

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/LA/22/0192

Re: Property at 7/3 Buchanan Street, Edinburgh, EH6 8SJ (“the Property”)

Parties:

Miss Eve Brennan-Davies, 2f2, 23 Dalgety Street, Edinburgh, EH7 5UN (“the Applicant”)

Letslet Property Management, 5 Clerk Street, Edinburgh, EH8 9JR (“the Respondent”)

Tribunal Member:

Nicola Irvine (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Respondent was not in breach of the Letting Agent Code of Practice and therefore made no order.

Background

1. An application dated 24 January 2022 was submitted in terms of Rule 95 (Application by a tenant, landlord or Scottish Ministers to enforce the Letting Agent Code of Practice) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the 2017 Rules”).
2. The Applicant sought an order against the Respondent arising out of an alleged failure to comply with The Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code”). In particular, the Applicant stated that the Respondent had failed to comply with the following provisions of the Code:-

- i) Paragraph 71 of Section 4 (Lettings)
 - ii) Paragraph 74 of Section 5 (Management and maintenance)
 - iii) Paragraph 82 of Section 5 (Management and maintenance)
 - iv) Paragraph 84 of Section 5 (Management and maintenance)
 - v) Paragraph 85 of Section 5 (Management and maintenance)
 - vi) Paragraph 89 of Section 5 (Management and maintenance)
 - vii) Paragraph 90 of Section 5 (Management and maintenance)
 - viii) Paragraph 92 of Section 5 (Management and maintenance)
 - ix) Paragraph 93 of Section 5 (Management and maintenance)
 - x) Paragraph 95 of Section 5 (Management and maintenance)
 - xi) Paragraph 108 of Section 7 (Communication)
3. In support of her application, the Applicant submitted a copy the private residential tenancy agreement signed by the parties on 25 and 26 August 2021, photographs and email correspondence between the parties.
 4. By decision dated 22 March 2022, a Convenor of the Housing and Property Chamber having delegated powers of the Chamber President, referred the application under Rule 9 of the Rules to a Case Management Discussion ("CMD").
 5. The Respondent's representative lodged written submissions on 18 May 2022.
 6. A CMD took place on 31 May 2022 by conference call. Reference is made to the Note and Notice of Direction issued to parties following the CMD.
 7. The Tribunal adjourned proceedings to a Hearing.
 8. On 3 August 2022, the Tribunal received on behalf of the Respondent a list of witnesses, a paginated bundle of photographs, a paginated bundle of documents and an affidavit.
 9. On 8 August 2022, the Tribunal received a paginated bundle of photographs from the Applicant, along with 2 witness statements.

The Hearing

10. The Hearing proceeded by Webex on 9 August, 11 October 2022 and 17 January 2023. Both parties participated in the Hearing and the Respondent was represented by Mr Halliday, solicitor. On the first day of the Hearing, the Applicant moved to postpone the Hearing due to unforeseen circumstances regarding her attendance at university and regarding her personal life. The application to postpone the Hearing was opposed. The Respondent's representative sent a draft joint minute of agreed facts to the Applicant 2 to 3 weeks before the Hearing. The Respondent's business has closed for the day

in anticipation of the Hearing proceeding. It was submitted that there is not a great deal of extrinsic evidence for the Applicant to assimilate. Having heard parties, the Tribunal refused the motion to adjourn the Hearing. The Applicant indicated that she intended to give evidence herself. The Respondent's representative indicated that he intended to call the witnesses on his list of witnesses to give evidence. The Tribunal heard evidence at length on the parts of the Code said to have been breached. The evidence given by the parties and the witnesses is summarised below. The summary is not a verbatim account of what was said at the Hearing but rather an outline of the matters relevant to the Tribunal's consideration of the application. At the conclusion of the evidence, the Tribunal adjourned the Hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to parties.

Summary of evidence

The Applicant – Eve Brennan-Davies

11. The Applicant gave evidence at length about the condition of the property and the Respondent's handling of complaints made. The issues raised by the Applicant are as follows:

Property not cleaned before she moved in

12. The Applicant lives at the address given in the application. She rented a property through the Respondent's office in August 2021. She viewed the property on 25 August 2021 and wanted to move in the following day. The Respondent told her that the property had not been cleaned yet. She completed the tenancy application form and arranged to collect keys the following day. On 26 August 2021, the Respondent suggested to her that she could clean the flat herself and the Respondent would pay her £50 for doing so. She agreed. The Respondent paid her £50. She did not make the suggestion of cleaning and that suggestion was made by the Respondent only at the point she was collecting the keys.

Mould in the property

13. She moved into the property with her boyfriend. When she moved in on 26 August 2021, she discovered mould. She unpacked some clothing and hung that in the wardrobe. She discovered a large patch of mould in the bedroom above the bed and also in the living room. She mentioned this in the inventory that she prepared and in an email sent to the Respondent on 2 September 2021. She attached photographs to that email. Over the next 3 weeks, she cleaned any areas of mould as they arose. She did not receive any advice from the Respondent about preventing or cleaning mould. She ventilated the property. She did not have the central heating on in the property and used a heated fan instead. Despite the steps taken, larger patches of mould appeared.
14. When she went to retrieve some clothing, she discovered mould on it. She also discovered mould on shoes and bags. She did not accept the suggestion that

she had packed damp clothes before moving to the property. She lodged photographs showing the mould damage to her clothing. On 29 September 2021 she sent an email to the Respondent and attached photographs depicting the mould. The bedroom was out of use because of the mould. The extent of the mould looked similar to the way it looked when she moved into the property but she did not take a photograph at that time. She started sleeping in the living room. She has never experienced a problem with mould on her clothing in the past. She ventilated the property and cleaned walls. She did everything reasonable to try to manage the mould. She thought the mould may have been caused by a structural issue. It was suggested to her that there was no damp proofing work carried out and the current tenant has not had an issue with mould in the property and therefore the issue with mould may have been a cleaning issue. She agreed. She accepted that it is a condition of the tenancy (clause 18) that the property was to be kept adequately ventilated and heated. She was referred to page 95 of the Respondent's documents which contains an email to her from the Respondent dated 26 August 2021. That email contained attachments, including information about how to remove mould. The Respondent had told her that an email would be sent with information about mould. She did not dispute that the email was sent but she did not receive the email. Due to an oversight, she did not chase up that email with information about mould.

15. Photograph 99 of the Applicant's bundle was taken on 23 October 2021 and shows the living room of the property with her belongings piled up in bags. Before moving into the property, she lived in a university flat, the lease for which ended on 26 or 27 August 2021. If she had not moved into the property on 26 August 2021, she would have stayed with her mother in the north of England.
16. She wanted to move out of the property. She found it difficult to find alternative accommodation right away. On 3 October 2021, she sent an email to the Respondent asking to extend her stay in the property. On 8 October 2021, the Respondent told her that her last day in the property would be 28 October 2021. Her father asked the Respondent if she could stay in the property for longer but the Respondent could not accommodate that. The mould continued to spread. She had to wash her clothing in white vinegar and then pile her belongings up in bags.
17. It was suggested that the photographs lodged did not show that there was a serious problem with mould. She regretted not sending more important photographs earlier. She should have taken a photograph of the black mould in the bedroom but she was busy and did not do so. She accepted that the photographs did not show a great deal and did not show something that required immediate attention.
18. She accepted that the email of 2 September 2021 could have been read as simply passing on information, rather than intimating that a repair was required. She was not explicit. She considered the mould to be a maintenance issue, rather than a repair. She had been told that the previous tenant did not live

there full time. She thought that the pre-tenancy check carried out by the Respondent had missed the fact that there was mould in the property.

19. It was suggested that if the mould was obvious, she would have noticed it whilst viewing the property. She expected the Respondent to point out mould. The viewing was rushed and lasted no longer than 5 minutes. It was enough time for her to see all of the rooms. She did not notice mould when she viewed the property.

Single bedframe unsuitable

20. There was a single bedframe with a double mattress, which was unsuitable for her and her boyfriend. She mentioned this issue in an email to the Respondent on 2 September 2021. Under cross examination, she accepted that the issue relating to the bed frame was not a repair issue. She also accepted that the issue with the bed frame was not raised by her again following her email of 2 September 2021. She agreed that the email of 2 September 2021 did not convey any urgency in relation to the bed frame. She received a reply advising that the manager would be consulted about the condition of the flat and that the landlord would be consulted about the bedframe. She assumed that the issues raised by her would be addressed. She did not expect the issue with the bedframe to be resolved immediately. Ultimately, the problem with the bedframe became less important because she started to sleep on the floor of the living room. She left it too long before raising the issue again with the Respondent. She was only told at the end of the tenancy that there was another single bedframe in the property which could have been put together with the existing bedframe to make a double.
21. The issue about the bedframe having been raised and not resolved amounts to a breach of paragraph 93 of the Code.

Tradesman attending without prior notice

22. On 25 October 2021, she spoke to the Respondent about arranging for the attendance of a plumber to fix a slow drip in the bathroom. She explained that it was not convenient for a plumber to attend that day. She is aware that the Respondent's position is that her father was asked for permission to allow a plumber access to the property. Her father was a guarantor and not a tenant, so he should not have been asked for permission. A plumber arrived without notice. Her boyfriend was in the property when the plumber arrived. The plumber told her boyfriend that mould had been caused by lack of ventilation and heating. She disputed this. She ventilated the property adequately.

Failure by Respondent to provide an inventory

23. She prepared the inventory for the property and delivered that to the Respondent at the outset of the tenancy. She mentioned issues in the inventory, such as the mould and the problem with the bedframe. It was suggested to her that in these circumstances, it would be non-sensical for the

Respondent to send her a copy of the inventory. She accepted that she did not make any complaint about not receiving a copy of the inventory until she made the present application. She accepted that she never asked the Respondent for a copy of the inventory. It was not a priority to ask for a copy of the inventory.

Attempts to resolve complaints

24. On 26 and 27 October 2021, she moved her belongings into storage. Along with her boyfriend and father, she arranged a meeting with the Respondent. Her father explained that she wanted compensation because she did not have full use of the property. The Respondent offered £100. She did not consider that was proportionate to the restricted use of the property and she rejected the offer.

Breach of the Code of Practice

25. Paragraphs 89, 90 and 93 relate to repairs. She accepted that she does not know what the agreement is between the Respondent and the landlord. She believes that the issue of mould within the property falls within the category of repairs and maintenance. She believes the Respondent was responsible for maintenance of the property. If the Respondent was not contracted to deal with mould, the Respondent was responsible for notifying the landlord and follow up any work to be done. When no action was taken following her email of 2 September 2021, she considered that the Respondent had failed to meet the obligations imposed by the Code in relation to repairs. Her email of 2 September 2021 warranted attention.
26. She was not complaining about the management of the tenancy after 29 September 2021. Her complaint related to the issues raised in her email of 2 September 2021 and the inaction thereafter.
27. She was referred to the agreement between the Respondent and the landlord and accepted if the Respondent contacted the landlord about any repair issues, the Respondent would have fulfilled its key responsibility. However, paragraph 108 imposes an obligation on the Respondent to respond to enquiries and complaints as quickly as possible.
28. The Respondent breached paragraph 108 by failing to respond to the Applicant's email of 3 October 2021. She accepted that she received emails from the Respondent on 4 and 8 October 2021, but not all of her points were answered.
29. The Respondent breached paragraph 74 and 85 by failing to carry out an adequate pre-tenancy check. When she had a rushed viewing of the property on 25 August 2021, she did not notice the mould. The Respondent had already carried out a pre-tenancy check and should have identified the mould and taken appropriate action. It should have been brought to her attention if the mould needed cleaned.

30. The Respondent breached paragraphs 82, 92 and 95 by arranging for the attendance of a plumber at the property without prior arrangement. Towards the end of October 2021, she reported a bathroom tap which was dripping. It was not convenient to her for a plumber to attend to deal with that repair. Her father did not give anyone permission to attend at the property. It was not appropriate for the Respondent to contact the Applicant's father about the attendance of a plumber; the Respondent should have made any arrangements directly with the Applicant. Although her father was in contact with the Respondent on her behalf, that related to negotiating extra time in the property and did not relate to other matters concerning the tenancy. She did not want the repair effected urgently as she was due to move out of the property within days. She conceded that she knows nothing about the qualifications of the plumber who attended the property and has no information about steps taken by the Respondent to check qualifications and insurance. She conceded that she had misunderstood the code.

Piyush Kulkarni (by telephone)

31. He is 29 years old and works for a private bank in Edinburgh. He is now the tenant at the property, having moved in on 15 November 2021 and lives there with his wife. He has no connection to the Respondent and has no interest in the outcome of this application.
32. He has belongings in the property which have been there since he moved in. His belongings have not been damaged by mould. He has not experienced any mould in the property, nor on his clothing or bedding. He uses the central heating in the property every day and there are radiators in the living room, bedroom and bathroom. He opens the windows in the hall, bedroom and bathroom which open to approximately 30 degrees. He has never noticed a black mark on the bedroom wall near the ceiling.

Schaung Pan, known as Tracy Pan

33. She is 59 years of age and resides in Edinburgh. She was born in China and has lived in the UK for 20 years. The business Letslet is now a limited company but at the relevant time, she was the proprietor of the Respondent business. It is a managing agent business and the clients are landlords. She started the business on 1 May 2007. She has 2 masters degrees, 1 in business administration and the other in accounting finance. The business has 3 employees, namely Taghrid Safwat, Andrena Rowley and Christian Walker.
34. She is aware of the provisions of the Code. She attended training courses about the Code and is familiar with its terms. Staff have also attended training events. The office is open plan.
35. One of the properties managed by the business is the property at 7/3 Buchanan Street. She gave details of the owner/landlord of the property who is registered

blind. All contact with the landlord is done by telephone rather than email. The contract between the Respondent and the landlord has been produced. The agreement is that the Respondent advertises the property for let, identifies tenants, takes details of any repairs noted and notifies the landlord. The Respondent has been managing this property for several years.

36. The staff deal with day to day management of the properties. The property at 7/3 Buchanan Street was empty and for let in July 2021. The practice of the business is to arrange for properties to be professionally cleaned after a tenant has moved out. She was told by Taghrid Safwat ("TS") that a tenant (the Applicant) had viewed the property and wanted to move in right away. The Applicant did not have anywhere to live. The Applicant attended at the office and Andrena Rowley ("AR") dealt with the application form and lease. AR asked her if the Applicant could move in. She said no because the property had to be cleaned first. AR told her that their cleaning contractor was busy and could not clean the property that day. The Applicant had all of her luggage with her. AR told her that the Applicant had agreed to clean the property herself. She offered the Applicant £50 for cleaning the property herself.
37. The next involvement she had with this property was when AR told her that the Applicant wanted to extend her stay in the property by 2 weeks. She told AR that was not possible because another tenant had been identified. After the Applicant moved out of the property and it had been cleaned, she went to the property with AR. She found another single bedframe in the wardrobe in the bedroom. It is a small flat and the other bedframe should have been easy to find. She noticed that the gas central heating had never been used because the meter reading was the same as it was when the Applicant moved in.
38. No other tenant who has lived in the property has complained about mould or damage to belongings.
39. In relation to a dripping tap, the Respondent would classify that as an emergency and arrange for the attendance of a plumber.

Saghir Hussain Moughal

40. He is 54 years of age and lives in Edinburgh. He is a plumber and gas safety engineer with 20 years' experience.
41. He is a contractor who is often instructed by the Respondent to undertake work at properties that they manage. He has received instructions from the Respondent for approximately 10 years. The Respondent normally sends him a message with details of the work required and provides the customer address and contact number so that he can arrange access.
42. When he received instructions to attend the property at 7/3 Buchanan Street, the Respondent told him that the customer was not going to be at home. He collected the keys from the Respondent on the same day he had been instructed. He attended at the property and pressed the buzzer. Having

received no response, he used the key to access the common stairwell. He knocked on the door and heard a noise inside. He knocked again and a young man opened the door. He introduced himself and explained why he was there. He entered the property and checked the boiler which was in working order. The young man told him that the toilet was leaking. He checked it and found that it was not leaking but rather sweating. A leak is when a sink or toilet drips water from the inside. Sweating is condensation around the outside, although it can appear to a lay person to be a leak. Whilst he was there, he noticed a large pile of belongings in the sitting room which had the curtains closed. He asked to see the bedroom. The young man initially refused to allow access, telling him that there was mould everywhere. The young man then agreed to allow him access. He noticed that there was mould on the bedroom wall. The curtains were drawn closed. He told the young man that the property needs to be ventilated and the windows should be opened. He was shown a patch of mould on the kitchen wall. He went into the living room and explained again that the windows need to be opened. The young man told him that the window was open but he pulled back the curtain and noted that the window was closed. It was not possible for him to reach the window because of all the belongings blocking the window. He is a small man and can normally access small or tight spaces, but he could not access the windows in the living room because of all of the clothing and shoes stacked up in front of the window.

43. After his visit, he reported the outcome of his visit to the Respondent. The Respondent later reported to him that it had received a complaint about him from the Applicant.

Taghrid Safwat

44. She is 37 years of age and lives in Edinburgh. She is employed by the Respondent as the office manager and has worked there for 5½ years. Three people work in the office, including Andrena Rowley (maintenance manager) and the owner, Tracy Pan.
45. She is responsible for viewings of the properties the Respondent manages, dealing with check-ins and check-outs of the properties and invoicing.
46. The Respondent manages the letting of the property at 7/3 Buchanan Street and has done so for more than 5 years. She visited the property before the Applicant moved in to make sure the property was not damaged and to check whether it needed cleaned. She conducted the viewing with the Applicant, which AR had arranged. She told the Applicant that the property was still to be cleaned. The Applicant said that she could not wait and wanted to move in right away. The Applicant offered to pay rent and deposit right away and offered to clean the property herself. She told the Applicant she would have to speak to her manager about that. That conversation took place at the Respondent's office after the viewing. The Applicant was given an application form to complete and return.
47. She discussed with Tracy Pan ("TP") that the Applicant was desperate to move into the property. She told TP that the tenant suggested that she would clean the property. TP did not like that suggestion. She told TP that the Applicant had

nowhere to live. TP told her that the Applicant would be given £50 if she wanted to clean the property herself. She contacted the Applicant and offered £50 for her to clean the property herself. The Applicant agreed and the Respondent paid the Applicant the agreed sum of £50. Thereafter, AR dealt with the tenancy application form and the tenancy agreement. She did not accept the suggestion that the viewing was rushed. The Applicant was given as much time as she needed to view the property.

48. She was aware that the Applicant made a complaint by email. There is one email address in the office and all staff have access to that. The Applicant sent photographs by email of her belongings and said that they had been damaged by mould. The Applicant's father contacted the office several times and spoke to AR.
49. Her first email involvement with the Applicant was when she sent the Applicant an email on 8 October 2021. There was a list of prospective tenants who wanted to rent the property. The Respondent offered the Applicant an additional 3 days in the property.
50. She and AR arranged to meet the Applicant, her boyfriend and father at the property on 27 October 2021. She noticed that the central heating was not on and the windows were closed. The Applicant's father pointed out the patches of mould. The Applicant's father said that the Applicant wanted compensation. She told him that she would tell TP who would ultimately make any decision about that. She took gas and electricity meter readings.
51. Following the Applicant's departure from the property, AR arranged for the property to be cleaned. The cleaners did not make any particular comment about the condition of the property.

Andrena Rowley

52. She is 54 years of age and lives in Edinburgh. She is employed by the Respondent as a maintenance manager, having started that employment in July 2021. She takes part in regular training events organised by the Scottish Landlords Association. She arranges maintenance and cleaning of properties between tenancies. The practice of the Respondent is always to arrange cleaning of properties unless an outgoing tenant has cleaned to a high standard.
53. The property at 7/3 Buchanan Street was very popular and the Respondent received numerous calls from prospective tenants. She completed the tenancy agreement relating to the Applicant's occupation of the property. Edinburgh has a lot of old buildings which are affected by condensation and dampness if not ventilated. 7/3 Buchanan Street is in an old tenement building in Leith.
54. She had a discussion with TS about the cleaning company being busy. She persuaded TP to allow the Applicant to move into the property right away and

to allow the Applicant to clean the property herself. She may have made the suggestion to the Applicant. She gave the Applicant £50 and obtained a receipt.

55. A standard email is sent to every tenant when they move in. She sent that standard email to the Applicant on 26 August 2021 (Respondent's documents page 95). That email attached information about ventilation and condensation and guidance on how to remove mould from walls.
56. The Respondent's normal practice is to prepare an inventory at the outset of the tenancy. However, because the Applicant wanted to move in right away, the Applicant prepared the inventory and sent that to the Respondent. She assumed that the Applicant had retained a copy of the inventory, since she prepared it herself. The Applicant never asked for a copy of the inventory.
57. The Applicant sent an email to the Respondent on 2 September 2021 about the cracked glass in the bathroom door and raised an issue regarding the bedframe. She considered that the Applicant raised these issues because she did not want to be charged when she moved out.
58. She later learned that there are 2 single bedframes within the property and they should be put together to make a double bedframe. The previous tenant dismantled one bedframe and stored it in a cupboard in the property. She cannot remember if she spoke to the landlord about the bedframe.
59. She saw the emails the Applicant sent, and in particular the email of 29 September 2021 attaching photographs. She did not think the mould was a big issue. The Applicant could have cleaned the mould. The Applicant did not ask the Respondent to clean mould. The Applicant gave notice in that email of her intention to move out of the property on 26 October 2021.
60. She maintains a list of any repairs required at the properties managed by the Respondent with details of action taken. The first entry relating to the property was dated 30 September 2021 and records that the Applicant had reported a mould issue in the property. She contacted Damp Doctors to give advice. Damp Doctors were to contact the Applicant directly to arrange a suitable time to visit. Damp Doctors reported to her that they had been unable to contact the Applicant.
61. She received emails and telephone calls from the Applicant's father. The telephone calls started around the week of 14 October 2021. She assumed that her father was contacting the Respondent on her behalf and the Applicant was copied into emails sent by her father. He complained that the Respondent had not dealt with issues such as the mould.
62. On 22 October 2021, she recorded that the Applicant reported that the electric oven was not working and there was a drip from a tap. She instructed a plumber to attend to the drip from a tap. She made an arrangement with the Applicant's father and was told that nobody would be home. He consented to the plumber attending and accessing the property to effect a repair. She assumed that the

Applicant's father was acting on her behalf. A repair was effected to the oven after the Applicant left the property.

63. She attended a meeting with TS at the property on 27 October 2021. The meeting was with the Applicant, her boyfriend and her father. The Applicant's father indicated that the Applicant wanted compensation. She told him that she would raise that with her manager. There was a small bit of mould at the top of the bedroom wall. There was no mould on the carpet. It appeared that no gas supply had been used. She checked the meter and noted it was still on reset mode which indicated it had not been used.

64. TP's partner, Shola, dealt with the release of the Applicant's deposit.

65. She was involved in identifying the next tenant, Mr Kilkarni. His lease started on 28 October 2021, although he did not move in that day. She arranged for the flat to be cleaned before he moved in. She instructed a cleaning company that the Respondent regularly instructs to do end of tenancy cleans. The new tenant has not had any issue with dampness or mould in the property.

Submissions

66. The Applicant submitted that, after some consideration, not all of the paragraphs of the Code have been breached as she first thought. She submitted that paragraphs 71, 82, 84, 85, 89, 92, 93 and 108 had been breached.

67. The Respondent's representative invited the Tribunal to disregard the written statements of Ian Davies and Hadyn Lonsdale which were lodged by the Applicant. Those witnesses had not been called to give evidence and the Respondent did not have an opportunity to cross examine them.

68. When the Applicant moved in, she had nowhere to live and was desperate to move in immediately. That is supported by the Respondent's witnesses. That led to the Applicant cleaning the property herself. She agreed to do it. The current tenant has not experienced any issue with dampness or mould. The Tribunal can conclude from that that if the property had been properly cleaned, problems would not have occurred.

69. One of the complaints was that the Applicant's email of 2 September 2021 was not responded to. The Tribunal should conclude that no reasonable reader would think that anything required immediate attention. The wording of the email was tied to the inventory being sent, rather than intimating that a repair was required.

70. There was no evidence that the Applicant's clothing or belongings were damaged as a result of a breach of the Code.

71. The Tribunal should attach weight to the evidence of Mr Mughal. The Applicant failed to comply with the condition of the tenancy agreement to keep the property heated and ventilated.
72. The issue concerning the bedframe could have been dealt with more quickly. However, that is a minor matter and was raised only once, not in robust terms. The email of 2 September 2021 was a request for an upgrade, not intimating that maintenance work was required. If any breach is found, it would not be appropriate to impose a sanction.
73. It would be preposterous to find a breach of paragraph 71 of the Code in circumstances where the Applicant prepared the inventory and sent that to the Respondent.
74. In respect of paragraphs 89, 90 and 93 of the Code, there was no evidence that anything was done which was not in accordance with written procedures.
75. If there was mould in the property, it could have been cleaned. During cross examination, the Applicant explained that she had been cleaning the mould regularly. If she was able to clean it off, there was no issue.
76. Paragraph 108 of the Code is said to have been breached because of the timing of a response to the Applicant's email of 3 October 2021. The Respondent made contact with the Applicant by email the next day about something else and responded to the email of 3 October 2021 on 8 October 2021. A failure to respond immediately does not constitute a breach of the Code.
77. In respect of paragraph 74 of the Code, there was no evidence about routine inspections.
78. In respect of paragraph 75 of the Code, there was no evidence to support a breach. Any mould was minor and cosmetic, removable by cleaning and was caused by the Applicant's failure to heat and ventilate the property.
79. It is said that the Respondent breached the Code by dealing with her father. That is preposterous. The Applicant was copied into emails sent by her father to the Respondent. He had ostensible authority to act on her behalf.
80. In relation to paragraph 82 of the Code, the Tribunal is invited to find Mr Moughal and Ms Rowley as credible and reliable witnesses. Access to the property was arranged with the Applicant's father.
81. There was no evidence to support a breach of paragraph 95 of the Code.

Reasons for Decision

82. Having considered the evidence and taking account of the terms of the Code, the Tribunal determined that the Respondent did not breach the Code. The extent of the factual dispute between the parties was very narrow: there was

only one issue which witnesses were at odds about and that related to who suggested that the Applicant should clean the property. Notwithstanding that factual dispute, the Tribunal does not require to determine that dispute. Regardless of who made the suggestion, the Applicant agreed to clean it in exchange for £50. That allowed her to move in on 26 August 2021. The Applicant was only resident in the property for 1 month before giving notice that she wished to leave. She remained living in the property for a further month and then vacated the property. The Tribunal found the evidence of Mr Kilkarni to be powerful in relation to the issue of mould. He has been living in the property since October 2021 and has not experienced any issues with dampness or mould. That suggests that the issue with dampness and mould should have been managed better by cleaning, heating and ventilation.

83. The Tribunal took account of the evidence of the Applicant, Mr Kilkarni, Mr Moughal, Ms Pan, Ms Safwat and Ms Rowley. The Tribunal did not take account of the written statements of Ian Davies or Hadyn Lonsdale. Those statements were submitted by email on 8 August 2022, on the eve of the first day of the Hearing. The Tribunal noted that at the CMD on 31 May 2022, the Applicant indicated that she intended to call 3 witnesses. Throughout the course of the Hearing which took place over 3 days, the Applicant did not indicate that there was any reason why her witnesses could not give evidence. The Respondent had no opportunity to cross examine Ian Davies or Hadyn Lonsdale.

84. The Tribunal sets out below the reason for the decision, taking each of the relevant paragraphs of the Code in turn.

Paragraph 71

85. This obliged the Respondent to provide the Applicant with a signed copy of the inventory for her records. The agreed evidence on this point was that the Applicant herself prepared the inventory and delivered that to the Respondent. She did not ask the Respondent for a copy of the inventory. The Respondent assumed that the Applicant had retained a copy of the inventory. In the circumstances, that was a reasonable assumption for the Respondent to make.

Paragraph 74

86. If routine visits or inspections are carried out by the Respondent, this obliged the Respondent to record any issues identified and bring these to the Applicant's and landlord's attention. There was no evidence of any routine visits or inspections having taken place. The Tribunal determined that this paragraph was not engaged.

Paragraph 82

87. This paragraph states "You must give the tenant reasonable notice of your intention to visit the property and the reason for this. At least 24 hours' notice must be given, or 48 hours' notice where the tenancy is a private residential tenancy, unless the situation is urgent or you consider that giving such notice

would defeat the object of the entry. You must ensure the tenant is present when entering the property and visit at reasonable times of the day unless otherwise agreed with the tenant.” There was no evidence at all regarding the Respondent visiting the property. There was evidence of a plumber attending to effect a repair which had been reported by the Applicant. The Tribunal considers that this paragraph is intended to strike at a letting agent visiting a property such as for a routine inspection. It does not apply to contractors attending to effect a repair. In any event, the Tribunal accepted the evidence of Andrena Rowley that she had agreed the attendance of the plumber with the Applicant’s father, who had indicated that nobody would be at the property. The Applicant’s father made representations on behalf of the Applicant and the Respondent was entitled to conclude that he had authority to act on her behalf in matters relating to the property. The Tribunal therefore determined that this paragraph was not engaged.

Paragraphs 84 & 92

88. As set out above, the Tribunal considers that the Respondent was entitled to proceed on the basis that the Applicant’s father had authority to speak on her behalf. The emails sent by the Applicant’s father were copied to the Applicant. In any event, there was no evidence that anyone visited the property unaccompanied. The Tribunal accepted the evidence of Saghir Moughal, who explained that when he attended the property, the Applicant’s boyfriend was at home and allowed him access. The Tribunal therefore determined that there was no breach of these paragraphs.

Paragraph 85

89. This requires the Respondent to have systems and controls in place to ensure that pre-tenancy checks, managing repairs and maintenance are done to an appropriate standard. The Applicant did not have any information about the Respondent’s systems and controls. The Tribunal accepted the evidence of Taghrid Safwat; she explained that there is a process that she follows to carry out pre-tenancy checks. Andrena Rowley gave evidence about the records she keeps regarding repairs reported to the Respondent and the steps she takes to instruct repairs. There was no evidence supporting a breach of this paragraph.

Paragraph 89

90. The Applicant had no information about the Respondent’s agreement with the landlord. There was no evidence to demonstrate that the Respondent had failed to manage a repair in line with the agreement with the landlord. The Tribunal found that there was no breach of this paragraph.

Paragraph 90

91. The issue reported by the Applicant regarding the bedframe did not constitute a repair. Following the Applicant’s email of 29 September 2021, the Respondent instructed “Damp Doctors”. That organisation reported that they were unable to reach the Applicant. There was evidence regarding 2 repairs

required. The first related to a dripping tap. The Respondent instructed a plumber to attend on the same day that was reported. The other repair related to the electric oven. That repair was effected after the Applicant left the property. The Tribunal found that the Respondent did not breach this paragraph.

Paragraph 93

92. There was no evidence that there was any delay in carrying out repair or maintenance work. The Tribunal found that there was no breach of this paragraph.

Paragraph 95

93. This paragraph states “if you use a contractor or a third party, you must take reasonable steps to ensure they hold appropriate professional qualifications and the necessary public and professional liability insurance. You should hold copies of all relevant documents.” The Applicant had no information about professional qualifications of contractors or their insurance arrangements. There was no evidence before the Tribunal supporting a breach of this paragraph.

Paragraph 108

94. The Applicant accepted that her email of 2 September 2021 could have been interpreted as passing on information. She accepted that she was not explicit about what she expected the Respondent to do. She explained that she had no complaint about the actions taken following her email of 29 September 2021. She considered that the Respondent did not respond to her email of 3 October 2021 within a reasonable timescale. The Tribunal noted that the email of 3 October 2021 was sent on a Sunday when the Respondent’s office was closed. The Respondent responded to the Applicant on 8 October 2021 and sent an email in the intervening period on 4 October 2021. The Tribunal considered that the Respondent responded to the Applicant within a reasonable timescale and therefore found no breach of this paragraph.


Legal Member

8 February 2023

Date