

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/21/2904

15 Bailie Drive, Bearsden, Glasgow, G61 3AL (“the Property”)

The Parties:-

Mr Stuart Anderson, 146 Frederick Crescent, Port Ellen, Islay, PA42 7BD (“the Applicant”)

Tay Letting, 8 Eagle Street, Craighall Business Park, Glasgow, G4 9XA (“the Letting Agent”)

Tribunal Members

Ms Helen Forbes (Legal Member)

Mr Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has not complied with paragraphs 17, 19, 20, 21, 26, 27, 73, 74, 89, 90, 91 and 94 of the Code of Practice for Letting Agents (“the Code”) as required by the Housing (Scotland) Act 2014 (“the Act”) and issues a Letting Agent Enforcement Order (“LAEO”).

The decision is unanimous.

Background

1. By application dated 19th November 2021, the Applicant applied to the Tribunal for a determination on whether the Letting Agent had failed to comply with sections 17, 18, 19, 20, 21, 26, 27, 73, 74, 89, 90, 91, 93 and 94 of the Code.
2. The Applicant indicated in the application that he was seeking the following sums in respect of the alleged failures by the Letting Agent:

Management fees - £3,850
Damage to Property - £25,000
Stress - £10,000

3. By decision dated 15th December 2021, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing.
4. By letter dated 10th January 2022, the Letting Agent made written representations.
5. A Notice of Direction was issued to parties on 16th January 2022. The Applicant was required to lodge a timeline of significant dates and copies of documentation and evidence to assist in proving his case. The Letting Agent was required to lodge the designation of the company, their written policy or procedure, and any relevant documents and communications.
6. A Case Management Discussion ("CMD") took place on 30th March 2022. A further Direction was issued to parties to provide further information and documentation.
7. By letter dated 22nd April 2022, the Letting Agent lodged written representations and productions.
8. By email dated 16th May 2022, the Applicant lodged written representations
9. A CMD took place on 8th June 2022. A Direction was issued requiring parties to lodge witness lists and any additional documents. The application was continued to a hearing.
10. A witness list was lodged by the Letting Agent on 20th July 2023.
11. A witness list was lodged by the Applicant on 28th July 2023.
12. A hearing took place on 10th August 2022. The hearing was adjourned as the documents to be referred to had not been provided to the witnesses. A Direction was issued requiring parties to provide a joint bundle of documents. The Letting Agent was required to provide a paper copy of the joint bundle to the Tribunal and the Applicant.
13. A hearing set down for 21st November 2022 was adjourned as papers had not been provided in hard copy to the Applicant.
14. A joint bundle of documents was lodged by the Letting Agent on 17th February 2023. The Applicant documents have the prefix SA, and the Letting Agent documents have the prefix DG, as referred to throughout the decision.

The Hearing

15. A hearing took place by teleconference on 27th February 2023. The Applicant was in attendance. Mr David Gibb represented the Letting Agent. The Applicant said he would not be calling any witnesses. Mr Gibb said he may call one witness if required. There were no other preliminary issues.

The Applicant's position

16. The Applicant said he had engaged the Letting Agent to manage the Property. The Letting Agent did not do as contracted. They did not look after the Property. They were contracted to undertake regular inspections. They produced two fraudulent reports stating that inspections had taken place and that all was well with the Property, when the inspections did not take place. The Applicant met with the Tenant of the Property before the tenancy ended and learned of a litany of complaints. The Applicant said the Tenant had been hounding the Letting Agent to carry out repairs.

17. There was water ingress from the middle floor to the kitchen in the basement for a period of 19 months and it was never repaired. As a result, there was damage to the sub-floor and dampness in the Property. On moving back into the Property, the Applicant contacted the Letting Agent. Mr Gibb told him to deal with the leak first, which he did.

18. The Applicant said the Letting Agent admitted that the inspection reports were fraudulent. The Letting Agent had taken the Applicant's money for managing the Property but was not prepared to do the work they were legally obliged to do. This caused enormous loss and incredible stress to the Applicant. The Letting Agent offered £1000 in compensation initially, then £1500. The Applicant dismissed the offer. He paid £4000 to the Letting Agent to look after the Property and this was not done.

19. The Applicant said when he came to sell the Property, which is in a desirable area, there were 14 viewers who all complained of a smell of dampness in the Property. The estate agent said it was not fit to sell. The Applicant carried out repairs and ran de-humidifiers for a month. The Property was then sold for substantially less than it would have been if the Letting Agent had done their job. The Applicant had consulted Trading Standards, who confirmed that the Letting Agent's actions in falsifying inspection reports was fraud. The Applicant said he is now looking for some form of justice. He and his wife are now retired and have less money.

Paragraph 17

You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).

20. The Applicant said the Letting Agent had failed in the honesty test immediately. The Letting Agent had contacted the Tenant on 23rd December

2019 (SA1.3) requesting access for an inspection on 6th January 2020. However, the first inspection report produced was dated 18th December 2019 (SA1.2). The second report was dated 23rd March 2020 (SA1.5). Neither of those inspections took place. In terms of the contract between the parties (SA1.8) inspections were to take place 'on a regular basis', and the Applicant understood that would be every 6 months.

21. The Applicant said his wife contacted the Letting Agent several times to enquire about inspections, having passed the Property and having 'noticed things'. They were assured that all was well on those occasions, and again later, when the Applicant was about to move back into the Property in September 2020.

Paragraph 18

You must provide information in a clear and easily accessible way.

22. The Applicant said the Letting Agent was bound to inform him of anything untoward and had not done this, resulting in a leak for 19 months. They had not provided information in a clear and accessible way.

Paragraph 19

You must not provide information that is deliberately or negligently misleading or false.

23. The Applicant said this referred to the falsified inspection reports and said the Letting Agent had accepted this failure to comply.

Paragraph 20

You must apply your policies and procedures consistently and reasonably.

24. The Applicant said the Letting Agent had failed to inspect the Property and provide reports. This was a failure to apply their policies and procedures.

Paragraph 21

You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.

25. The Applicant referred to SA2, which set out details regarding repairs. He had been unaware of the issues at the time, and had been informed by the Tenant later. This was not acceptable as the Applicant should have been kept informed whenever repairs were reported by the Tenant. At the start of the tenancy, the Tenant had reported a list of issues, which had been passed to the Applicant. No further issues were reported during the tenancy.

Paragraph 26

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

26. The Applicant said the Tenant had reported faults and repairing issues and these were not attended to.

Paragraph 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.

27. The Applicant referred to his earlier submissions in this regard.

Paragraph 73

If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

28. The Applicant said the Letting Agent did not manage the Property despite the contract between the parties. They did not deal with complaints and allowed a leak to continue for 19 months. The disrepair caused substantial loss.

Paragraph 89

When notified by a Tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

29. The Applicant said the Letting Agent had failed to comply with this paragraph by failing to manage the leak for 19 months. He explained that the leak occurred at the chimney. It was repaired but the repair did not solve the problem. The Tenant continued to report issues.
30. The Applicant said remedial works were carried out to the electrical system at the start of the tenancy. Sockets had been moved, and some were not blanked off or reconnected. This was discovered later.
31. There was some discussion about a kitchen tap referred to in the Applicant's written representations, where the Applicant had stated that, having asked for a receipt for a kitchen tap, for which he had been charged £245, no receipt was forthcoming. The tap continued to leak and he assumed the work had not been carried out. The Applicant confirmed this was the case. Mr Gibb interjected and said no work had been carried out to replace the tap.

Paragraph 90

Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

32. The Applicant said there was water coming through the kitchen ceiling for 19 months and the Letting Agent had clearly failed in this regard.

Paragraph 91

You must inform the Tenant of the action you intend to take on the repair and its likely timescale.

33. The Applicant said the Tenant had not been informed of action to be taken, as the Letting Agent failed to respond to complaints. She carried out repairs at her own cost.

Paragraph 93

If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible.

34. The Applicant said he would 'bypass' this paragraph as it was unlikely to make any difference to the outcome.

Paragraph 94

You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided

35. The Applicant referred to his written submissions, as follows: On the rare occasion that work was carried out, at no time did the contractors return to rectify the ongoing problem, i.e., the wood burner stove, bedroom sockets, making good ceilings where lights had been changed, dishwasher being replaced and water still leaking causing damage to kitchen units.

Further discussion

36. Responding to questions from the Tribunal as to how much he had spent on the Property after moving back in, the Applicant said it was around £2500 to £3000. This included a plumber and decorating work. There were four dehumidifiers running for a month. He described the work as basic, and what was required to sell the Property.

The Letting Agent's position

37. Mr Gibb said the use of the word 'fraud' was very harsh. A former member of staff had made up reports. He disagreed that the issues had led to significant cost.

Paragraph 17

38. Mr Gibb said the Letting Agent was upfront when they discovered the situation in respect of the false reports. He referred to documents DG1 and DG2, which were emails from him to the Applicant dated 29th and 30th September 2021 respectively. He had gone through each point raised by the Applicant.
39. Mr Gibb said the situation occurred throughout lockdown. The Letting Agent staff had struggled to access their server-based system while homeworking. That issue has now been resolved with changes to a cloud-based system. He accepted there were shortcomings with the information provided, but said that, as soon as reports were brought to the attention of the Letting Agent, they were addressed.

Paragraph 18

40. Mr Gibb said information has always been provided in a clear and easily accessible way. With regard to the kitchen tap, a quote had been provided but the work had never been carried out.
41. Mr Gibb referred to documents DG3 to DG 6 which were landlord statements provided regularly, clearly setting out the required information. Mr Gibb referred to document DG8 which was a repairs and maintenance timeline. On 6th November 2019, before the tenancy commenced, recommendations were made to the Applicant of matters that required attention to bring the Property up to the repairing standard.

Paragraph 19

42. Mr Gibb agreed there had not been compliance with this paragraph. The matter was dealt with internally and the member of staff responsible was no longer in employment. The Letting Agent had apologised to the Applicant and offered a refund of 4 months management fee.
43. Mr Gibb explained that the Letting Agent's system now schedules an inspection at 6 weeks, then every 6 months. The process has been tidied up and the system tracks the inspection to ensure it is carried out. At the time of the attempt to inspect the Property in January 2020, the six-week inspection was in place but was not as well followed up as it now is. There is now an email to ask the Tenant to confirm and make access arrangements.
44. Responding to questions from the Tribunal as to whether or not the employee who had compiled the false reports was dismissed, Mr Gibb said there were a number of issues and he was no longer an employee.
45. Asked how he had calculated the 4 months management fee as compensation, Mr Gibb said he felt that was a significant amount and there were only 5 months of the tenancy during which inspections could have been carried out.

Paragraph 20

46. Mr Gibb said the Letting Agent had followed their procedures. They always look to ensure they are doing so. They carried out staff training after this issue and this included training on the handbooks and the Code.
47. Responding to questions from the Tribunal as to whether inspections were part of their policies and procedures, Mr Gibb said yes, 100%. The terms and conditions state inspections will take place every 6 months, but at the time of this tenancy there was a loose commitment to an inspection after 6 weeks.

Paragraph 21

48. Mr Gibb referred to the Letting Agent's written submissions on this point, as follows:
49. We acknowledge that there were difficulties in delivering our property management service during 2020, and this was predominately as a result of the Covid 19 pandemic and the requirement to adjust our working practices. Our systems were not compatible with home working, but we endeavoured to address this, moving to a cloud-based CRM software system at the start of 2021.
50. Having reviewed email correspondence with the Tenant, we would note that in certain instances, we requested further details from the Tenant to understand more about issues being raised, but we did not receive a response. While we appreciate that as agent, these matters should have been followed up, again we would note that without access to our system, it was challenging to keep track of outstanding jobs. We were also advised by the contractor that in relation to the repair to the wood burner, their request for access was unanswered by the Tenant, which compounded the difficulties.
51. Mr Gibb also said their system had been past its sell-by date, and one of the first things he did on joining the company was to replace the system. He referred to document DG8 which showed a list of issues that had been raised by the Tenant around 3rd December 2019. There was evidence that the Applicant had been informed of these. The Tenant had reported that she had bent a pipe to stop a leak. Mr Gibb said the matter should have been followed up but the Tenant had resolved the issue. There was correspondence going back and fore about this between the Letting Agent and the Tenant on 6th May 2020.
52. Responding to questions from the Tribunal as to the normal procedure following complaints from tenants, Mr Gibb said the tenants can now use the new system through a portal, and can upload photos and videos, which are used to inform decisions, and are passed to landlords. At the time of this tenancy, all complaints were recorded on an Excel spreadsheet. The landlord should have been notified of any repairs involved above the agreed threshold of £50.

53. Responding to questions from the Tribunal regarding his email admissions as shown in document DG1 that a report by the Tenant in respect of the wood burner in March 2020 '*was not picked up by the property manager*', and, in respect of the leaking pipe, '*sadly, the property manager dealing with this matter failed to contact you for further instruction*', Mr Gibb said it had been felt by the Letting Agent, on reflection, that communication had not taken place to their required standard. They had then offered a further refund of 2 months management fees, which brought the total offer to the equivalent of 6 months management fees.

Paragraph 26

54. Responding to questions from the Tribunal, Mr Gibb said there were no timescales in the Letting Agent's written agreement at the time of this case. The timescale now is an initial response within 24 hours. Mr Gibb pointed out that, with the exception of a couple of issues, most of the concerns occurred during early Covid.
55. The Letting Agent's written representations stated: It is our position that we handled the Applicant's complaint fairly and reasonably, and within an appropriate timescale to allow for sufficient investigation into the Applicant's complaints. We thereafter provided a comprehensive response addressing all relevant points.

Paragraph 27

56. Mr Gibb said he had nothing to add to the written representations which stated: There were two issues where we consider further instruction would have been appropriate – namely the leak from the wood burner and the leak from the pipe in the hall. The Tenant raised the issues in March 2020 at the start of lockdown. We would note that there was already pre-existing water damage to the hallway floor as noted in the inventory.

Paragraph 73

57. Mr Gibb referred to the written representations which stated: Although we accept shortcomings with certain repair matters, and also the inspection report, we would highlight that throughout the tenancy we did otherwise provide a full service to the Applicant. There is considerable correspondence between members of the Tay Letting team and the Applicant throughout the duration of the tenancy.

At the start of the tenancy, there were substantial works required from a compliance perspective in order for the property to pass both gas and electrical safety checks, which we dealt with on the Applicant's behalf. We were also prudent to ensure that all safety certifications were updated as appropriate throughout the duration of the tenancy.

We didn't neglect the tenants repair requests by any means, and we did instruct contractors to undertake repairs, and also dealt with the replacement of the dishwasher in a timely manner.

We also accommodated the Applicant's request to split contractor invoices for compliance remedial works over several months, so as to avoid the need for the Applicant to settle this upfront. This was at a cost to Tay Letting, as we had to settle the bill with the contractor and recharge the Applicant each month.

Responding to questions from the Tribunal regarding what was included in the management fee, Mr Gibb said it was not just collection of the rent. There was also correspondence, managing of certification, and management of the end of tenancy process.

Paragraph 74

58. Mr Gibb referred to the written representations which stated: The tenants failed to provide access to the Property for the first inspection, and thereafter we were unable to conduct inspections by law as a result of Covid 19.

Paragraph 89

59. Mr Gibb referred to the written representations which stated: With the exception of the wood burner and hall pipe leaks, we did inform the Applicant of all repairs needing to be actions, and requested their instructions accordingly. The majority of repairs were requested at the start of the tenancy and at that time we provided a list of repairs to the Applicant and requested their instruction. We explained that it would be difficult to provide estimated costs as contractors don't know what is involved without seeing what needs done, and we also explained that there would be a call out charge for contractors to attend. Nonetheless, we were instructed to obtain rough estimates, which meant that repairs were protracted and it was difficult to obtain responses from contractors. This was further protracted as a result of Covid and the changes to working practices.

Paragraph 90

60. Mr Gibb said there were no urgent repairs. There was merely a drip above the wood burner, which was addressed, and further issues were never reported back to the Letting Agent.

Paragraph 93

61. Mr Gibb referred to the written representations which stated: There were no instances whereby a contractor advised that repair and maintenance would be delayed.

Paragraph 94

62. Mr Gibb said there was no need to pursue any contractor. He referred to the written representations which stated: The Tenant noted that there was standing water below the dishwasher after the engineer was out to inspect it. It had already been reported that the dishwasher was leaking, which prompted the engineer to be called out, and therefore the engineer determined that it needed to be replaced if the leak could not be fixed. A plumber was attending the property to address the leak in the tap, and was instructed to look at the leak under the dishwasher at the same time to ensure no further water egress. The dishwasher was subsequently replaced to address the issue. The Tenant did not report any other inadequate work.

Further discussion

63. Mr Gibb addressed the Tribunal on the check-in inventory dated 7th November 2019 (DG9), pointing out marks to the walls, floor, tiling and kickplate in the kitchen (p113) and marks on the cupboard fascia (p115).

64. Mr Gibb addressed the Tribunal on the check-out inventory dated 8th September 2021 (DG10) referencing page 91 which showed no evidence of the ceiling coming in in the kitchen and no pools of water. DG14 showed larger photographs from both inventory reports that indicated the kitchen was in a similar state at check-in and check-out.

65. Mr Gibb referred to the Home Report dated 9th April 2019 (DG12), which showed a repair category of 2 for *Dampness, rot and infestation*. He referred to the Home Report dated 25th August 2021, which also showed a category 2 for the same section. It was not evident that there was significant damage in terms of dampness, as the rating would have changed. He would have expected to see evidence of significant damage in the second Home Report.

66. Mr Gibb said the Letting Agent had held their hands up to their mistakes. They have new members of staff. They have changed all their operating systems and carried out a lot of work.

67. Mr Gibb said the Applicant had provided no evidence of the work carried out to the Property after the contract between the parties ended. There were no quotes, invoices or reports from contractors and no evidence of purchase of dehumidifiers. If he had been in the Applicant's position, he would have lodged this type of evidence.

68. The Applicant said the employee responsible for the falsified reports had still been employed by the Letting Agent during the three previous hearings of the case. It was his position that the directors were responsible for the employees' actions. The fact that the Letting Agent had made so many changes made him feel vindicated.

69. The Applicant said the Letting Agent staff were shown the leak after he moved into the Property. He and the staff took photographs of the leak, but the

photographs had obviously not made the cut. The Letting Agent staff had said they had seen worse and nothing would be done about it.

70. At this stage, Mr Gibb said he wished to call a witness. It was his position that his team were not shown water damage at that time. They had attended after Pinstripe, a third party, who had compiled the check-out report.
71. The Applicant said there was water coming through a hatch but he had not taken photographs. He had wiped the water up. He did not wish to waste valuable time arguing about this. The house was stinking of dampness after a 19-month leak. Water coming through the ceiling was an emergency situation. He was not informed of issues and they were not dealt with.
72. The Applicant said he accepted he had not lodged evidence of the cost of repairing the damage. It was very difficult for him to prove his case. He had asked Your Move for a report, and they had said properties in Bearsden and Milngavie were going for 35% above valuation. The Applicant got 6% over the asking price. He lost out significantly. The Property was not left in the condition it was in when it was first tenanted.
73. Responding to questions from the Tribunal, the Applicant said he had contacted Mr Gibb when he moved back into the Property, and he had been told to get the leak fixed. The pipes were repaired. A roofer carried out repairs. The wood burner had rusted. Decoration was carried out. The Applicant said he had managed and built houses when in employment. He understands houses, and the biggest issue, in his opinion, was leakage into the subfloor of the Property. The leakage had been absorbed by the timbers and that was where the smell was coming from. The Applicant used heating and dehumidifiers to dry the Property out and got rid of the majority of the damp smell.
74. Responding to questions from the Tribunal regarding whether the surveyor had examined the sub-floor at the time of carrying out the survey for the Home Report, the Applicant said that would not have been done. They do not lift floors to check underneath while doing such a survey.
75. Mr Gibb responded by saying that his understanding was that the Home Report covered the whole property. It was his position that a leak could have occurred at any time. Pinstripe had carried out the check-out report and photographs had not been cherry picked. If there was damage under the tiled floor, that would not have been picked up in the inventory report, but if there were structural issues, they would be picked up in a Home Report. Mr Gibb withdrew his request to call a witness.
76. Mr Gibb said the former employee referred to earlier left in September 2022. There had been due process to go through before that stage was reached.
77. There was further discussion about the issue of the Tenant allegedly bending a pipe, and emails at SA2.1 and SA2.2 were referred to. The Letting Agent had told the Tenant she would have to pay to have the floor lifted to allow

access for a heating engineer. The Tenant responded that the pipe was already slightly bent, there was already a hatch in the floor, and she would not be paying for the repair. It appeared that no further work was arranged by the Letting Agent, and the Tenant eventually had the pipe capped herself.

Findings in Fact and Law

78.

- (i) In April 2019, a Home Report was compiled in respect of the Property, showing a property valuation of £545,000.
- (ii) In terms of a contract dated 30th September 2019, the Letting Agent was contracted to manage the Property on behalf of the Applicant.
- (iii) The Applicant entered into a private residential tenancy agreement with the Tenant in respect of the Property that commenced in November 2019 and ended in September 2021.
- (iv) A check-in inventory report was produced by Pinstripe dated 8th November 2019.
- (v) In November 2019, the Tenant reported a leak in the roof above the wood burner.
- (vi) In or around December 2019, the Letting Agent arranged a repair of the leak in the roof above the wood burner.
- (vii) On 3rd December 2019, the Tenant informed the Letting Agent of issues with the Property. The Letting Agent contacted the Applicant and the issues were addressed.
- (viii) On 23rd December 2019, the Letting Agent emailed the Tenant to request access for a property inspection. Access was not provided.
- (ix) On or around 7th January 2020, the Letting Agent attended to carry out an inspection but access was not available.
- (x) In January and February 2020, there was communication between the parties concerning works required and carried out at the Property.
- (xi) By email dated 22nd March 2020, the Tenant emailed the Letting Agent concerning a small leak from a pipe in the hall of the Property, stating that she had bent the pipe a little to stop the leak.
- (xii) By email dated 22nd March 2020, the Tenant informed the Letting Agent that the roof continued to leak in the lounge around the wood burner. No further repair was carried out to address the leak.

- (xiii) On 6th May 2020, an exchange of emails took place between the Tenant and the Letting Agent concerning the bending of the pipe. The Tenant informed the Letting Agent that the pipe was previously bent and there was an adjacent hatch for inspection purposes. No further repair was carried out to address the leak.
- (xiv) On 6th May 2020, the Tenant informed the Letting Agent that the leak above the wood burner continued. No further repair was carried out to address the leak.
- (xv) At some time after 6th May 2020, the Tenant arranged to have the pipe capped.
- (xvi) On 21st October 2020, the Tenant reported an intermittent leak through the wood burner and damp patch on the front room ground floor. No further repair was carried out to address the leak.
- (xvii) On 27th November 2020, the Tenant informed the Letting Agent that the leak over the wood burner continued. No further repair was carried out to address the leak.
- (xviii) On 11th August 2021, the Applicant was provided by the Letting Agent with two inspection reports of the Property dated 18th December 2019 and 23rd March 2020.
- (xix) On 25th August 2021, the Applicant's wife emailed the Letting Agent concerning various issues including the leak over the wood burner. The Letting Agent responded that the issue had been resolved and the Tenant had not reported any further issues.
- (xx) On August 25th 2021, the Applicant's wife informed the Letting Agent that the Tenant claimed no inspections had been carried out despite two inspection reports having been provided to the Applicant.
- (xxi) No inspections were carried out by the Letting Agent.
- (xxii) The inspection reports of 18th December 2019 and 23rd March 2020 were falsified reports of inspections that had not been carried out.
- (xxiii) In August 2021, a Home Report was compiled in respect of the Property, showing a property valuation of £575,000.
- (xxiv) In September 2021, the Applicant and his wife moved back into the Property with a view to selling the Property.
- (xxv) A check-out inventory report was produced by Pinstripe dated 8th September 2021
- (xxvi) In September 2021, the Applicant discovered water ingress to the Property.

- (xxvii) In or around September 2021, the Applicant withdrew the Property from the market following complaints from viewers about a smell of dampness.
- (xxviii) On 20th September 2021, the Applicant emailed the Letting Agent with a list of issues with the Property including damage to the fire and chimney breast/ceiling of the fireplace in the lower ground floor caused by water ingress.
- (xxix) By email dated 29th September 2021, the Letting Agent informed the Applicant that the property manager had failed to pick up the continued problem with the leak above the wood burner.
- (xxx) By email dated 29th September 2021, the Letting Agent informed the Applicant that the property manager had failed to contact the Applicant for instruction on the leak from the pipework.
- (xxxi) By email dated 29th September 2021, the Letting Agent offered the Applicant a refund of six months management fees to settle the matter.
- (xxxii) Throughout the tenancy, the Letting Agent produced regular landlord statements setting out a breakdown of fees charged and work carried out.
- (xxxiii) There was continuous water ingress to the Property throughout the tenancy.
- (xxxiv) The Letting Agent failed to address the reported problems with water ingress.
- (xxxv) The Letting Agent failed to inform the Applicant of repairing issues.

Determination and Reasons for Decision

79. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

Paragraph 17

80. The Tribunal found there had been a failure to comply with this paragraph of the Code in respect of the matter of the falsified inspection reports. The Letting Agent was not honest or fair in their dealings with the Applicant.

81. The Tribunal considered this to be a matter of the utmost seriousness. The Tribunal was not persuaded from the representations before it that the Letting Agent had taken this matter as seriously as it ought to have done.

Paragraph 18

82. The Tribunal did not find there had been a failure to comply with this paragraph of the Code. The Tribunal was concerned about the issue with the tap, given the polarised accounts from the parties on what had or had not taken place, however, no substantive evidence was put forward in this regard. The Tribunal considered that the management statements lodged by the Letting Agent showed they provided information in a clear and easily accessible way, as required by the Code.

Paragraph 19

83. The Tribunal noted that this failure to comply was agreed by the Letting Agent.

Paragraph 20

84. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to apply their procedures consistently and reasonably in respect of property inspections.

Paragraph 21

85. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to carry out their services in respect of inspections and leak repairs with reasonable care and skill and in a timely way.

Paragraph 26

86. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to respond to the Tenant's complaints regarding leaks within the Property within reasonable timescales.

Paragraph 27

87. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to inform the Applicant promptly of issues in relation to leaks within the Property of which they had been made aware.

Paragraph 73

88. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to provide services in line with the Code.

Paragraph 74

89. The Tribunal did not find a failure to comply with this paragraph. No inspections were carried out due to Covid-19.

Paragraph 89

90. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to manage repairs to the leaks in line with the agreement between the parties.

Paragraph 90

91. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to deal with repairs in respect of the leaks promptly and appropriately having regard to their nature and urgency and in line with their written procedures.

Paragraph 91

92. The Tribunal found that the Letting Agent had failed to comply with this paragraph of the Code by failing to inform the Tenant of action they intended to take on the leak repairs and the likely timescale.

Paragraph 93

93. The Tribunal noted that the Applicant had withdrawn this alleged failure during the hearing.

Paragraph 94

94. The Tribunal did not find that the Letting Agent had failed to comply with this paragraph of the Code as it was not clear that there was inadequate work or services provided by contractors.

Further reasoning

95. The Tribunal found that there had been slow water ingress to the Property throughout the tenancy from the leak above the wood burner. The issue had been reported to the Letting Agent on several occasions after the first and only repair was carried out, and the Letting Agent, by their own admission, failed to pick up on, and address, the matter. The Applicant had contracted with the Letting Agent to have the Property fully managed, and this included dealing with repairs, and keeping the Applicant informed of issues. The Applicant was entitled to expect that the Property would be managed in line with the contract between the parties, and in line with the Code, even during the Covid-19 pandemic. The fact that the Letting Agent has subsequently gone to such lengths to change their systems and working practices tends to indicate that the original systems were not fit for purpose. While the Tribunal accepted the evidence on behalf of the Letting Agent that there were other services provided as part of the management fees, the Tribunal considered the falsification of inspection reports and the repeated failure to deal with reported water ingress to be of such seriousness that the Applicant is entitled to a full refund of his management fees, in the sum of £3,850.

96. The Tribunal took into account that the water ingress was not apparent at the time of the check-out report by Pinstripe, however, the Tribunal accepted the evidence of the Applicant that he discovered the water ingress after moving back into the Property, and that he had work carried out to the Property. The Tribunal accepted the evidence of the Applicant that there was a strong smell of dampness, which may have been coming from the sub-floor. and that he had been told that this deterred prospective purchasers.
97. The Tribunal considered it unfortunate that the Applicant did not provide any evidence to indicate the state of the Property in September 2021, or vouching for work carried out. The Tribunal took into account that the second Home Report did not reflect an increase in dampness in the Property, however, it did report under the category of Dampness, rot and infestation that '*localised decay and previous staining was noted particularly surrounding the chimney heads.*' This was not mentioned in the earlier Home Report. The Tribunal also took into account that the surveyor carrying out the single survey did not have access to the sub-floor compartments during the time of the appraisal. The surveyor mentioned that surfaces of exposed floors were visually inspected and no carpets or floor coverings were lifted. It would not, therefore, have been apparent at that time that there was any issue with the sub-floor, which may have been causing the smell of dampness.
98. The Tribunal accepted the evidence of the Applicant that work was required to the Property to rectify the issues caused by water ingress, and, in the absence of any vouching, the Tribunal awarded a sum of £500 to the Applicant in this regard, as the Tribunal found that the work required was a direct result of the admitted failures of the Letting Agent to address the reported water ingress.
99. The Tribunal noted that the Applicant did not provide any evidence other than anecdote that he achieved a lower price than could be expected on sale of the Property, and that this was due to the state of the Property. No evidence was provided to quantify any loss of value in the Property. Indeed, the Home Reports showed an increase of £30,000 between April 2019 and August 2021. The Tribunal made no award in this regard.
100. The Tribunal considered that the Applicant was entitled to an award of £1000 in respect of the distress and inconvenience caused by the Letting Agent's failures to comply with the Code.
101. The Tribunal made no findings in respect of the kitchen tap, any alleged damage caused during electrical works, or damage to fencing, as there was an insufficiency of evidence provided in this regard.

Proposed Letting Agent Enforcement Order ("LAEO")

102. Having determined that the Letting Agent has failed to comply with the Code, the Tribunal must make a LAEO. The Tribunal is required by section 48(7) of the Act to require the Letting Agent to take such steps as it considers necessary to rectify the failure. Section 48(8) provides that payment of

compensation may be made by the letting agent to the Applicant as the Tribunal considers appropriate for any loss suffered by the Applicant as a result of the failure to comply with the Code.

The Tribunal determined to make an LAEO as follows:

1. The Letting Agent must pay to the Applicant within 21 days of the issue of this Order the sum of £3,850 which constitutes the refund of the management fees.
2. The Letting Agent must pay to the Applicant within 21 days of the issue of this Order the sum of £500 in respect of the cost of repairing damage to the Property as a result of the Letting Agent's failures to comply with the Code.
3. The Letting Agent must pay to the Applicant within 21 days of the issue of this Order the sum of £1,000 in respect of distress and inconvenience caused to the Applicant due to the failures of the Letting Agent to comply with the Code.

Right of Appeal

In terms of section 46 of the Tribunals (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.

Legal Member and Chairperson

9th March 2023