



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/19/1601

Parties:

Mrs Gillian McKay (“the Applicant”)

Fineholm Letting Services Limited (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Currie (Housing 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, 23 and 82-84 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 29 May 2019;
2. Email exchange between Applicant and Respondent dated 13 and 14 May 2019;
3. Email from Respondent to Applicant dated 17 May 2019;
4. Email from Applicant to Respondent dated 23 May 2019;
5. Email from Respondent to Applicant dated 24 May 2019;
6. Email from Applicant to Respondent dated 13 June 2019 enclosing further complaints and Response of same date;
7. Email from Applicant to Respondent dated 12 July 2019 enclosing further complaints and Response dated 24 July 2019;

8. Written Representations from the Respondent received 16 September 2019 along with attachments:
9. Notice of Direction dated 12 August 2019;
10. Respondent's response to Direction which included their Complaints Procedure.

The Applicant had notified the Tribunal in advance that her husband would be conducting the Hearing on her behalf.

Hearing

Ellen Hamilton, Office Manager of the Respondent attend the Hearing on its behalf. The Applicant did not appear and was represented by her husband.

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, 18, 23 and 82-84 of the Code.

The Tribunal then heard evidence from the Parties specifically with regard to the allegations against the Respondent.

Ms Hamilton gave evidence on behalf of the Respondent that it accepted their employee should not have entered the Property on 22 May 2019 without the Applicant's consent and apologised.

The Tribunal enquired why this had not been the Respondent's position until now. Ms Hamilton's evidence was to the effect that she thought the responses to the complaints were an apology and acceptance that the employee should not have entered the Property in the circumstances.

The employee concerned had been asked to ascertain whether the Applicant was still in residence at the Property and make enquiries about rental arrears. Apparently there had been no payment of the last month's rent. She had collected the keys when she had started work that day.

Ms Hamilton further explained that there had been a voicemail left with the Applicant on 21 May 2019 and an email regarding the arrears on 17 May 2019.

Mr McKay gave evidence to the effect that this was the first time they had been in arrears over the tenancy and the rent was only 3 weeks late. He advised that he had just left the Property minutes before the employee had entered without authorisation and that when his wife and daughter returned, they had found a copy of the letter attached to the email of 17 May 2019 in the Property. This was the letter chasing payment of rent. Nothing else to explain why entry had been exercised and by whom.

This had caused significant distress and trauma to Mr McKay, his wife and children. Their home had been violated, personal effects were around the Property and they had endured anxiety as a consequence.

Mr McKay explained that the voicemail had never been received by the Applicant.

Ms Hamilton apologised to the Applicant and accepted that the employee should not have entered the Property in the circumstances. She gave evidence that internal training had been provided to all staff as to the circumstances when it was permissible to exercise entry.

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

1. The Applicant was the tenant of the Property as at 22 May 2019;
2. The monthly rent was £1200;
3. The Applicant had not been in arrears during the tenancy until the beginning of May 2019;
4. The Parties had an email exchange on 13–14 May 2019 in which termination at the end of May and June 2019 was discussed;
5. The Respondent's email of 17 May 2019 sought payment of the outstanding rent and made no reference to an intended exercise of entry;
6. The Applicant did not receive a voicemail on 21 May 2019 from the Respondent;
7. On 22 May 2019 the Respondent's employee collected keys for the Property with the deliberate intention of entering the Property in order to ascertain if the Applicant had vacated;
8. The Employee entered the Property on 22 May 2019 and left a copy of the demand letter attached to the email of 17 May 2019 on a coffee table and not in an envelope;
9. At the time of entering the Property the Respondent did not have authorisation to do so and the exercise of the entry was unlawful;
10. The Applicant and her family discovered the unlawful exercise of entry upon their return to the Property later that same day;
11. The unlawful entry caused the Applicant, her husband and 2 young children anxiety and distress;
12. The Applicant complained to the Respondent by email on 23 May 2019, 13 June 2019 and 12 July 2019;
13. The Respondent responded to those complaints in similar terms on 24 May 2019, 13 June 2019 and 24 July 2019;
14. The responses to the Applicant's complaints did not apologise or accept any wrongdoing;
15. The Respondent's Written Representations to the Tribunal and evidence of Ms Hamilton before the Tribunal accepted the exercise of the entry was unlawful and apologised to the Applicant;
16. The Respondent has conducted internal training on circumstances when entry may be exercised to appropriate staff since the unlawful entry.

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

(a) Paragraphs 16, 18 and 23 of the Code:

Entry had been exercised in an unlawful manner on 22 May 2019. No information had been provided to the Applicant to advise that entry was being requested or attempted.

It was accepted that the employee should not have exercised entry.

In light of those facts it was evident that the Respondent had not:

- (i) Complied with relevant legislation (16);
- (ii) Provided information in a clear and easily accessible way (18); and
- (iii) Ensured staff were aware of and complied with the Code and legal requirements (23).

The Tribunal found that the Respondent had breached all 3 paragraphs of the Code complained of.

(b) Paragraphs 82, 83 and 84 of the Code

The Tribunal considered that these paragraphs had been breached by virtue of the Respondent's failure:

- (i) to give the Applicant reasonable notice of the intention to visit the Property and to ensure the Applicant was present when entering the Property (82);
- (ii) to ensure their employee did not enter the Property where access had not been agreed to (83)
- (iii) to make it clear to the Applicant before entry that the employee was going to enter the Property (84).

The Tribunal considered and found that the Applicant and her family had suffered anxiety and distress as a consequence of the unlawful entry to the Property. The Tribunal considered that a fair, proportionate and just amount of compensation would be the sum of £1,200 which was equivalent to one month's rent.

The Tribunal made the following Letting Agent Enforcement Orders:

- 1. The Respondent shall within 21 days lodge with the Tribunal and copy to the Applicant:**
 - (a) Written Procedures and processes for exercising entry to Properties;**
 - (b) Full details of the training provided to staff regarding the exercise of entry to let Properties by whom and to whom; and**
 - (c) The Respondent's Letting Agent Registration.**

- 2. The Respondent shall within 21 days pay to the Applicant the sum of £1,200 by way of compensation for the unlawful exercise of entry on 22 May 2019 and the anxiety and distress occasioned to the Applicant and her family.**

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 them.

Alan Strain

Legal Member/Chair

11 October 2019

Date