 23, 85, 90 and 91 of the Code.

The Tribunal then heard evidence from the Parties specifically with regard to the allegations against the Respondent. The Tribunal worked its way through each of the Heads of Complaint in the Applicant's application and invited the Respondent to respond to each in turn.

The Applicant addressed each of the complaints in turn and Ms Simpson responded.

Most of the evidence was contained within the original complaint letter of 20 May 2019, the Respondent's response of 5 June 2019, the Applicant's further complaint of 24 June 2019 and further response of 10 July 2019.

The heads of complaint and evidence was as follows:

1. Communication.

It was asserted there had been a breach of paragraphs 90 and 91 due to the failure of the Respondent's to even respond to the Applicant's communication about a lapsed safety certificate. The Applicant had raised this issue by email of 6 March 2019, issued reminders on 13 and 18 March 2019 before eventually receiving a response on 18 March 2019.

The Respondent accepted that they should have responded within a shorter time frame and explained that the failure to do so was due to the member of staff responsible being dismissed. They had now taken steps to reinforce communications timescales with staff. The Respondent apologised for this.

2. Electrical Installation Condition Report (EICR) not carried out.

The Applicant had requested a copy of the EICR for the Property. The Respondent arranged for an EICR to be conducted on 7 April 2019 which was then sent to the Applicant by email of 23 April 2019. The EICR attached stated that the Property had failed to pass the inspection.

It was asserted that this was a breach of paragraphs 16, 23 and 85 of the Code.

The Respondent explained this had been sent in error, there was a valid EICR from September 2016 and which was valid for 5 years. A copy of this was sent to the Applicant with the response to the complaint dated 5 June 2019. It also confirmed that a further EICR would be carried out. The further EICR was conducted on 2 June 2019.

3. EICR failed.

This essentially duplicates complaint number 2 above. It further states that there has been a failure to communicate despite the EICR stating that the Property had failed and the Applicant was living in an unsafe Property since commencement of her tenancy on 30 September 2016.

It was asserted that this was a breach of paragraphs 16, 17, 19, 20, 21, 23, 85, 90 and 91 of the Code.

The Respondent explained this had been sent in error, there was a valid EICR from September 2016 and which was valid for 5 years. A copy of this was sent to the Applicant with the response to the complaint dated 5 June 2019. It also confirmed that a further EICR would be carried out. The further EICR was conducted on 2 June 2019.

4. Unqualified contractors attending property

The allegation was that a lighting fixture installed in the bathroom was unsafe and should have been carried out by a qualified contractor. The Applicant requested confirmation of the qualifications of the contractor.

It was asserted that this was a breach of paragraph 95 of the Code.

The Respondent maintained that all contractors were appropriately qualified and offered to check the light fitting and enclosed copies of the qualifications of the contractor instructed to check. It was explained that prior to the Code being in force copies of contractors' qualifications were not required to be kept and there were no copies.

5. False/Misleading information provided by Respondents

It was asserted that the Applicant had wished to contact the Landlord with her concerns over management of the Property. The Applicant requested the Landlord's contact details by email of 21 April 2019 and was advised by email of 23 April 2019 from the Respondent that they would not disclose this information.

To date the information had not been provided.

It was asserted that this was a breach of paragraphs 16, 17, 18 and 19 of the Code.

The Respondent apologised for this and explained staff had been told internally that they must provide this information and it had not been provided as the Applicant had managed to contact the Landlord without having this information disclosed.

6. Gas Safety Certificate

It was asserted that the Applicant had never received a copy of the Gas Safety Certificate in respect of the Property.

No reference was made to a paragraph of the Code.

The Respondent's position was that the certificate was passed and signed by the Applicant on 17 October 2018.

The Applicant asserted that the management by the Respondent of the Property had caused significant distress and trauma to her.

Having heard the Parties and considered the documentary evidence the Tribunal made the following findings in fact:

1. The Applicant was and remains the tenant of the Property;
2. The Applicant had raised the issue of the EICR by email of 6 March 2019, issued reminders on 13 and 18 March 2019 before eventually receiving a response on 18 March 2019;
3. The Respondent arranged for an EICR to be conducted on 7 April 2019 which was then sent to the Applicant by email of 23 April 2019. The EICR attached stated that the Property had failed to pass the inspection.
4. There was a valid EICR from September 2016 and which was valid for 5 years. A copy of this was sent to the Applicant with the response to the complaint dated 5 June 2019. It also confirmed that a further EICR would be carried out. The further EICR was conducted on 2 June 2019.
5. The Applicant detailed her complaints to the Respondent in her email of 20 May 2019. A holding response was issued on 22 May 2019 advising a response would be made within 10 working days. A detailed response was issued on 5 June 2019;
6. The Applicant issued a further complaint by email of 24 June 2019 which was responded to by email of 10 July 2019;
7. An EICR Report had been carried out confirming passed dated 27 September 2016;
8. A Gas Safety inspection had been carried out on 17 October 2018 and a Certificate confirming satisfactory was produced dated 17 October 2018;
9. Qualifications of Lee Malcolmson dated March 2016 in SQA Certificate were produced;
10. The Applicant requested the Landlord's contact details by email of 21 April 2019 and was advised by email of 23 April 2019 from the Respondent that they would not disclose this information;

11. The Respondent has made it clear to staff that Landlord's details should be given to tenants but to date has not provided that information to the Applicant;
12. The Applicant had suffered distress and inconvenience by virtue of the Respondent's conduct and failure to provide prompt confirmation that there was a valid EICR in place.

Having considered the evidence and made the above findings the Tribunal decided:

(a) Paragraphs 16, 18, 19, 21, 85, 90 and 91 of the Code:

The Respondent had not provided information such as the Landlord's contact details which were legally required (16 and 18); had provided misleading information with regard to the EICR and such information was not clear and accessible (18 and 19); the services to the Applicant had not been provided with reasonable care and in a timely way due to the misleading information provided and the delay in responding to the request for the Landlord's details (18, 19 and 21); appropriate systems and controls were not in place to ensure inspections and relevant records were kept and produced to the Applicant (85); responses to the Applicant's concerns were not dealt with promptly and appropriately having regard to the nature and urgency of the Applicant's concerns over the EICR and the request for the Landlord's details. (90 and 91).

The Tribunal found that the Respondent had breached all 7 paragraphs of the Code complained of.

(b) Paragraphs 17, 20, 23, 29 and 95 of the Code

The Tribunal considered that these paragraphs had not been breached as there was no evidence that:

1. the Respondent had been anything other than honest, open, transparent and fair in dealings with the Applicant (17);
2. the Respondent had not complied with their policies and procedures consistently and reasonably (20);
3. had not ensured staff were aware of and comply with the Code (23); and
4. had not taken steps to ensure contractors have appropriate qualifications.

The Tribunal considered and found that the Applicant had suffered distress and inconvenience as a consequence of the Respondent's failure to deal with her concerns over the EICR promptly and with clarity. The Tribunal considered that a fair, proportionate and just amount of compensation would be the sum of £500.

The Tribunal also considered the Applicant's application for expenses under Rule 40. The basis of the application was the unreasonable conduct of the Respondent's agents in that they had been unprepared for the Hearing originally set for 24 January 2020 which resulted in the postponement of that Hearing. This had occasioned unnecessary costs to the Applicant for attending the Hearing that did not proceed.

The Tribunal considered the Parties respective written submissions on this and determined that the conduct of the Respondent was not sufficiently unreasonable to merit any award and, in any event, appeared to be caused by error on the solicitor's behalf. The Tribunal declined to make any award.

The Tribunal made the following Letting Agent Enforcement Order:

- 1. The Respondent shall within 21 days pay to the Applicant the sum of £500 by way of compensation for the distress and inconvenience occasioned to the Applicant.**

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

Tribunal chair
11 March 2020