

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision under Section 48(6) of the Housing (Scotland) Act 2014 (“The Act”)

Chamber Ref: FTS/HPC/LA/22/2373

The Parties:-

**Mrs Catherine Brown, 4 Croftwood, Bishopbriggs, Glasgow, G64
 (“the Applicant”)**

**Ms Pauline McHugh, 39 Angus Avenue, Bishopbriggs, Glasgow, G64 1AH
 (“the Applicant’s Representative”)**

**R & G Estate Agents Limited, 57 Townhead, Kirkintilloch, Glasgow, G66 1NN
 (“the Respondent”)**

Tribunal Members:

Martin J. McAllister, Solicitor, (Legal Member)

**Elizabeth Dickson (Ordinary Member)
 (the “tribunal”)**

Background

1. This is an application made by the Applicant under Rule 95 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, to enforce the Letting Agent Code of Practice (“the Code”).
2. The application was dated 15th July 2022 and was accepted for determination on 24th August 2022.
3. The Applicant is the landlord of two properties and the Respondent was the letting agent responsible for their management on her behalf. The Applicant’s late husband dealt with the Respondent on behalf of the Applicant.
4. The application states that the Respondent has failed to comply with various sections of the Code: Sections 24,26,27, 37(a), 107, 108,111 and 113.
5. The Respondent submitted written representations on 30th September 2022.
6. A case management discussion was held on 17th November 2022 and a Note was issued to parties along with a Direction. Subsequent to the case management discussion, both parties submitted written representations.

The Hearing

7. A Hearing was held by video conferencing on 7th March 2023. The Applicant was present and was represented by Ms Pauline McHugh. Mr Gerry McNulty, director of the Respondent, was present and was accompanied by Ms Maria McNulty, an employee, and Mrs Carolyn Graham, office manager of the Respondent.

Preliminary Matters

8. Mrs Brown said that she owned two properties which had been managed by the Respondent until it had terminated its business relationship with her on 23rd December 2021.
9. Mrs Brown said that she owned 32 Ashfield, Bishopbriggs and 39 Whitelaw Gardens, Bishopbriggs and she said that her husband, Alan Brown, looked after the administration of the properties on her behalf and dealt with the Respondent.
10. Mrs Brown said that the Respondent had been responsible for 32 Ashfield since late 2015/ early 2016 and for Whitelaw Gardens from 2019. She said that, as far as she knew, her husband had been satisfied with the work of the Respondent in relation to the two properties.
11. Mrs Brown said that her husband died suddenly on 13th November 2021 and that she had then tried to get information from the Respondent about her properties and their management.
12. Mr McNulty said that he was one of two owners of the business. He said that he looked after the estate and letting agency side of the business and that his co-owner, Mr Roger Graham, looked after the financial services part of the business. He said that the business had two other directors who took no part in the running of the business which had been in existence for twenty one years. It has two offices. He said that the Respondent currently manages two hundred and twenty eight properties for landlords.

Decision

The tribunal determined that the Respondent has failed to comply with paragraphs 24 and 107 of the Letting Agent Code of Practice and makes a letting agent enforcement order in the following terms:

The Housing and Property Chamber of the First-tier Tribunal for Scotland requires R & G Estate Agents Limited to provide the following undertaking to it within twenty one days of the date of the order:

- (a) It will maintain proper records of dealings with landlords, tenants and prospective tenants and that such records will include written correspondence, telephone calls and meetings.**

(b) It will ensure that its letting agent registration number is included in all relevant documents and communications and in compliance with the Letting Agent Code of Practice.

13. Findings in Fact

- 13.1 The Applicant is the owner of 32 Ashfield, Bishopbriggs and 39 Whitelaw Gardens, Bishopbriggs.
- 13.2 The Respondent acted as letting agent in respect of the two properties owned by the Applicant until it terminated its management contract on 23rd December 2021.
- 13.3 Prior to his death on 13th November 2021, the Applicant's husband, Mr Alan Brown dealt with the Respondent on behalf of the Applicant.
- 13.4 Subsequent to the death of her husband, the Applicant contacted the Respondent seeking information on the properties and, in particular, for evidence for authority for the instruction of an electrical installation condition report (E.I.C.R) for 32 Ashfield, Bishopbriggs. Not all information was provided timeously.
- 13.5 The Respondent did not include its letting agent registration number on all its documents and communications.
- 13.6 The Applicant's agent, Mr Alan Brown, gave authority to the Respondent for an E.I.C.R. to be carried out on 32 Ashfield, Bishopbriggs.
- 13.7 The Respondent timeously advised the Applicant that a repair had been carried out to the shower at 32 Ashfield, Bishopbriggs.
- 13.8 The Respondent timeously provided replies to enquiries and complaints made by the Applicant.
- 13.9 The Respondent provided appropriate and sufficient information to the Applicant following upon the termination of the letting contract.

14. Finding in Fact and Law

The Respondent has failed to comply with paragraphs 24 and 107 of the Letting Agent Code of Practice in breach of its obligations under the Housing (Scotland) Act 2014.

Evidence and Reasons

- 15. It was decided that the tribunal would deal with each alleged breach of the Code and that each party would lead evidence on each paragraph.

24: You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code's requirements.

- 16. Ms McHugh said that the main issue for the Applicant was that an electrical installation condition report (EICR) had been carried out on 32 Ashfield on 30th November 2022 and that the Respondent could not provide evidence that it had been authorised. Mrs Brown said that the EICR for the Property had expired but that was not the issue. She said that she had not been provided

with evidence that her husband had authorised the work. She said that, subsequent to her husband's death, she had told the Respondent around 20th November 2022 that no money was to be spent on the Property without her authorisation.

17. Mr McNulty said that he was involved with overall management of the estate and letting agency business and did not know the detail of everything that went on in the business. He said that Mr Brown had been a popular and valued client who liked to do things on a face to face basis by coming in to the office and giving instructions rather than by email.
18. Mrs Graham explained that there had been difficulty in accessing the property at Ashfield because eviction proceedings were ongoing in October/November 2021. She referred to the Respondent's production 6.1 which was an exchange of emails between Linda Gow of the Respondent and Mr Alan Brown. On 6th October, the Respondent had emailed Mr Brown, addressing it to "Catherine" advising that some certificates required renewal. On the same date, Mr Brown responded and asked for details of the certificates which required to be renewed. On 7th October, Ms Gow responded with information and costs. The email contained the information that the likely cost of an E.I.C.R. would be £170. She stated that, for 32 Ashfield, Electricity, PAT, Gas and Legionella certificates required to be done.
19. On 19th October 2021, Mr Brown sent the following email: *"Please find attached pictures of gas certificates for 32 Ashfield and 39 Whitelaw Gardens. Please contact Tenant at 39 Whitelaw Gardens for other checks that need done. As for Ashfield that Tenant is on way out soon, so contact them by email and just ask them to contact R&R."* Mrs Graham said that she considered "R&R" was a typographical error and that the Respondent took this to mean "R&G." Mrs Graham said that she considered that Mr Brown's email of 19th October provided authority to the Respondent to arrange for the EICR to get done.
20. Ms McHugh said that the Applicant did not consider that the email exchanges referred to did evidence that authority for the EICR had been given.
21. During an adjournment, the Respondent lodged copies of further emails. One was an email from Linda Gow to Mr Brown on 20th October 2021: *"Further to our conversation yesterday, Nicola McMurray called me this morning and gave me her new phone number. I advised that some certificates required renewal and that the relevant contractors would be contacting her to arrange access. She seems ok with this. Hope that is satisfactory to you."* An email of 20th October from Ms Gow to GES Electrical instructed the electrician to contact the tenant for access for an EICR. Mr Brown was copied in on the email. Mrs Graham said that Nicola McMurray was the tenant and that the email to Mr Brown, read together with the emails of earlier in October, constituted authority for the EICR to be done.
22. Ms McHugh said that had the emails, now before the tribunal, been made available to Mrs Brown when she asked for evidence of authority in December 2021, she would have been satisfied. She said that the fact that two of the

emails were only produced on the date of the Hearing underlined that the Respondent did not keep proper records of dealings with landlords.

23. Mr McNulty said that the Respondent has a more robust IT system following upon a server failure in 2020. He said that face to face meetings with Mr Brown were not recorded in the Respondent's system but that any actions following on from such meetings were. He described the relationship with Mr Brown to be "unique" in that he liked doing business face to face. He said that Mr Brown and the staff got on well and that he occasionally brought gifts for them.

26: You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.

24. Ms McHugh said that the Applicant had verbally asked for information and had not been provided with it timeously. The Applicant had also made a written request for information on 15th December. Ms McHugh referred to a subject access request which had been made on 22nd December 2022 and that it was only in response to that when the Applicant had been provided with information which she had been seeking. She said that, even then, the Respondent's email of 24th December 2022 had not provided all the information which had been sought. She did not get information on any actions taken by the Respondent.

25. Mr McNulty said that his email of 24th December contained a one drive link with the information requested in the Applicant's letter of 22nd December. Included in the link was a letter from the Respondent dated 23rd December. That letter also contained intimation from the Respondent that it was terminating its contract with the Applicant and would no longer be managing her properties. He said they did not record or log face to face meetings with Mr Brown but would action any instructions given by him at such meetings.

27: You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.

26. Ms McHugh said that when the electrician carried out the EICR for 32 Ashfield, he had also carried out a repair to a shower and that the Applicant had no knowledge of such a repair and only became aware of it when she was invoiced for it on 24th December along with other information sent by the Respondent. The tribunal was referred to Applicant's production 4b which was an invoice from the Respondent dated 23rd December 2021 for "EICR check and certification.....No earth at shower so repair had to be carried out on shower switch-replace 45a pullcord and remake burnt out cables at switch." The invoice was for £234 and stated that the work had been done by G.E.S.(UK) Ltd.

27. Mr McNulty said that the sum charged by the electrician was for the EICR and the work carried out to make the shower safe. He said that the electrician, because of his SELECT registration, was obliged to deal with any urgent safety issues which he found when carrying out an inspection. Mr McNulty said that

the electrician had not contacted the Respondent before the work to the shower was done. He said that, at that time, the electrician was working seven days a week because there was such a backlog of EICR work as consequence of lockdowns. He said that the first the Respondent was aware of the matter was when the electrician had rendered an invoice. He said that the Respondent sent an invoice to the Applicant around the same time.

37: When either party ends the agreement, you must:

a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed, you must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill.

28. Mrs Brown said that she never got a proper final statement in respect of 32 Ashfield. She said that there was no issue with the statement she got in respect of 39 Whitelaw Gardens. Ms McHugh said that the Applicant was entitled to a proper accounting. The tribunal was referred to Applicant's productions 6 (a) and 6 (b). Ms McHugh said that these were two rent statements for 32 Ashfield. She said that 6 (a) showed a balance due of £343.16 and that 6 (b) was a statement for the same period which showed a balance of £5.18 after deduction of the electrician's costs and an invoice for £70 in respect of a washing machine repair. Mrs Brown said that she asked for explanations but was left "not knowing what was happening."

29. Mrs Graham said that the fact that two statements were issued for the same rental period was as a consequence of timing of invoices and dates of rental payments from Universal Credit.

30. Ms McHugh said that, included in the cash statement was a repair for a washing machine which should not have been included because the Respondent had stated that it would pay for it. Mr McNulty said that, a matter of days after Mr Brown's death, the tenant at 32 Ashfield had reported an issue with the washing machine. He said that it would have been "crass and insensitive" for the Respondent to contact the Applicant so soon after the bereavement and that the repair had been instructed by it. He said that the level of delegated authority under the management agreement with the Respondent was £150. Mr McNulty said that the relationship with Mrs Brown had deteriorated and that three members of his staff were upset by her attitude and that one had been reduced to tears. He said that, in an attempt to try and retain Mrs Brown as a client and, in recognition of her condition as a result of bereavement, he had offered, in a meeting, to accept responsibility for the washing machine repair. He said that the offer was made in an attempt to appease Mrs Brown but that this was not achieved and he therefore did not consider that he was bound by the offer. Mr McNulty described the meeting with Mrs Brown as "horrible" and something the like of which he had not previously experienced in his business.

107: You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act.

31. Mr McNulty said that the letting agent registration number had always been included in tenant and landlord documentation and advertising. He said that he had not been aware that it should be included on letterheaded note paper, emails and other documents. He said that he accepted that the Respondent had made an error in this regard and that this had now been rectified.

108: You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

32. Ms McHugh asked the tribunal to consider this section of the Code along with paragraph 26. She said that she had nothing further to add.

111: You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.

33. Ms McHugh said that the Applicant refutes completely the description of her behaviour towards the Respondent's staff. Mrs Brown said that she felt intimidated by Mr McNulty and the way he had spoken to her when they had a meeting in his office. She said that all she was looking for was information from the Respondent and that she felt that she was not being listened to.

34. Mr McNulty said that, at no time did Mrs Brown say that she was distressed and that, when he met with her, he was aware that he was dealing with a woman who had recently lost her husband. He said that he was trying to build bridges with her.

35. Ms McHugh said that the Applicant had sent a formal letter of complaint to the Respondent on 1st February 2022. She referred the tribunal to the Respondent's production 7.1.5. Ms McHugh said that the letter stated that the Applicant did not want any direct contact from the Respondent and that any communication should be through her representative, Pauline McHugh. Ms McHugh said that, notwithstanding this, the Respondent communicated directly with the Applicant which caused her distress.

36. Mr McNulty said that he had communicated with Ms McHugh in response to the letter of complaint. He accepted that he had also sent communications to the Applicant and said that this had been a misunderstanding. Mr McNulty said that he had thought the reference to communication in the letter of complaint meant direct contact by telephone or email.

113: The procedure must also set out how you will handle complaints against contractors and third parties; any recourse to the complaints procedures of a professional or membership body you belong to; whether you provide access to alternative dispute resolution services; if you are also subject to another regulatory body (for example the Scottish Legal Complaints Commission); and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.

37. Ms McHugh said that Mr McNulty was involved in investigating the complaint and that this was wrong because he was the person being complained about. Mr McNulty said that the complaint escalated very quickly from Stage 1 to Stage 4 in the Respondent's complaints procedure. He said that, although there are other directors in the company, none had his level of expertise in relation to letting agency matters.

Submissions

38. Ms McHugh invited the tribunal to consider all the evidence and find that the Respondent had not complied with the Code. She said that the Respondent had not provided information to the Applicant when it was requested. She said that, in relation to the EICR, information had been available to the Respondent with regard to authority from Mr Brown but it had not been provided when requested and that the totality of the relevant information had only been provided on the day of the Hearing. She said that the Respondent had also failed to provide a proper accounting after the contractual arrangement with the Applicant had come to an end.
39. Ms McNulty said that the Respondent believes that it had complied with the Code. She said that there had been an IT server failure which meant that some information was lost. She said that the Applicant had been provided with what information the Respondent had. She said that the information with regard to authority for the EICR had been provided only on the day of the Hearing because search functions are not perfect. She said that the storage and retrieval of information is now more robust and that the Respondent now has better software. She said that the Respondent's processes have been improved.
40. Ms McNulty said that the Respondent had been alive to the particular circumstances of the Applicant and had endeavoured to act in her best interests. She said that three employees of the Respondent had been adversely affected by the Respondent's attitude to them. She said that one member of staff had been so badly affected that she had been unable to attend a meeting with the Applicant.

Discussion and Determination

41. The tribunal considered that the situation of her husband's death must have been traumatic for the Applicant. She not only had to deal with the grief but also take charge of matters such as the management of the rental properties which he had dealt with. The tribunal noted that she had said that he dealt with all matters in relation to them.
42. The tribunal noted that the Applicant said that her husband appeared to have been happy with the way the Respondent dealt with the rental properties and considered that, had there been issues with the Respondent prior to his death, Mr Brown would, on the balance of probabilities have spoken to his wife about any such problems.
43. The tribunal accepted the evidence of Mr McNulty that Mr Brown liked to deal with matters on a more face to face basis and that they would have been required to adapt to the way that the Applicant wanted to deal with things. It is unfortunate that the relationship broke down when it appears that the relationship with Mr Brown had been good.
44. The Respondent's position was that its record keeping is more robust than it was and that new software systems have improved this. It seemed to the tribunal that any face to face meetings with a landlord should be recorded especially if a letting agent had to then rely on such interactions to prove that it had been instructed to do certain things. The Applicant had concerns about whether or not her husband had given authority for an EICR to be carried out. The email exchanges between Mr Brown and the Respondent on 6th and 19th October 2021 would, on a reasonable interpretation, have provided evidence of such authority. In the tribunal's opinion, the emails of 20th October 2020 put the matter of evidence of such authority beyond any doubt. Ms McHugh's position was that, had such emails been provided to the Applicant, she would have accepted that Mr Brown had given authority for the EICR.
45. The full record of emails between Mr Brown and the Respondent were in the letting agent's system but had not been made available. The Respondent also accepted that face to face meetings which staff had with Mr Brown had not been logged. In regard to the emails and the logging of meetings, the Respondent failed to keep appropriate records of its dealings with Mr Brown, agent of the Applicant and therefore failed to comply with paragraph 24 of the Code.
46. The tribunal considered that, from the documentation that had been produced, the Respondent had responded timeously to requests for information from the Applicant and had therefore complied with paragraphs 26 and 108 of the Code.
47. The Applicant considers that she should have been told sooner about the fault with the shower. The tribunal accepted the evidence of the Respondent that it had informed the Applicant as soon as it knew it from receiving an invoice from the electrician. The Applicant's position was not that the work did not require to be done but that she should have been made aware of the repair. This was a safety issue and required to be dealt with. The email to Mr Brown of 6th October

2021 stated that the cost of the EICR would be in the region of £170. The total cost of the electrical work, inclusive of the EICR, was £234 which meant that the shower repair was £64. The terms of business states that the Respondent had authority to carry out works less than £150 and if it had been advised of the need for the shower repair, it would have been entitled to instruct it. In any event, the Respondent was unaware of the need for work to the shower and advised the Applicant as soon as it was aware. The tribunal determined that the Respondent had complied with paragraph 27 of the Code.

48. The tribunal considered the documentation provided to the Applicant after termination of her contractual arrangement with the Respondent. The Applicant was content with the information supplied to her in respect of 39 Whitelaw Gardens and was not satisfied with the statement which was provided in relation to 32 Ashfield. The tribunal noted that the Respondent had issued two statements for the same rental period but accepted that this was because of timing of invoices received by it and rental payments received from Universal Credit. The tribunal accepted that the statements provided necessary information to the Applicant. The tribunal determined that it had not been demonstrated that the Respondent had failed to comply with paragraph 37 (a) of the Code.
49. The Respondent accepted that it had not included its letting agent registration number on all its written communications but that it was now doing so. The tribunal determined that the Respondent had failed to comply with paragraph 107 of the Code.
50. The tribunal heard evidence that members of the Respondent's staff had been treated poorly by the Applicant and that, as a consequence, the Respondent had made the decision to terminate the contractual arrangement which it had with the Applicant. The tribunal considered that, in relation to conduct of the Applicant, it was not required to make a finding.
51. The Applicant's evidence was that she felt intimidated in a meeting which she had with Mr McNulty. Mr McNulty's evidence with regard to the meeting was that it was "horrible", that he had not behaved improperly to the Applicant and that he had been trying to resolve matters with her. The tribunal came to no view on the meeting and did not consider that it could find that the Applicant was intimidated in the meeting.
52. The Applicant's position was that she had felt intimidated by the Respondent's staff when she had asked them questions and that the fact that the Respondent sent her communications when asked not to was intimidatory in itself. The tribunal made no finding in relation to the conduct of the Respondent's staff towards the Applicant as there was insufficient detailed evidence on the matter. The terms of the correspondence which had been sent in error to the Applicant was not intimidating, threatening or abusive and the tribunal did not consider that the sending of the correspondence was, in itself, in breach of the Code. The tribunal determined that the Respondent had complied with paragraph 111 of the Code.

53. Paragraph 113 of the Code deals with the complaints procedure which a letting agent requires to have in place and what should be contained in such a procedure. The tribunal had sight of the Respondent's complaints procedure and considered that it met the requirements of the Code. The tribunal accepted that the Applicant perhaps had a valid argument that Mr McNulty should not have been involved in consideration of the Applicant's complaint but it was the letting agency which was being complained about not Mr McNulty in particular. The Respondent is a small company and Mr McNulty is inextricably involved in the running of it and in dealing with clients although not involved in the detail of every property managed by the Respondent. Whilst the tribunal did not consider that paragraph 113 of the Code had been breached, the Respondent should perhaps reflect whether, in dealing with complaints from Stage 3 onwards in its complaints procedure, another person such as a director should be involved as the senior manager referred to in the procedure. Such a director would not necessarily require to have detailed knowledge of letting agency matters.

Disposal

54. Section 48 (7) of the Housing (Scotland) Act 2014 states that, where the Tribunal finds that the letting agent has failed to comply with the Code, "it must by order (a 'letting agent enforcement order') require the letting agent to take such steps as the Tribunal considers to rectify the failure."

55. The tribunal determined that the Respondent had failed to comply with paragraphs 24 and 107 of the Code.

56. In relation to paragraph 24, meetings with Mr Brown had not been properly recorded and the Respondent's production of emails on the day of the Hearing demonstrated the failure in record keeping. Those emails, had they been produced sooner, would have provided some information which was being sought by the Applicant.

57. The Respondent accepted that it had not complied with the provisions of paragraph 107 but that it was now doing so.

58. The tribunal considered the content of a letting agent enforcement order. It was clear to it that the Applicant had made the application not for monetary gain but because of her concern at the way she thought matters had been handled by the Respondent. The application did seek reimbursement of invoices for the electrician's work in respect of the EICR and shower repair together with reimbursement for the repair to the washing machine. The tribunal did not consider that it was reasonable for such costs to be borne by the Respondent. Non-compliance with paragraph 24 was significant and was core to the issues which the Applicant had. The tribunal considered that any compensation it might order to be paid would be at the lower end of the scale and would have little significance for the Applicant. The tribunal considered that it would be more important for the Respondent to provide assurances that it would comply with paragraphs 24 and 107 in the future.

59. The tribunal determined to make a letting agent enforcement order in the following terms:

The Housing and Property Chamber of the First-tier Tribunal for Scotland requires R & G Estate Agents Limited to provide the following undertaking to it within twenty one days of the date of the order:

(One) It will maintain proper records of dealings with landlords, tenants and prospective tenants and such records will include written correspondence, telephone calls and meetings.

(Two) It will ensure that its letting agent registration number is included in all relevant documents and communications and in compliance with the Letting Agent Code of Practice.

Martin J. McAllister
Legal Member
27th March 2023