

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of decision: Section 50(2) Housing (Scotland) Act 2014

Reference number: FTS/HPC/LA/18/3454

The Parties:

Carlos Pimenta, 23 Roundhouse Circle, Renfrew, PA4 8FL (“the Applicant”)

Westcoast Lettings Ltd, 19 Main Street, Kilbrnie, Ayrshire, KA25 7BX (the Letting Agent/ Respondent “the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

John Blackwood (Ordinary Member)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the Letting Agent Enforcement Order (“LAEO”) dated 18 March 2019 and that in terms of Section 50(2) of the Housing (Scotland) Act 2014 Notice of that failure should be served on the Scottish Ministers.

The decision is unanimous.

Background

1. By application dated 14 December 2019 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for a determination that the Respondent had failed to comply with the Letting Agent Code of Practice. The Applicant stated that the Respondent had failed to comply with section 2 (16,17,18, 19, 20, 21, 22, 24, 25 and 26), Section 4 (60), Section 5 (74,76 and 77), Section 6 (98), Section 7(108) and Section 8 (118, 119, 120, 123 and 124) of the Code.

2. On 16 January 2018, a Convener on behalf of the President, referred the matter to a Tribunal for a determination. A hearing was assigned to take place at Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow on 8 March 2019.
3. The hearing took place before the Tribunal on 8 June 2018. Neither party attended and neither were represented. No witnesses were present. The Tribunal considered the correspondence and representations from both parties and noted that neither had requested a postponement of the hearing and both had indicated that the hearing could proceed in their absence. The Tribunal determined that it would proceed to consider the application on the basis of the written representations and documents which had been lodged in terms of regulation 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) regulations 2017.
4. Following the hearing the Tribunal issued a decision that the Respondent had failed to comply with Section 20 and 21 of the Letting Agent Code of Practice. The Tribunal also issued a LAEO requiring the Respondent to “Undertake staff training to ensure that all members of staff are aware of the terms of the Letting Agent’s procedures, the Code and the requirement to obtain written authority from landlords if taking instructions from third parties. Thereafter to provide the Tribunal with evidence of the staff training which has been carried out”. The Respondent was to comply with the LAEO within 12 weeks of the date of service of the order.
5. The LAEO was issued to the parties. Thereafter, the Tribunal sought confirmation from both parties that the order had been carried out. Initially, no response was received. The Applicant then responded on 4 August 2019 to advise that he could not confirm or deny whether the order had been carried out and that he no longer had a property registered with the Respondent. On 31 July 2019 the Respondent emailed the Tribunal to advise that it had already submitted evidence of compliance together with a letter which stated that the letting agent business was closing. The Tribunal notified the Respondent that the previous correspondence had not been received and asked the Respondent to re-submit same. No response was received. A further email was issued again asking the Respondent to re-submit the evidence of compliance with the order and again no response was received.

Reasons for Decision

6. The Tribunal considered the responses received from the parties. The Tribunal notes that the order requires the Respondent to carry out staff training and to provide evidence of this. Although an email has been received from the Respondent it did not provide any information or evidence of training having been undertaken. The email also indicated that the letting agency was

closing, but again no evidence was enclosed. Two further opportunities have been provided for the Respondent to provide evidence of compliance, with no response. The Applicant is unable to confirm whether the LAEO has been carried out.

7. The Tribunal therefore concludes that the Respondent has failed to comply with the LAEO. Furthermore, in the absence of evidence that the Respondent is closing its letting agency business, the Tribunal determined that the order should not be revoked.

Appeals

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.

Josephine Bonnar, Legal Member
17 September 2019