Housing and Property Chamber
First-tier Tribunal for Scotland

**First-tier tribunal for Scotland (Housing and Property Chamber)
("the tribunal")**

Decision on Applicant's application:

Housing (Scotland) Act 2014 ("the 2014 Act"), Section 48(6)

First-tier Tribunal Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules"), Rule 95

The Letting Agent Code of Practice ("the Code of Practice")

Chamber Ref: FTS/HPC/LA/19/1975

The Parties:-

**Mrs Sukhvinder Latif, 80/5 Craighouse Gardens, Edinburgh, EH10 5LW
("the Applicant")**

**Craigflower Lettings Limited, a limited company (number SC30437036) having its registered office at Ashley Terrace, Edinburgh, EH11 1RE
("the Respondent")**

**Tribunal Members:
Susanne L M Tanner QC (Legal Member)
Helen Barclay (Ordinary Member)**

DECISION

1. **The Respondent has failed to comply with the Letting Agent Code of Practice ("the Code of Practice"), in particular Section 2, paragraphs 17, and 18; Section 4, paragraph 65, Section 5, paragraph 74, and Section 6, paragraphs 102 and 104.**

2. **The Respondent has not failed to comply with the Code of Practice, Section 2, paragraph 19.**

3. **The tribunal issued a Letting Agent Enforcement Order ("LAEO") setting out the steps the Respondent must take to rectify the problem by the date specified in the LAEO; including payment of compensation to the Applicant for her loss occasioned by the Respondent's failures.**

4. **The tribunal will notify the Scottish Ministers that the Respondent has failed to comply with the Code of Practice.**

5. **The decision of the tribunal is unanimous.**

STATEMENT OF REASONS

Background

1. The Respondent carries out letting agency work in Scotland.

2. The Respondent is registered on the register of Letting Agents in Scotland (registration number LARN1803003) which authorises the company to carry out letting agency work in Scotland.

3. The Code of Practice sets out the standards all those doing letting agency work must meet. The Code of Practice came into force on 31 January 2018.The Respondent's duty to comply with the Code of Practice arises from that date.

1. The Application

1.1. On 26 June 2019, the Applicant lodged an application with the tribunal in terms of section 48 of the 2014 Act and Rule 95 of the 2017 Rules, to enforce the Code of Practice ("the Application").

1.2. The complaint in the Application was specified with reference to the following Sections and paragraphs of the Code of Practice:

1.2.1. Section 2, Overarching Standards of Practice: paragraphs 17, 18 and 19.

1.2.2. Section 3, Engaging Landlords: paragraphs 32 and 33;

1.2.3. Section 4, Lettings, paragraph 65;

1.2.4. Section 5, Management and maintenance, paragraph 74; and

1.2.5. Section 6, Ending the tenancy, paragraphs 102 and 104.

1.3. The Applicant's reasons for considering that there have been failures to comply with the specified paragraphs were adopted from a letter sent by the Applicant's solicitor, Lindsays, Caledonian Exchange, 13a Canning Street,

Edinburgh, EH3 8HE, to the Respondent dated 6 June 2018, a copy of which was attached to the Application.

1.4. The Applicant stated that she had suffered losses and adopted what was said in the solicitor's letter in relation to seeking a payment of £3,000.

1.5. The Applicant stated that in order to comply with the Code of Practice she thought that steps required to be taken by the Respondent were compensation for losses and 9% fee she has paid to the respondent for five and a half years but does not feel that they have earned; accountability, ownership and apology for the Respondent's actions, of which she was ignorant until April 2019 as she had not seen the tenant contract and the property until then and was shocked at how little had been done. She stated that she had trusted "Angus", of the Respondent to do his job, but he had taken advantage.

2. The Applicant provided the following documentation with the Application:

2.1. Cover email from the Applicant to the tribunal's administration dated 26 June 2019;

2.2. Said letter from the Applicant's solicitor, Lindsays to the Respondent dated 6 June 2018 [sic] (should be 2019), containing notification of potential breaches of the following paragraphs of the Code of Practice: 33, 65, 74, 102 and 104;

2.3. Recorded delivery receipt showing the tracking code for the above letter; with tracking showing that the item was delivered to the Respondent on 7 June 2019;

2.4. Copy email response from Angus King, of the Respondent to Adam Gardiner at Lindsays Solicitors, dated 7 June 2019, responding to the alleged failures to comply with the Code, stating that the Applicant has refused the invitation to proceed through the complaints process and containing an offer to make a goodwill payment to the Applicant to resolve the matter; and

2.5. Pest prevention and control report forms from MENCO dated 19 and 29 April 2019.

3. On 2 July 2019, the Convener with delegated powers considered the Application and the Application was accepted for determination by the tribunal.

4. A hearing was fixed for 28 August 2019 at 10.00h in George House, 126 George Street, Edinburgh, EH2 4HH.

5. On 12 July 2019, both parties were notified that the Application had been accepted for determination by the tribunal and that a hearing had been fixed for the said date. Parties were asked to respond by 2 August 2019 to indicate whether they wished to attend the oral hearing. Parties were advised that should they wish to submit written representations they should submit them to the tribunal's administration no later than 2 August 2019.

6. Further pre-hearing procedure

6.1. On 18 July 2019, the Respondent requested an extension to the time allowed for written representations to 12 August to allow for annual leave.

6.2. The Applicant responded asking whether she would also be permitted additional time to submit written representations.

6.3. The tribunal issued Directions dated 27 July 2019 extending the time for both parties to lodge written representations to 12 August 2019.

6.4. On 3 August 2019 the tribunal issued Second and Third Directions to parties with orders to produce specified items to the tribunal's administration by 20 August 2019.

6.5. On 11 and 12 August 2019, the Applicant submitted written representations with a numbered list of documents and an accompanying bundle of documents; with confirmation that the Applicant would attend the hearing.

6.6. On 11 and 12 August 2019 the Respondent submitted written representations with a numbered list of documents and an accompanying bundle of documents; with confirmation that a representative of the Respondent would attend the hearing.

6.7. Both parties' submissions and bundles of documents were crossed over to the other party.

7. Hearing – 28 August 2019 and 24 October 2019

7.1. An oral hearing took place over two days.

7.2. The Applicant attended the hearing together with her husband, Mr Shafiq Latif, as a supporter.

7.3. Mr Angus King, Director of the Respondent attended the hearing together with his wife, Heidi King, as a supporter.

7.4. Summary of parties' submissions and evidence

7.5. The tribunal heard submissions from both parties in relation to the alleged failures of the Respondent to comply with the **Code of Practice, paragraphs 17, 18, 19, 65, 74, 102, 104**.

7.6. The Applicant withdrew her complaint in terms of the **Code of Practice, paragraphs 32 and 33**, on the first day of the hearing.

7.7. Section 2, paragraphs 17, 18 and 19

7.8. The Applicant did not go through any formal complaint process with the Respondent, despite the Respondent offering the same, but she and her husband had been in email communications with Mr King about their complaints, including the matters specified in relation to the alleged failures to comply with paragraphs 17, 18 and 19 of the Code of Practice. Their stated reason for not going through the complaint process was that they did not think that it would impartial.

7.9. The notification letter from the Applicant's solicitor to the Respondent dated 6 June 2019 did not include reference to paragraphs 17, 18 and 19 of the Code of Practice. No objection was made by the Respondent to the Applicant advancing complaints in terms of Section 2, paragraphs 17, 18 and 19, despite these not being contained in the notification letter from the Applicant's solicitor to the Respondent dated 6 June 2019.

7.10. The tribunal proceeded to hear from both parties in relation to the Respondent's alleged failures to comply with paragraphs 17, 18 and 19 of the Code.

7.11. Paragraph 17: *"You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)."*

7.12. **The Applicant** stated that there were four complaints under paragraph 17. She was alleging that there had been dishonesty, a lack of openness, a lack of transparency and a lack of fairness in the Respondent's dealings with her.

7.13. ***Alleged dishonesty***

7.14. **The Applicant** alleged that the Respondent had not been honest in its dealings with her. She stated that she and her husband had requested the full tenant file from the Respondent on four occasions and that the Respondent had not sent it until 2019 and even then, it was incomplete. She stated that she did not think that she had been provided with the full tenant file. She was only provided with two documents and she would have thought that if someone had

been a tenant for five and a half years that there would be more information. She stated that she thought that information had been hidden from her and that if the Respondent did not have anything to hide, she should have been provided with the information. In particular, she would expect more correspondence between the tenant and the Respondent; and more documentation in addition to photographs of the flat and the tenant contract which had been provided. She submitted that as it appears that documents have been hidden, that amounts to dishonesty on the part of the Respondent.

7.15. **Mr King** responded that he disputed the allegation that he had been dishonest. He stated that he had sent what he thought was relevant to the Applicant in response to her request for the tenant file. He took the "tenant file", to mean the original application form that the tenant filled in, which had personal details including those of the tenant's previous landlords. He stated that he felt uncomfortable about providing that information to the Applicant. He stated that he had considered his role as a data controller for the company. He stated that he had taken advice from a landlord's association. He stated that if the Respondent had expected correspondence it could be a "foot high pile" of information. He stated that he had considered what the Applicant needed the information for and considered that the Applicant would need a forwarding address for the tenant and meter readings, together with a copy of the lease. He referred to document **R6.1.15, page 9**, from Mr Latif to him on 16 April 2019 which said: *"If you could send the full file please, as requested, along with the photos you've mentioned, that'd be great"*. Mr King stated that his response was not contained in **R6.1.15**. Mr King stated that in response he had sent the lease and the forwarding address to Mr Latif. He repeated that he had felt reluctant to send original application forms without consulting the people whose data was on the form. He did not think that he had explicitly said that to Mr Latif. He did not say to Mr Latif that he had taken advice. He had said that he could not find the original response about the cat as he was not aware that there was a cat in the property until the stage at which the tenant was leaving. Mr King stated that he should have just said that he did not know that there was a cat in the property and had not given authority to the tenant to have a cat in the property. He stated that he had carried out inspections and had not noticed cat paraphernalia or a cat. He has not asked the tenant when he got the cat. In summary, he stated that he did not think that there was anything specific that was asked for by the Applicant and that he felt uncomfortable handing over the original application form in response to the request for the tenant file, which is why he had not done so.

7.16. **The Applicant** responded, stating that she was legally advised to ask the Respondent for the full tenant file. She stated that she did not need the tenant's forwarding address. She wanted to see more information, such as: had the tenant been vetted properly by the Respondent, were references

taken; when was the tenant out of work; etc., all to get the bigger picture about the tenant; and inspection reports to show the inspections which were meant to be carried out quarterly. She had already received notifications from the Respondent about work which had been done and the amounts. She understood from her solicitor what would be expected to be in the file if she described it as a tenant file and she had been advised that she was legally entitled to see it.

7.17. Alleged lack of openness

7.18. **The Applicant** stated that she has always had to chase up things and that she never gets a straight answer. By way of example, she referred to **A2, page 29**, an email from 13 August 2013 (this was before the Code of Practice came into effect on 31 January 2018). She then turned to look at her **A1, page 41**, which contain email samples between Mr King and her husband Mr Latif. She stated that her husband took over the correspondence with the Respondent in March 2019. She stated that her husband asked five or six times why a cat was allowed in the property, referring to **A1, Page 52**, 16 April 2019: *"You still haven't responded to why there was a cat allowed to stay in the flat, despite me asking you multiple times"*; **A1, page 54**: *"Any word on why the cat was there?"* and **A1, page 56**, 15 April 2019 *"You're deliberately avoiding the issue here Angus. You were told in no uncertain terms *not* to allow any animals in the flat whatsoever…".* The Applicant submitted that these emails demonstrate a lack of openness, in that the Respondent was not answering questions as to why a cat was allowed to live there, as well as why no property inspections had been done and why there was a moth infestation. Those questions were raised from March or April 2019. She referred to **A1, page 67**, an email from 2 April 2014 saying that there to be no pets in the property and no-one who smoked. She stated that when she asked the tenant on 13 April 2019 why there was a cat in the flat, the tenant told her that he had agreed it with Angus. She explained that the tenant was meant to be out by 11th April but he was there until 15th April and that that was the first time she had met the tenant.

7.19. **Mr King** responded stating that he disputed the allegation that there had been a lack of openness. He referred to the sheer volume of the emails between him and the Applicant over the years. He stated that the correspondence in relation to this property was 10 times the normal amount. He refuted the fact that the Respondent did not reply to emails. He stated that he would say that he has been open in his dealings and had nothing to hide.

7.20. The tribunal chair asked Mr King whether he had provided a response to the multiple requests about why the cat was in the Property. Mr King replied that he did not think that there had been a response to the questions about the

cat and that he should have provided one. He stated that he could not recall any discussion with the tenant about a cat. He stated that he should have replied to the Applicant and said that he could not say why there is a cat there, as he did not know. He submitted that although he accepted that he had not replied to his questions about the cat, his failure would not amount to a lack of openness.

7.21. Alleged lack of transparency

7.22. **The Applicant** stated that she was relying on the same facts to which she had referred in relation to the alleged dishonesty and alleged lack of openness. She stated that there was an overlap on the facts and adopted what she had said in relation to those matters in relation to not sending the full tenant file when requested to do to and not responding to her requests, such as the ones about the cat. She submitted that the same facts could amount to a lack of transparency.

7.23. **Mr King** disputed the allegation and stated that he had sent the lease and photos of the property and engaged in lots of correspondence with the Respondent about end of tenancy matters. He submitted that he had dealt with the Respondent in a transparent way.

7.24. Alleged lack of fairness

7.25. **The Applicant** alleged that there had been a lack of fairness in the Respondent's dealings with her. She stated that she had said no to the cat (with reference to the email to which had already referred in which she said not to allow pets) and submitted that by permitting the tenant to have a cat, which damaged her sofa, was not really fair to her because she had said no

7.26. **Mr King** disputed the allegation of unfairness in his dealings with the Applicant. He stated that he had not allowed the tenant to have the cat. He stated that the tenant had been in the property for about five and a half years. He stated that his correspondence with the Respondent had covered multiple issues but accepted that he should have responded to the cat issue on paper. He questioned what the financial loss would be, as the damage to the sofa would be irrelevant given the age of the sofa and the rules on fair wear and tear.

7.27. The ordinary member asked the Applicant whether there was any verbal communication with Mr King requesting the full property file. The Applicant stated that there were unanswered phone calls from her to the Respondent.

7.28. **The Applicant** stated that the relationship between her and Mr King had broken down in March 2019 and her husband had taken over corresponding on her behalf. She had advised Mr King that her husband would be taking over correspondence in March 2019. She asked her husband to request the full tenant file.

7.29. **Mr King** responded that there was no evidence that there were unanswered phone calls from the Applicant to his office. He stated that he always replied by phone or email. He stated that there will be points where he is out of the office but there is always somebody there such as a receptionist or colleague to help out. There are usually three people in the office. His wife works in the business as well. He stated that he absolutely sensed the Applicant's frustration and accepted Mr Latif taking over correspondence in March 2019, with which he did not have any issue. He stated that he corresponded with him by email and does not think that there was any hostility. He was trying to be helpful and get back to people. He stated that there are things on both sides that have been missed and things that Mr Latif has not replied to.

7.30. Paragraph 18: "You must provide information in a clear and easily accessible way."

7.31. **The Applicant** submitted that the Respondent had not provided information in a clear and easily accessible way. She referred to **A2, page 27**, stating that as per clause 4 of the lease, she thought that there would be an inventory which had been signed the tenant. She had not received an inventory for the start of the tenancy. She also thought that at the end of the tenancy she would receive a report, to say that Mr King or another representative of the Respondent had gone through everything on the inventory with the tenant and told him about the damage, for instance the cooker. She stated that she had discovered in April that there was no checkout inspection report or follow up and that she would have expected a comparison with the property at the start and the property at the end. She stated that the photographs which were provided by Mr King, and were said to show the tenancy from the beginning and towards the end, were insufficient and poor quality as they did not show damage, such as the sofa damage and did not compare like with like. She stated that she had asked for the full tenant file at the end of the tenancy and she did not get it. She submitted that the information about the end of the tenancy and the responses to her request for the full tenant file were not the provision of information in a clear and easily accessible way.

7.32. **Mr King** disputed the allegation that the information had not been provided in a clear and easily accessible way. He stated that an inventory had

been prepared at the start of tenancy, together with photographs of the property. He stated that the inventory had been given to the tenant at the start of the tenancy but had not been returned by the tenant. He stated that at that time, the normal practice was to provide the tenant with a period of time to come back if they disputed anything but that now the Code of Practice required that he chase up the tenants to get the inventory back. He stated that the inventory had not been lodged with the tribunal but that there was one available in the office. He stated that he had used the photos taken at the beginning with those of the end, for comparison purposes.

7.33. Mr King stated that his wife could obtain a copy from the office. She obtained a copy by email and produced it to the tribunal. It is headed *"Inventory Address: 70/6 Balcarres Street. Inventory prepared on 9 October 2013."* The Applicant was provided with a copy and indicated that there was no objection to late lodging. The tribunal allowed the document to be lodged late and it was numbered **R6.1.20**.

7.34. The tribunal chair asked Mr King why a copy of this inventory had not been given to the Applicant before now, given her and her husband's requests since March/April 2019 and the subsequent Application to the tribunal including her written submissions raising this issue.

7.35. Mr King replied that it had not come to mind and that he did not think that it had been asked for. He stated that he had created and provided a "before and after summary" to the Respondent as he thought that it was more helpful way to look at it. He referred to **R6.1.15. p25 to 37**. He stated that this was an email dated 17 April 2019 attaching a "summary of condition". He stated that he had used photographs from a file called "inventory pictures" which were from 2008, showing the property as it was. He stated that on **R6.1.15, page 26** the words above the photograph were taken from the inventory. He stated that the photographs from **pages 26-28** are from 2008, **pages 28- 31** are from 2012, **pages 31-33** are from the start of Cochrane tenancy 2013 and that **page 33 onwards** are checkout photos. He stated that the photographs are not time stamped on the document. He stated that in relation to the tenancy deposits, the Respondent uses Mydeposits Scotland, who would ask the Respondent to send the photos in the evet of dispute. He stated that he had repeatedly had correspondence with the owner to make it clear that the property is tired and dilapidated. Throughout the tenancy he stated that if the tenant moves out, the property will need money spent on it.

7.36. He stated that the way that the Respondent does inventories now is different. On the point of openness, they try to use the SAL templates for everything and never try and hide things in flowery language.

7.37. Mr King stated that at the end of the tenancy they did carry out an end of tenancy inspection, the week of 15 April 2019. At that time, the tenant told Mr King that he was going to get the place cleaned. Mr King stated that there were issues like the tenant broke a light fitting when going out and he left a couple of items. Mr King arranged for the handyman and cleaner to go in and attend to certain things. Mr King stated that they normally take the original inventory to an end of tenancy inspection but that he did not do it in this case. He stated that they did do a comparison before and after his tenancy even though the inventory was not used. He stated that the owners had been into the property the previous weekend. He stated that he knew what the property looked like anyway and that when he got the keys back and he was out, the property was as expected. He stated that the property needs renovations. He stated that there had been correspondence with the Applicant that renovations would be required when the tenant left. He stated that items in the property were way beyond normal lifespan. He stated that he had said to the Applicant that due to the length of tenancy he did not think that they could go to Mydeposits Scotland to rightfully ask for a deduction, on the basis that items were so old and they were beyond their natural lifespan. He stated that cleaning was a different thing. The tenant was moving to another property with the Respondent. There were cleaning charges deducted from his deposit. There were no late rent arrears. The tenant also paid for handyman charges for work required for damage caused on the way out. He stated that he was pretty sure that he knew what the arbiter would say about the deposit if there was an attempt to claim deductions for other items. He stated that he has not been to the Mydeposits training but that his wife had done the training. He has done landlord training. He has overseen two or three Mydeposits processes. He is quite familiar with how they work. When one looks at the guidelines they would not look at it. Items had been in the property for 11 years. He stated that it was a slightly extraordinary situation because there had been a lot of correspondence with the Applicant about the condition of the property. In relation to the document he produced following the end of tenancy inspection, he stated that he had taken a sample through the years and thought that this was more useful to the Applicant, as it showed the natural lifespan. He felt that this was a more appropriate way to convey the message about how the property had deteriorated. He stated that the place was given back cleaned with excess items removed. He accepted that he had missed the issue with the cooker door as had the handyman and cleaners. It had not been notified by the tenant. When it was brought to his attention, he offered to send in a tradesman to fix it and did not get an answer from the Applicant or her husband. He would not want the client to be unhappy. Mr King submitted that the information that he had provided was clear and easily accessible.

7.38. The ordinary member asked whether the Respondent had a portal for landlords to access. Mr King stated that they do not but that if people need things they can have them sent if they ask.

7.39. **The Applicant** responded by stating that she did not think that the photographic information was clear and easily accessible. She criticised the resolution and lighting of the photographs. By way of example, she stated that on **page 35** the photograph died not contain a view of the moth eaten and cat scratched carpet and stated that the colour in the picture was not correct. Further, she stated that she would have expected a written report as well as photographs. The Applicant stated that the tenant had told her that there had been a moth infestation for 5 and a half years and that he had not reported it to the Respondent. The cooker was shown in the photos but had clearly not been checked. There was blu tac on walls which were not shown in the photographs, other than the boxroom, on page 36. There was nothing in writing from the Respondent and the photographs were not clear enough to show the issues.

7.40. **Mr King** produced the Inventory for the Property which was produced 9.10.13 and added as a production 9.10.13 (without objection by the Applicant and with the consent of the tribunal).

7.41. Mr King stated that in relation to the moths the tenant had not tell the Respondent at any time. He stated that had it been reported, it would have been the responsibility of the Applicant to treat it at the Applicant's expense. The bill would be put on the Applicant's account. He stated that had already told the Applicant that the carpets needed to go before the tenancy. Mr King stated that the Respondent does try to give clear information.

7.42. Mr King stated in relation to the inventory that there is not a document like this from the end of the tenancy. He stated that there were almost exceptional circumstances in this case. He stated that the inventories now produced by the respondent are different. They are room by room with photos. If there is anything noteworthy or damaged then they would get a picture of that. If a property was professionally cleaned they would put in a cleaning bill or note if fully refurbished or provide a bill from sofa company.

7.43. The ordinary member asked if the Respondent uses the Scottish Association of Landlords ("SAL") inventory template. Mr King stated that it was a combination of the SAL template and the Respondent's interpretation of information from Mydeposits. They are collated into one document. There is usually a bit at the start about the general condition, which includes a note about whether it had been professionally cleaned.

7.44. In relation to the Property, Mr King stated that the Respondent had managed the property since 2008. It has not been touched by the Applicant since that point. He stated that it has been let to the same tenant for five years until 2019. Prior to the start of that tenancy there was correspondence with the landlord to say that she was not in a financial position to do it up. Mr King referred to **Respondent's productions: 6.1.1,** correspondence to the Applicant concerning upgrades to the property. Page 4 – 9.9.13, after the previous tenant had given notice "it's a question of whether you want to do anything to the place"; page 5 – 8.10.13 "I'm working part time at the moment so no extra funds"; page 6 – in which he was not explicitly saying the carpets or décor are worn out but saying that it needs work done to get the market rate. The general response from the Applicant was that she could not afford to do it up. That was in 2013, prior to the most recent tenancy. There were points throughout the tenancy where the Applicant considered giving notice to the tenant and re-letting. Page 7, in 2015 there was some correspondence in which Mr King stated, "probably need to do the place up a bit first". Page 8 – same sort of thing, with reference to décor and upgrades, which would also make the place more appealing to a more affluent tenant. Page 9 – Mrs Latif asked for a rough figure. Mr King thought that he or Heidi had mentioned £2000 as an estimate. Mr King stated that in 2015 – 6.1.8 page 7, Heidi had given advice about work needing to be done and estimated about £2000. Page 10 onwards, the same sort of correspondence in 2019, a selection of emails that raised the condition issue.

7.45. **The Applicant** responded and stated in relation to the inventory that it would have been good to have been given this as part of the full tenant file. With reference to the correspondence with Mr King, she referred to page 9, in which she said that she had not seen her flat for years and asked Mr King to give her a rough figure. She stated that he did not respond with a figure or send pictures. She had not seen any pictures until the file was sent in April 2019. She stated that she was considering giving the tenant notice. She was ill and going to hospital appointments and did not have the energy to deal with it. She stated that she did not think that it looked that bad before the Cochrane tenancy. She accepted that she was told throughout the years by the Respondent about the condition.

7.46. The ordinary member asked whether the Applicant had looked at the information about lifespans. The Applicant stated that she has not seen any documents relating to tenancy deposit protection. She did not look at the lifespan wear and tear. She stated that she has educated herself since all of this has happened. At the time she thought that as she had paid a fee, that was what I had to do. She did not know that the onus was on her to do anything in relation to tenancy deposit protection, because she did not lodge the deposit. She accepted that there were comments about condition throughout the

Cochrane tenancy but she thought that it looked fine at the start of the Cochrane tenancy and worse at the end.

7.47. In summary she stated that she did not think that the "hybrid" document that was produced by the Respondent after the tenancy was sufficiently clear and accessible.

7.48. Paragraph 19: "You must not provide information that is deliberately or negligently misleading or false."

7.49. **The Applicant** stated adopted the evidence already led in relation to other alleged breaches and stated that the Respondent's response to the request for the tenancy file was misleading. She does not think that she was provided with the complete file and submitted that that is misleading. She submitted that Mr King negligently provided misleading information.

7.50. **Mr King** disputed that he deliberately or negligently provided misleading information. He stated that the Respondent provided what was measured and appropriate.

7.51. Paragraph 65: "You must inform the landlord of the statutory requirements on tenancy deposits under the Housing (Scotland) Act 2006 and the Tenancy Deposit Schemes (Scotland) Regulations 2011"

7.52. **The Applicant** complained that the Respondent had not at any time informed her of the requirements on tenancy deposits.

7.53. Mr King referred to R6.1.7, stating that page 1 related to the previous tenancy and that page 2 is a deposit certificate. R6.1.8 is the bundle relating to information to landlord. He stated that the management of this Property started before the tenancy deposit regime. He referred to the Newsletter Winter 2012 which was sent to all clients in December 2012, to let people know that it was now in operation. He stated that on page 3, his wife Heidi King had explained that the deposit had been transferred to the new tenancy deposit scheme. Page 5, July 2014, is a conversation about deposits. In January 2013, he had a conversation with the Applicant about the fact that a deposit cannot be used as rent.

7.54. The tribunal chair asked Mr King what he had sent to the Applicant, if anything, when the deposit Regulations came into force. Mr King stated that he did not think that he had sent anything explicit to say that the deposit rules were in force. He had not sent any information to clients prior to December 2012. He accepted that he has not informed the Applicant at any time about the deposit protection obligations and Reg 42 information.

7.55. The tribunal Chair asked Mr King whether the code coming in caused him to tell existing landlords about their obligations in relation to the deposit scheme. Mr King stated that they did not tell existing landlords about deposit

protection. He referred again to the 2012 newsletter and stated that it was in the context of fairly heavy media coverage as well. He stated that the management agreement deposit pre-dated the deposit regulations by many years.

7.56. He stated that the Respondent issued the prescribed information to tenants but that the Respondent did not send copies of what was being sent to tenants to the landlord. He stated that the Respondent has one account with the deposit protection company and that log-ons to the account were done by his wife, Heidi King. All the tenancies are set up under the firm account. He referred to 6.1.2 – page 4, 2m) and 3.1k) and stated that particular landlords could access accounts. The tribunal chair asked whether Mr King was suggesting that Mrs Latif could discern from this that she has duties. Mr King said that he was not suggesting that and stated that maybe the Respondent should not have sent out the whole management contract.

7.57. Mr King then referred to R6.1.8 and R6.1.15 but accepted that at no point had the Respondent explicitly informed the Applicant about her obligations. He stated that there is no information on the Respondent's website and no links to the tenancy regulations which is available to landlords. He said that he now tells them when they meet and that now the Respondent produces an information pack for new landlords as new clients. He stated that Heidi King is doing the training with the deposit protection company and that there is more ongoing training with Scottish Association of Landlords. He stated that the problem is not difficult to rectify.

7.58. **The Applicant**, in response, stated that there would be no point in the Respondent providing the information to her now as she is no longer a client of the Respondent and they are no longer managing the Property.

7.59. Paragraph 74: "If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance)."

7.60. **The Applicant** stated that as per the service agreement she would expect a quarterly inspection and a report. She referred to **Page 38. Agent's duties A5**, to carry out a quarterly inspection and report where necessary to the landlord. She stated that she never had any reports following on inspections at the property. She stated that she had received some emails after she was billed for items and queried them, and then she got an explanation of what had happened. She stated that some things had been communicated ahead, with regards to fixing things that had got broken.

7.61. **Mr King** stated that "the 2008 wording is not too good". He stated that when meeting landlords at the time, if it was a 6 month lease, the Respondent would say that they would go quarterly, after which they would inspect if they thought that it was necessary. He accepted that inspections were not carried

out in this tenancy on quarterly basis. He stated that visits were carried out in lieu of routine inspections.

7.62. The tribunal chair asked whether he was submitting that the contract was varied to not have quarterly inspections. Mr King stated there had been no contract variation.

7.63. Mr King stated that he visited the property "quite often". He referred to R6.1.9. He stated that it got to the stage where it did not seem necessary to repeat things that needed done like replacement of carpets. The start date of the most recent "Cochrane" tenancy was 12 October 2013. He stated that there were 10 or 11 visits and that it did not seem necessary to inspect quarterly. Mr King requested an adjournment to compile a list of visits and inspections with reference to his productions and the tribunal allowed the adjournment for this purpose. Mr King then listed six visits to the Property during the Cochrane tenancy and described each one:

7.63.1. **January 2014**. The tenant had a habit of getting locked out. Mr King went to the Property to meet him. Mr King used the keys, opened the door, got him into the property and checked he had his keys. Mr King stated that it was possible to see all of the rooms as soon as he entered the hallway. He just visited the property. He stated that it was not necessary to report back to the Applicant, explaining that it dd not seem relevant. He stated that there was no scheduled quarterly inspection in January 2014.

7.63.2. **June 2014**, R6.1.9, page p6A, 3 June 2014. The tenant reported that the vacuum cleaner had broken down. A colleague, David, went to the Property to collect it and to drop off a new one. David was in the property as a visit. Mr King could not expand on this point. There was no report back to the Applicant. He stated that had there been anything worrying, David would not have turned a blind eye, giving the example of a cat or overcrowding or drug paraphernalia, or bathroom tiles or silicone needing done. He accepted that this visit was not as extensive as a quarterly inspection.

7.63.3. **3 July 2014** – page 5. Mr King described this as a welfare visit. The tenant was not responding to texts, calls, emails about rent. Mr King went to the Property to see him. Mr King went into the property. The tenant was not there. He provided an update to the Applicant about being unable to track him down for the rent. Mr King submitted that that amounts to a routine inspection. He stated that there was nothing untoward.

7.63.4. **December 2014 -** page 2. Mr King visited the Property. The tenant was having trouble with his boiler and a cabinet door. Page 3 details follow up. Mr King submitted that it was the equivalent of a routine inspection as he spent quite a bit of time with the tenant. Mr King could not, during the hearing, actually remember that visit. He did not record anything beyond that. He told the Applicant that he got the boiler back to

life, stating that if there had been anything over and above that he would have reported it to the Applicant.

7.63.5. **5 October 2015** – page 9. He referred to an email from Heidi King stating that someone from the Respondent had been to the Property to inspect (with no date being given). The email was in the context of whether the Applicant should ask the tenant to leave. Mr King did not know when the inspection had been carried out, stating that it was probably 4 or 5 October 2015. He stated that Heidi sent the email out and that there was no other record. He stated that it was not a routine inspection but that there was a report on the condition. It was the whole property. He could not say that it was not messy. "There was not any damage he could do unless he took an axe to the walls and hacked to pieces". It was inspection with a view to another tenancy.

7.64. **December 2015,** page 6B. Mr King stated that Keith Innes from Random Tasks does the bulk of the Respondent's maintenance during tenancies as well as renovations at a low level, such as decor, vinyl, laminate flooring. For anything over and above, he would have done a report on what was required. In this case he fixed a bathroom tap.

7.65. Mr King explained that the Property is a front facing tenement on the second floor. There is a hallway, boxroom on the left, turn right, bathroom ahead. On the left is an open plan living room and kitchen. There are storage cupboards in the lounge. There are no kitchen cupboards. There is a butcher's block.

7.66. Mr King stated that for a routine mid tenancy inspection there is a one page checklist. They do not use the inventory. In the bathroom they look at sealant and grouting. They do not test anything. They send the tenant a note in advance to plan access. Some people like to be present. The tenant can leave an information sheet stating that there is a problem. The tribunal chair asked how many of those type of inspections were carried out during the Respondent's management of the Property. Mr King replied, "In this particular tenancy, zero."

7.67. Mr King stated that in terms of recording and documenting they probably have not done that for this tenancy. He said that they had reached the stage prior to the Cochrane tenancy where they knew what the condition of the property was. It was really at the stage where it needed work done to it. There was not going to be any new information over and above what was already known. There was not a regular documented reporting. In 2013 the property had reached the stage where it needed renovations. He accepted that there is a breach in relation to the Code but stated that it was done in the spirit of what was outlined. He accepted that inspection visits were included the service agreement, to assess the property for the landlord but stated that they were quite aware of what the property looked like, they had advised the Applicant accordingly and the Applicant had made it clear that she did not have the funds to do the work and did not intend to do so. Mr King referred to the Applicant's documents, second bundle, p42, A5 and stated that he was not disputing that

there was a duty to inspect quarterly. He repeated that there was no agreement latterly to agree that no need to inspect quarterly.

7.68. The Applicant responded by stating that she and her husband were in the flat on 13 April 2019, the Saturday before the tenant left, and in less than seven minutes they spotted the patches in the carpets, the moths flying, the cat damage, the cat, and the cooker which was visibly broken. She stated that a property can be dated and still be kept clean, and those are the kinds of things she would expect to be told about, such as the sofa, the walls, and the broken cooker. She disagreed with Mr King's assertion that you can see the whole flat from the front door, stating that you cannot see any of the rooms without going into the flat. She said a visit to the front door does not count as an inspection. She said that she had not asked for quarterly inspection reports because she assumed that they were inspecting quarterly and that there was nothing to tell her about which is why Mr King had not contacted her about anything.

7.69. Paragraph 102: "If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began."

7.70. **The Applicant** stated that the Respondent was responsible for managing the checkout process. She referred to the Applicant's First bundle, page 4, the Service Agreement dated 25 January 2008. C6 stated that a professional inventory shall be taken.

7.71. She referred to her written representations, page 41 onwards. Page A66, an email from her dated 12 April 2019 stated "has everything gone OK with the tenant vacating the property?" There was a reply from Mr King. She thought that Mr King would sort out the flat, give her the keys and that he was responsible or the checkout process. She was not asked by the Respondent to do anything. She stated that had she been told she would have done it. Mr King told her that he would organise the cleaner to come in, he provided meter readings, he organised repairs from the handyman because the tenant broke a light. She referred to A48, dated 15 April which stated "…cleaners have keys now, …". The light repair was coming from the tenant's deposit and so was the cleaner's bill. She did not have access to Mydeposits. The company told her that as the Respondent had registered the deposit, she could not get information from them. She thought because the tenant made the mess that the tenant would pay for the cleaning. She submitted that the Respondent was responsible for managing the checkout process despite it not being in the management service contract.

7.72. She stated that they therefore had a duty to ensure that checkout is conducted thoroughly. She stated that it was not conducted thoroughly. The Respondent did not pick up on the broken cooker. The hinge on the door was not closing. It was an electric cooker which was two years old. She does not

know if it was under guarantee because the Respondent organised the purchase. The moth infestation, the carpets and the cat damage and the walls having blu tack and pins were not picked up on the final inspection. She would expect at final inventory check someone to go around in a thorough way. She submitted that the inspection was not thorough. There was no verbal or written report after the inspection. She never saw an inventory at the start. The first time she saw it was at the last hearing. There should have been a sufficiently detailed checkout report prepared with reference to the initial inventory. R6.1.20. is the inventory dated 9.10.13. She would have expected to see something like this at the end of the tenancy, with a condition report for individual items. She stated that by the time the tenant left her property it was not free from odours because of the pet and all the damage to the carpets and lack of dealing with the moth infestation and she would have expected to be told that when the tenants left.

7.73. **Mr King** stated that the Respondent would assume the duty/responsibility to carry out a checkout although it was not in the 2008 document. He accepted that the Respondent was responsible for managing for the checkout process, not from a contractual point of view but they do it to be helpful. He stated that there were lots of emails discussing the checkout process implying that they would be involved, managing and advising and being part of the process, working with the landlords.

7.74. Mr King said that he would describe the Applicant and her husband as having involvement in the checkout process because they entered the property before the Respondent did and produced a detailed list of the work which they said was required. Mr King took that to be part of the checkout process. He stated that he had informed the Applicant that the Respondent would address the cleaning and the handyman. In relation to the oven, he did volunteer to get one of their appliance guys to fix the oven hinge. He accepted that on inspection he had missed it, as had the cleaners.

7.75. Mr King reiterated that despite his view that the Applicant was involved in the checkout process, he accepted that Respondent was responsible for managing the checkout process.

7.76. He submitted that the Respondent did thoroughly conduct the checkout inspection. The inspection was done after the cleaning. He thought it was easier to see the property once it was cleaned, rather than a work in progress. He photographed everything. He had already detailed to the Applicant what to expect at the end of the tenancy and what they expected in relation to the work needing done to the Property. With reference to the Inventory, there were certain items that tenant had left behind. There were photographs on a disc from the time that the tenancy started. At that time, the tenant got a paper copy of the inventory and a separate file of photographs on a disc. At the end of the tenancy, Mr King took a set of photographs. Mr King compiled and sent the Applicant a ‘before and after’ photo spread of the Property. He was looking at it in terms of following the guidelines from Mydeposits. He stated that it is one thing to say that this is damaged or this needs painting, but Mydeposits may say that the property has not been painted for 20 years when considering

something like blu tac damage to walls. He was looking at the Property at the end of 11 years with nothing done during that time. The Respondent had said to the Applicant at the point of notice being given to plan ahead and to plan a council uplift. The Applicant had sent a list of their issues before Mr King inspected. He referred to A61-62, a list from the landlords on 15 April 2019. He stated that he did not send an email with the results of the inspection but he sent photographs. He said that he personally inspected on behalf of Craigflower Lettings on 16 April. He was in for 10 minutes or so to carry out the final inventory inspection. He stated that the length of time depends upon the property and that this was a sparsely furnished one bedroomed flat. He emailed the Applicant on 16th April but did not send a report of his inspection. He stated that normally the Respondent would look at it in terms of reporting back to the owners and that there is a different dynamic with an owner who is on hand. He said that in a “normal” tenancy, the normal practice was for Averill to take the inventory and the camera and mark off the inventory, photographing any areas of concern, following which the Respondent would report back to the landlord and the tenant on what needs done and what needs addressed.

7.77. Following the 16 April 2019 inspection, the Respondent did not produce a report for the owners. Mr King photographed everything (and made a video). He sent the photographs to the Applicant. There are comments on the photo schedule. He would describe this as a bit different to a normal process. He thought it was better that he see the Property himself.

7.78. Mr King submitted that he did conduct a thorough inspection but he accepts that he did not prepare a sufficiently detailed report with reference to the original inventory. He stated that this seemed like an exceptional situation because there was a fractious relationship with the Applicant. He referred to A bundle 1, page 27, a file of photographs. He stated that this was emailed to the Applicant. There is no date of final inspection on the bundle of photographs. R bundle 6.1.15, p25 onwards, shows photos. After inspecting on 16th April, he was reporting back on 17th April. He produced the photograph schedule as a final inspection report, because the property was going to be sold, to encapsulate the whole period of letting. The attached file was the file in A bundle 1, page 27. From page 34 onwards, there are summary photos from the end of the tenancy.

7.79. The tribunal chair asked whether there were any emails (other than the one at 6.1.15 p25 at 1710 on 17.4.19) after the inspection which said to the Applicant that these were the results of the end of tenancy inspection. Mr King responded by stating that the tribunal should treat the photographic schedule as the document which they produced. He said that that is not normal practice now and that no end of tenancy report was available for the Applicant, the tenant or if required for the deposit protection scheme. The reason for not doing it in this case was that the owners had seen it themselves and Mr King thought that the property needed refurbished anyway and he had told the owner that, five years previously, before Mr Cochrane moved in, and again when they discussed perhaps giving the tenant notice because of the rental situation.

7.80. Mr King stated that from encountering the tribunal process, he is of the view that a lot of the Respondent's practice pre-dates the Codes and he appreciates that now there is a clearer checklist to hit. At the time he had done it thinking that it was the right thing not to do an inventory check but that it had not been done from a position of him not being bothered or not wanting to. He stated that the Respondent did do training on check in and check out. They have been SAL members for a long time and that they had always done these kinds of courses. He did "Letwell" and it is ongoing training. He stated that the tribunal is new to the Respondent and has shown them how important the record keeping is. He stated that he is probably guilty of doing what he thinks is the right way rather than referring back to the code.

7.81. I submitted that his email of 17 April 2019 is sufficiently detailed because the checkout process almost starts when the notice was given. He told the Applicant what to expect and what the Applicant should look to expect to do. He also sent a letter to the tenant telling him what to do to prepare for the end of tenancy.

7.82. Mr King accepted that the photographs which he sent to the Applicant were not clear but stated that they had stored them electronically and they are clearer. He sent a PDF to the Applicant. The company did not get any request from the Applicant to send the individual photos. He referred to the picture on Applicant's second bundle, page 19, stating that the photographs were taken after the clearance of items.

7.83. **The Applicant** responded to Mr King's submissions by stating that she and her husband went to assess the Property as to what they would do once the tenant moved out. They were not there to inspect. It was the first time she had seen the Property in years. Her list of points was not for a final report or to contribute to the Respondent's report. She accepted that Mr King also offered to get the cooker fixed but she thought that that offer was made too late. She referred to the Applicant's Second bundle: A16, A17; 13 April 2019, before the cleaning; A18, A19, A20 were taken after the cleaning took place, while it was being cleared; and on 18 April 2019, after Mr King's inspection, after the cleaners had been. The tenant had left on 15th. She submitted that this was evidence that a thorough inspection was not conducted. She does not think that the email from Mr King on 17th April was sufficient reporting on a final inspection. The pictures were not done uniformly. They are different in each set. They are also poor quality pictures. Mr King's email was the extent of what was produced after the end of tenancy inspection and she submitted that it was insufficient. She stated that the document was sent as a PDF and the photographs were not clear.

7.84. The Applicant referred to two videos. The first was taken by her husband on 13th April to show the overall poor condition of the flat and the fact that Mr King had allowed the tenant to have a cat, moth infestation, cat food trays in bath, patches on bedroom carpet. She stated that it lasted 7 minutes and showed the Applicant and her husband walking into the Property. She stated that the tenancy had finished on 11 April but the tenant was still there. The tenant was made aware that the Applicant and her husband was coming to the

Property and so was Mr King. Hs stated that the tenant left on Monday 13th April, 4 days late. The video contained conversation between the Applicant / her husband and the tenant. She stated that it showed the areas that the wall was damaged below the living room door, quite low. The second was taken on 21 April 2019, after the tenant had left, during clearance.

7.85. **Mr King** stated in relation to the first video from 13 April 2019 that the video was taken prior to final inspection and cleaning. He stated that he felt uncomfortable seeing a video as the tenant was still in the tenancy and his son may have been present. He stated that he always carries out his inspections after a tenant has left, unless the tenant asks for one while they are still there.

7.86. The tribunal decided that the videos were relevant and there being no objection (other than the possible inclusion of a child in the 13 April video) allowed them to be added as APP VIDEO 1 – 21 April 2019 at 1335h and App VIDEO 2 – 13 April 2019. They were played during the hearing. There was no child shown in either of the Applicant's video.

7.87. App VIDEO 2 – 13 April 2019. The Applicant stated that the state of the carpets could be seen. She stated that they had been there since 2004 in every room. They were 15 years old at the end of the Cochrane tenancy. The sofa was 11 years old. The Applicant purchased it for the Cochrane tenancy, from January 2008. She referred to the cat trays which could be seen within the bathroom area and the cat carrier in the living room

7.88. The Applicant submitted that if Mr King went to check the boiler, he cannot have failed to notice the claw marks on the sofa and that there was a cat in the Property. She submitted that the moth infestation should have been picked up during inspections, stating that there were no moths when she lived there and none had been reported from any other tenants. She stated that the Respondent needed to spray chemicals. There were larvae in the skirting boards. The inspector stated to her that it was a bad infestation. She received and paid an invoice for treatment. She stated that she understood that she would not have recovered money but submitted that there is a duty of care for looking after her property. That does not include a moth infestation which was left, a cat which was not permitted, or breaking the cooker and not reporting it to her.

7.89. **Mr King** stated that on 13 April, the Property was still occupied, the tenant was still moving out, and the video was taken prior to cleaning. He stated that it obviously looks unpleasant. He accepted fairly obvious indications that there was a cat in the property. He stated that when he went in December 2018 to drop off a heater he did not notice a cat and that was the last time he visited. He stated that the handyman sometimes comes back and reports. He had said that it was bit smelly. Mr King was aware that the personal hygiene of the tenant was a problem and the handyman said the same thing. Mr King emailed the handyman at the end and asked for his thoughts on the place. He stated to Mr King that there was nothing out of the ordinary that would trouble him. Mr King stated that he is not an expert on moths. However, he accepted that had he carried out quarterly inspections, he would have identified moth

damage. He knows what to look out for. He does not know what furniture was on top of those areas of carpet at the time. If they had been present at the time of the inventory he would have noted it in the inventory. He stated that the sofa was old but not cat-scratched at the start and that he did not authorise the cat in the property.

7.90. Mr King produced a video, labelled RESP VIDEO 1, 16 April 2019. It was allowed to be received late in the absence of any objection from the Applicant. It was taken after the Property was empty and had been cleaned. It was played. Mr King stated that it does not show that there is a damaged area of the living room wall. This shows the property after the tenant's belongings had been removed. Mr King submitted that for 11 years, it does not seem in excessively poor condition. All excess items left by the tenant had been removed. There was damage to a light caused by the tenant during removal, for which Mr King organised the handyman. The Applicant had told him that there was a window key missing and Mr King had sourced the window key. He stated that he was trying to be helpful. He stated that he also had keys with him at the tribunal hearing, available to give to the Applicant.

7.91. **The Applicant** replied, in relation to the keys which had been offered by Mr King and stated that the Property was sold in July. She stated that she did not want the keys from Mr King. She stated that she had nothing to add in relation to the Respondent's video.

7.92. **Mr King** undertook to securely destroy the keys he was holding for the Property.

7.93. Paragraph 104: "You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared."

7.94. **The Applicant** stated that she interpreted the rule as not giving the tenant the information that the cooker was broken and all the things she had mentioned earlier and not taking any deductions for these items off his deposit. She stated that the tenant did not leave the Property to a standard that it was when he moved in. She summarised the issues as "the cat thing", the sofa being damaged, the carpets being damaged, and stated that it was not how it was let out to him. She said that she understands that fair wear and tear would have been an issue for the sofa, carpets and walls. She said that she had made allowance for wear and tear but stated that this was different to actual damage done by a cat, moth infestation and a broken cooker door. She did not know if the cooker was new when it was installed two years prior. She stated that Mr King arranged it. She stated that at end of the tenancy, the door catch was broken. She added that as far as she was concerned, the Applicant was the only tenant. When she and her husband attended on the Saturday prior to the tenant leaving, there was a female in the Property whom she assumed to be his partner.

7.95. The Applicant produced a third late video, numbered as APP VIDEO 3, 17.4.19, 11.19. It was accepted by the tribunal without objection by the Respondent. The footage was 9 seconds, on Wednesday 17th April, after the tenant left and the Property had been cleaned, but before she had the property cleared on the Thursday, two days after the tenant left. The video was viewed by the tribunal and the parties.

7.96. The Applicant stated that she had nothing further to add in relation to the alleged breach.

7.97. **Mr King** began by accepting that the Respondent did not give the tenant clear written information about any damage identified during the checkout process but this was under explanation that the reason he did not do so was purely the age and life span of the items. He stated that in normal practice, the Respondent is happy to act as the go between with landlord and tenant in deposit disputes. From the knowledge of the Respondent, the deposit scheme would want to know how old the sofa and carpets are if any deduction was claimed. He stated that the checkin Inventory in relation to the sofa says, "fair condition consistent with age." He stated that beyond cleaning and removing items, he could not see anything that would fall under the tenant's responsibility. He stated that the tenant's lease said that he should leave the property clean, consistent with fair wear and tear, and remove personal items. He stated that there was a quick bit of correspondence with the tenant about the light being damaged during moving out. The Respondent knew that the Property would need a clean. The handyman did the clearance. Mr King stated that these are the things that he thought would fall under the tenancy rules.

7.98. The ordinary member stated that most tenancies would require a clean at the end and asked what proportion was attributed to the tenant. Mr King stated that the tenant agreed to pay for the full clean, the handyman for the light and the clearance. Mr King stated that the Respondent has an ongoing relationship with the tenant. There was no dispute with the tenant. The tenant agreed to pay cleaning, estimated to be probably about £90 and the handyman bill of £90. The Respondent only took £180 from the tenant and that was an agreed amount. It came from the tenancy deposit scheme. The tenant did not lodge a dispute under the tenancy deposit scheme. Mr King was not sure if he lodged the document as it was not in R6.1.14. He stated that he has a good relationship with the tenant. He submitted that what the Respondent had done meets the requirements of Rule 104.

7.99. In relation to the cooker, Mr King explained that when he inspected the cooker the door was open. He could see that it has been cleaned. He stated that he would not dispute that the catch was broken and he offered to send the appliance engineer to repair it and cover the cost.

7.100. Mr King did not remember having discussions with the tenant about whether the items in the Property were old. He stated that he would have replaced the sofa with an 11 year old sofa without cat damage. He stated that there were no communications like that with the tenant, nor did anyone from

the Respondent write it down. He assumed that there was no point even broaching the subject. He made the decision but did not put anything in writing to the tenant to that effect. He stated that now they work on the SAL basis and use their templates for end of tenancy checkout reports. They do not send a copy to the tenant and the landlord. They generally just engage the tenant and the landlord. If it is all agreed, the just instruct the deposit release. It only goes to parties when there are proposed deductions or things to discuss. He stated that on reflection, in every case they should send to both parties. He stated that he treated this as a special case. He did send an email to the tenant and stated that it was not lodged but that he could obtain a copy from his office over the lunch adjournment. After the adjournment he stated that he had been unable to find any email from anyone at the Respondent to the tenant but that his colleague Laura could see the bills and that fact that the deposit had been cleared off. He stated that deductions were agreed and there was no dispute.

7.101. Mr King stated that before Mr Cochrane moved out, Mr King had received an email from him in which he referred to a child. Mr King had been told that Mr Cochrane's son had been present when the Applicant and her husband attended. Mr King referred to 6.1.14, page 2, 21 April 2019, which makes reference to a child.

7.102. Mr King added that at the end of it all he had messaged his handyman asking for his views. He referred to R 6.1A, in which he asked whether he had noticed anything on the occasions that he has been in the property. Mr King stated that he took his views as a starting point.

8. Parties' submissions in relation to the remedies sought by the Applicant

8.1. The Applicant stated that she was seeking compensation for losses.

8.1.1. **Claim for clearance: £360.00.** The Applicant is claiming £360.00 for having to have the flat cleared out because the Respondent did not pick up these points with the tenant and deduct from his deposit. She had to clear the sofa and the carpets. Everything apart from the fridge and the washing machine was cleared. She explained that all furniture dated from 2008 except the living room unit. She was advised by MENCA to get rid of the carpets because of the moth infestation. She had to make a decision the day of the clearance whether to fix the cooker door. She had not seen the email from Mr King until later on 17 April when he offered to repair it. She referred to the Receipt – Applicant's Second direction document, page 55. She stated that she is not seeking the full amount because the sofa was clawed. The cupboard was not in a good condition. She did not want to keep the bed because of the moth infestation. She stated that everything smelled.

8.1.2. **Moth treatment: £144.00.** The Applicant is claiming £144.00 for moth treatment with MENCO. She stated that this should have been picked up, had there been property checks. The expert said to her that it is an advanced stage of an infestation. There was also infestation in the

bathroom. Applicant's bundle, p39. The engineer said it was also damage which could have been caused by a cat.

8.1.3. **Cost of cooker: £250.80**. The Applicant is seeking £250.80 for the cooker that was damaged. It was a two year old cooker and could have been repaired for a few pounds. She accepted that this might be wear and tear but stated that she is still claiming the full amount of the cooker damage. She stated that Mr King's offer to repair it came too late because she did not want him to come after that and she did not want to wait to get someone to repair it, when it should have been something that in the final inventory check should have been picked up.

8.1.4. **Management Fees (inc VAT), 50% of fees paid (£3564.00): £1782.00**. The Applicant is claiming management fees. The fee she has paid is £45 plus VAT, £54 per month. She has paid £2970 + VAT, £3564 over 66 months, from October 2013 to April 2019. She stated that she grudges paying a fee where a service has not been provided, quarterly inspections have not been done, the flat has been left, the tenant has been permitted to do whatever he wants to do without any direction form the Respondent. There was trouble getting rent, because the tenant was not paying. The week after the rent was due she had to chase up. She stated that there was an information problem, rather than Mr King having the rent and not passing it on. The tenant got some benefits. He seemed to be out of work July to December every year. This all went through the Respondent. The Respondent was discussing payment proposals and rent arrears all on her behalf. Up until this tenant moved in everything was fine. The Applicant accepted that the Respondent has fixed the boiler and got another cooker. She accepted that repairs and renewals had been done and said that they had been fine. She submitted that she has not received a good service. She would say 50% of the service has not been received. The main issue is lack of quarterly inspections, which she did not know about until she went into the flat. Tenancy documentation was prepared by the Respondent. At the time she trusted that they were doing their job. Her solicitor advised her to get the full tenant file in April 2019. She submitted that the Respondent had performed half of its functions; or that the respondent had performed all of their functions half as well as they should have. She commented that at the first hearing Mr King had stated that he does inspections for all of his properties and she wanted to know why hers was left out. She stated that she had been thinking of re-letting but because this was such a bad experience she decided not to do so. She had not made any plans to do up the flat while the tenant was there. She took steps to evict him because of rent arrears. She was not ready to do anything because of her health and she was not working. The full amount of rent went on the mortgage and the Respondent's management fee. The rent was £500.00 per month for the full term of the tenancy. She stated that as a landlord, the house met the repairing standard. The boiler, the fridge and the cupboard were addressed via the Respondent. She was informed about items, albeit sometimes from the statement when there was a deduction. Her husband had sold his flat a year and a half before and was going to lend her the money to the work after the Cochrane tenancy. The

tribunal chair asked the Applicant whether she had ever asked the Respondent for costings for improvements. She said that she had asked once and decided not to do it. She was sent the Gas Safety certificates every year, which were instructed by the Respondent, as was the EICR. She accepted that the Respondent did those things for her and that that aspect of their service was provided, to ensure compliance with your legal obligations. The tribunal chair asked the Applicant how she ensured that the she complied with her obligation to ensure that the Property met the repairing standard throughout the tenancy. The Applicant stated that she did not know what the repairing standard is. She stated that she used to read circulars sent by the Respondent and that she was also a member of the Landlords Association at the local authority. She stated that through all the years of letting the property she had not been aware of the repairing standard but stated that she thought that she took her obligations as a landlord seriously.

8.2. The Applicant stated that she was seeking accountability, ownership and apology by Mr King for his actions. She stated that through the emails with her husband the Respondent never apologised or took accountability for mistakes. She stated that that would have gone a long way and matters would not have got to this stage had he offered to sort out some of the problems. It would have helped to clear some of the stuff but it was too late by the time that he offered. She stated that he failed to acknowledge that there was an issue at all and was deflecting all the time in the emails. She stated that she was shocked when she walked into her flat and thought that it was disturbing that someone could let it get into that state. She stated that even if she had waited until the tenant had left, there were still moths flying around and that it smelled from the way the tenant had been living. She stated that it was devastating to her as she owns the property and has lived there herself. She stated that she sometimes wishes she had not gone on the Saturday before the tenant left. She stated that her husband called Mr King on the Saturday to say that they had just been to the flat and that Mr King did not call them on the Monday. They were not told about the tenant requesting extra days to stay and that she should really have been informed about that. He was not even moving his stuff on the Saturday despite the fact that he was meant to leave on Thursday. She stated that the casualness and lax attitude of Mr King does not inspire confidence. She stated that she is not asking the tribunal to order an apology but it would be nice to get an apology. She finished by stating that she trusted Mr King to do his job but she felt that he had taken advantage of her, such as the failure to carry out quarterly inspections. Standard stuff. Blu tack and Sellotape on the walls. He cannot have failed to have noticed that when he went to fix the boiler. Nothing was done about this and he must have known about it for a while.

8.3. **Mr King** stated that at the stage the notice was given to the tenant he suggested to the Applicant that the Property should be cleared after he moved out. During the process, Mr King suggested to the Applicant arranging a council uplift, with a charge of £5 per item for up to 10 items from the kerbside. He thought that that would be the most cost effective way. He sent an email to the Applicant, R6.1.11, p10, “ditch any old furniture”; page 11, if it was going back on the market… empty and tidy would be enough for an agent to take it on”;

page 13 for 10 items it would have been £50 instead of £360. Mr King stated that he has a general opposition to paying for uplift of items from the Property. He stated that if it was going to be sold rather than re-let after a long tenancy, the first stage would be to empty the Property, which would be the landlord's responsibility. He received no response from the Applicant to suggesting an uplift.

8.4. In relation to the moth infestation, he disputed that he should have to reimburse the Applicant. He stated that if it had come up during the tenancy the Applicant would have had to pay. He stated that it was never mentioned by the tenant and that it may not have come to light until items were lifted out. He stated that if it had come up, even in 2014, we still would have got MENCO and the Applicant would have paid. He stated that he had had experience of about three or four instances of carpet moths he has seen, generally when furniture has been moved. He submitted that the expense to the Applicant has not really changed by finding out in 2019. He appreciates that it is unpleasant but submitted that the cost element to the Applicant is no different than it would have been if picked up at an earlier inspection.

8.5. In relation to the cooker, Mr King stated that he had offered to repair the cooker when the issue was identified. He stated that he would have done that at the expense of the Respondent. He stated that a door catch could just break and it was not necessarily the result of neglect or wilful damage by the tenant. He would have been prepared to send out the Respondent's appliances engineer who would probably charge £40-45 and he would have quite happily paid that. He appreciates that Mrs Latif took the decision to get rid of it but he did not see how the whole amount could be due by the Respondent to the Applicant. He stated that the deposit company would probably award a percentage amount of the cooker.

8.6. In relation to the management fee, Mr King stated that very early on in the discussions there was a lot of correspondence between the Respondent and the Applicant, the majority of which was to do with the rent. He stated that he understood the Applicant's issue with the tenant not paying. He stated that the tenant did regularly engage with the Respondent about problems with meeting the rent and that the Respondent always passed that information on. When the tenant did pay it was passed on to the Applicant. He stated that his wife, Heidi King, prioritised it. He stated that the Respondent processed rent, carried out repairs when notified, did safety checks and all compliance certificates, tenancy documentation, invoiced the landlord, paid trades bills, paid out rent within a week of receiving it, normally sooner. By the end of the tenancy 100% of rent was paid. There were no arrears. The tenant went through periods where he got paid in advance and the Respondent managed and negotiated and worked all of that out. The tenant's local Housing Allowance was more than the rent he was charged. This was effectively communicated to the Landlord. He completely understands that it would be frustrating but the Respondent also discussed the options, including giving notice and doing work on the Property.

8.7. Mr King disputed poor communication. He stated that if any correspondence was received it was forwarded on or sent to the Applicant. It may not have been what she wanted to hear but there was communication.

8.8. Mr King stated that the only management failure was a total failure to inspect the Property. He did not see what was to be gained by inspecting the Property. He agreed that it would be fair to take something for a failure to inspect. He stated that the Respondent did not get a chance to engage once the Application was made to discuss matters with the Applicant. If it had been an ongoing client they could have sat down and asked what they could do to resolve matters. They could also have arranged things like the council uplift. Mr King stated that he would have arranged that, to try to smooth things over. He would not want a client to be unhappy and would have preferred to have had a happier solution. He did not want a client to go away like that but they did not get to engage civilly. He stated that it had been upsetting to see the Applicant upset during the process. He stated that seeing a property whilst a tenant is in the throes of moving out is probably the worst time. He stated that the video he had showed the tribunal was a property at the end of an 11 year life span, after it had been professionally cleaned. He thought that it was not too offensive. He suggested that the Applicant might have had a different perspective on the whole course of events if she had not gone in while the tenant was still there and before the Property had been cleaned. In summary he stated that he was trying to manage a highs stress tenancy as best he could.

9. The tribunal make the following findings in fact:

9.1. The Applicant is the landlord of the Property.

9.2. The Respondent carries out letting agency work in Scotland.

9.3. The Respondent has joined the Register of Letting Agents in Scotland.

9.4. On or about 25 January 2008, the Applicant and the Respondent entered into a contract of agency in terms of which the Respondent would let and manage the Property on behalf of the Applicant.

9.5. The Respondent has been appointed by the Applicant and is therefore a “relevant letting agent” as defined in Section 48(2) of the 2014 Act.

9.6. On 26 February 2019, updated terms of business were sent by the Respondent to the Applicant but these were not signed and were stated to be for information only.

9.7. The parties did not vary the terms of the 2008 management contract at any time prior to the end of the contract in or about April 2019.

9.8. The management fee charged by the respondent to the Applicant throughout its management of the Property was 9% of rental income collected, plus VAT.

9.9. The Respondent arranged a short assured tenancy of the Property with Mr David Cochrane which lasted from 11 October 2013 until in or about April 2019 ("the Cochrane tenancy").

9.10. The rent payable by Mr Cochrane was £500.00 per calendar month.

9.11. The corresponding management charge paid by the Applicant to the Respondent was £45.00 plus Vat per calendar month, totalling £54.00 per calendar month.

9.12. The Respondent prepared an inventory of the Property on or about 9 October 2013, which listed contents, but it made no mention of condition of the Property or the fixtures, fittings or contents.

9.13. The inventory was not signed by Mr Cochrane.

9.14. Some photographs were taken by the Respondent in or about 2013 at the start of the tenancy but these did not form part of the inventory.

9.15. The Respondent did not retain an accurate record of the state and condition of the Property at the commencement of the Cochrane tenancy.

9.16. The tenancy agreement provided for a deposit of £600.00 to be paid by Mr Cochrane.

9.17. The Respondent took a tenancy deposit of £400.00 from Mr Cochrane.

9.18. The Respondent did not discuss or agree with the Applicant that the deposit would be restricted to £400.00 instead of the £600.00 contractually provided for in the tenancy agreement.

9.19. The Respondent lodged Mr Cochrane's tenancy deposit with a tenancy deposit protection scheme.

9.20. The Respondent did not at any time inform the Applicant of the statutory requirements on tenancy deposits under the Housing (Scotland) Act 2006 and the Tenancy Deposit Schemes (Scotland) Regulations 2011.

9.21. There were rent arrears at various times during the Cochrane tenancy but at the time that the tenant moved out of the Property the tenant had no outstanding rent arrears.

9.22. The Respondent was required in terms of the management agreement to conduct quarterly inspections of the Property and to report to the Applicant as necessary.

9.23. The Respondent failed to carry out quarterly inspections of the Property throughout its period of management of the Property.

9.24. The Cochrane tenancy ended in or about April 2019, following service of notice by the Respondent on behalf of the Applicant.

9.25. Mr Cochrane moved out of the Property on or about 15 April 2019.

9.26. The Respondent instructed professional cleaning after the end of the Cochrane tenancy and the cost was charged to the tenant.

9.27. A light fitting was damaged during Mr Cochrane's removal from the Property.

9.28. The Respondent instructed repair of the damaged light fitting and the cost was charged to the tenant.

9.29. The Respondent was responsible for managing the checkout process at the end of the Cochrane tenancy in April 2019.

9.30. The Respondent did not carry out a thorough check out process in April 2019.

9.31. The Respondent did not use the initial inventory for comparison purposes during the April 2019 checkout process.

9.32. The end of tenancy inspection was conducted by Mr King and lasted for around 10 minutes.

9.33. The photographs taken by Mr King during the April 2019 checkout process did not bear any relation to the photographs taken at the commencement of or during the tenancy.

9.34. A number of issues were not identified during the end of tenancy inspection in April 2019, such as a hole in the living room wall, cat damage on the sofa, a moth infestation, blu tack on walls and a broken door catch on the cooker. Said issues might have been picked up during a thorough inspection.

9.35. The Respondent did not produce a sufficiently detailed report of the end of tenancy inspection in April 2019, with a photographic record, linked to the initial inventory.

9.36. The PDF document produced by the Respondent following the end of tenancy inspection contained images of poor quality and questionable relevance, did not show all issues present at the end of the tenancy and had very few written annotations.

9.37. The Respondent did not give the tenant clear written information (or photographic evidence) about any damage identified during the checkout process and the proposed repair costs with reference to the inventory.

9.38. Deductions were made from the tenant's deposit for damage to a light fitting (caused during removal) and for full cleaning of the property.

9.39. At the end of the tenancy in April 2019 there was damage behind a living room door which had not been reported or recharged to the tenant.

9.40. At the end of the tenancy in April 2019, there was moth damage to the carpets.

9.41. At the end of the tenancy there were blu tack marks on a number of the walls.

9.42. At the end of the tenancy in April 2019, there was a broken catch on the cooker door.

9.43. The Respondent did not report to the tenant in relation to the damage to the living room wall, the moth damage to the carpets, the blu tack marks on the walls or the broken catch on the cooker door.

9.44. Following the end of tenancy inspection and cleaning of the Property, the Respondent provided the Applicant with a PDF file containing a selection of images of the Property taken in 2008, 2012 and 2019, with limited annotations.

9.45. At the end of the Cochrane tenancy, the fixtures fittings and contents, including the carpets and sofa were all at least 11 years old, with the exception of the cooker which was at least 2 years old.

9.46. At the end of the Cochrane tenancy, the property had not been re-decorated for in excess of 11 years.

9.47. No information was provided by the Respondent to the tenant about the end of tenancy inspection.

9.48. In about April 2019, the Applicant requested the full tenant file from the Respondent.

9.49. In response to the Applicant's request for the full tenant file, the Respondent produced the tenancy agreement.

9.50. The Respondent did not produce any reports of tenancy inspections when asked by the Applicant for the full tenancy file.

9.51. After the Cochrane tenancy had ended, the Applicant made repeated enquiries to the Respondent about finding evidence of a cat in the Property, including cat damage to contents.

9.52. The Respondent did not respond to any of the Applicant's enquiries about the cat or cat damage.

9.53. The Applicant's requests for information from the Respondent were not answered in a clear or easily accessible way.

9.54. On or about 6 June 2019, the Applicant's solicitor notified the Respondent about alleged breaches of the Code of Practice.

10. Tribunal's determination regarding allegations of failure to comply with the Code of Practice

11. Paragraph 17: *"You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)."*

11.1. The tribunal considered all four alleged breaches of paragraph 17, namely whether the Respondent had been honest, open, transparent and fair in its dealings with the Applicant.

11.2. Reference is made to the parties' evidence and submissions and the tribunal's findings in fact.

11.3. The tribunal was not satisfied on the balance of probabilities that there had been dishonesty on the part of the Respondent.

11.4. The tribunal was satisfied that the Respondent had not been open in its dealings with the Applicant. In particular, the tribunal had regard to the repeated requests for the tenant file and the fact that only two documents were produced by the Respondent to the Applicant. In addition, the Respondent failed to respond to the Applicant's enquiries about finding a cat in the Property.

11.5. The tribunal was satisfied on the balance of probabilities that the Respondent had not been transparent in its dealings with the Applicant. This was on the basis of the same findings in fact about the response to requests for the full tenant file and the Respondent's failure to answer her enquiries about the cat and cat damage in the Property.

11.6. The tribunal was not satisfied that the Respondent had been unfair in its dealings with the Applicant. There was no clear evidence which was accepted by the tribunal that the Respondent had been unfair in its dealings with the Applicant.

11.7. The tribunal finds that the Respondent has failed to comply with the Code of Practice, paragraph 17, as a result of a lack of openness and a lack of transparency in its dealings with the Applicant.

12. Paragraph 18 - *"You must provide information in a clear and easily accessible way."*

12.1. On the basis of the evidence and submissions, the tribunal was satisfied on the balance of probabilities that the Respondent did not provide information to the Applicant in a clear and easily accessible way. In particular, the

information produced after the Cochrane tenancy, in the form of a PDF document with a selection of images, was not clear or easily accessible.

12.2. The tribunal finds that the Respondent has failed to comply with the Code of Practice, paragraph 18, as a result of a failure to provide information to the Applicant in a clear and easily accessible way.

13. **Paragraph 19 -** ***"You must not provide information that is deliberately or negligently misleading or false."***

13.1. The tribunal was not satisfied on the balance of probabilities that the Respondent's response to the Applicant's request for the tenancy file was negligently misleading, as alleged by the Applicant. There was no evidence to prove that the lack of information was negligently misleading.

13.2. The tribunal finds that the Respondent has not failed to comply with the Code of Practice, paragraph 19.

14. Paragraph 65 - ***"You must inform the landlord of the statutory requirements on tenancy deposits under the Housing (Scotland) Act 2006 and the Tenancy Deposit Schemes (Scotland) Regulations 2011"***

14.1. The Respondent accepted that he had not at any time informed the Applicant of the statutory requirements on tenancy deposits. As a result the Applicant was unaware that there were any such statutory duties incumbent upon her.

14.2. The tribunal also observed that the Respondent unilaterally elected to take a different amount from the tenant to that specified in the management agreement, Section A7 "one months' rent plus £100 per property. The rent for the property was £500. Therefore a deposit of £600 was due to be taken. However, only £400 was deposited in a scheme. No discussion took place with the Applicant regarding this reduced amount.

14.3. On the basis of the evidence and submissions, the tribunal was satisfied on the balance of probabilities that the Respondent had not informed that Applicant of the statutory requirements on tenancy deposits under the 2006 Act and 2011 Regulations.

14.4. The tribunal finds that the Respondent has failed to comply with the Code of Practice, paragraph 65, in failing to inform the Applicant of the said statutory requirements on deposit protection.

15. Paragraph 74 - ***"If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance)."***

15.1. Mr King admitted that the Respondent had failed to conduct quarterly inspections, as provided for in the management agreement, throughout the period of its management of the Property.

15.2. The tribunal accepted the evidence of both parties that there had been a number of visits to the Property over years, such as a representative of the Respondent or a handyman visiting the Property to attend to repairs when issues were reported by the tenant, such as a boiler repair (19 December 2014), kitchen cupboard repair, replacement of vacuum cleaner (June 2014), delivery of new cooker (26 June 2017), replacement of a bathroom tap (5th October 2015), grouting/silicone work in bathroom. The repairs and renewals which were carried out appeared to be reactive to reports by the tenant to the Respondent. Any expenses for such repairs or renewals were noted as a deduction on the statements issued to the Applicant. Mr King informed the Applicant by email about the problems with the boiler in December 2014. Mr King also attended to give access to the tenant when he was locked out (7 January 2014). The tribunal did not accept the contention made by Mr King that any of his visits to the front door of the Property could amount to an "inspection", in particular as he could not see the whole Property during such visits and also because no record was made of the visit or any inspection.

15.3. The tribunal observed that the Respondent's position throughout the hearing was that due to the age and condition of the Property and its fixtures, fitting and contents, he did not need to inspect the Property on a quarterly basis. Mr King had repeatedly told the Applicant throughout the years of the Cochrane tenancy that the carpets and furniture were due for replacement. However, there had been no discussion with the Applicant to reduce or remove the need for quarterly inspections from the management agreement, nor had there been any variation to the management contract reducing or removing the quarterly inspections. Mr King had explained to the Applicant that the furniture and carpeting was needing replaced as it was 11 years old. The Applicant had elected not to replace any contents, fixtures or fittings following upon this recommendation due to her stated lack of funds.

15.4. The Respondent did not notice the moth infestation at any time during its management of the Property. The tribunal accepted the Applicant's evidence that the infestation was at an advanced stage. The tribunal accepted the Respondent's evidence that that had not been reported to the Respondent by the tenant. The Respondent did not notice the presence of a cat in the Property, nor the damage caused to the sofa with its claws. Such issues would have been identifiable during any competent regular inspection of the Property. Had the Respondent inspected the Property he would not have had to rely on reports from the tenant.

15.5. On the basis of the evidence and submissions, the tribunal was satisfied on the balance of probabilities that the Respondent had failed to carry out agreed routine quarterly inspections and as a result, had failed to record any issues and bring these to the tenant's and Applicant's attention where appropriate.

15.6. The tribunal finds that the Respondent has failed to comply with the Code of Practice, paragraph 74.

16. **Paragraph 102 -** ***"If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began."***

16.1. Mr King accepted that the Respondent was responsible for managing the checkout process. The Applicant had the same understanding. The tribunal was satisfied on the balance of probabilities that the Respondent was responsible, as part of its management of the Property, for managing the checkout process.

16.2. The tribunal was satisfied on the balance of probabilities that the Respondent did not carry out a thorough check out process. The Respondent did not use the initial inventory for comparison purposes (and the inventory itself was deficient in a number of respects as it did not note the condition of listed items). The inspection was cursory and lasted for around 10 minutes. The photographs which were taken by Mr King did not bear any relation to the photographs taken at the commencement of or during the tenancy. Issues were missed, such as a hole in the living room wall, cat damage on the sofa, a moth infestation and a broken door catch on the cooker. Said issues might have been picked up during a thorough inspection.

16.3. The tribunal was satisfied that it would have been appropriate for the Respondent to produce a sufficiently detailed report with a photographic record, linked to the initial inventory. The photographs taken by Mr King in April 2019 were taken after the property had been cleaned. Mr King had undertaken the Letwell certified course and also is a member of Scottish Association of Landlords, which provides templates to members for use at the end of a tenancy and throughout the tenancy where a detailed routine inspection is to be carried out. Mr King did not produce a sufficiently detailed report to the Applicant or to the tenant about issues present at the end of the tenancy. No relevant links were made to the inventory produced at the start of the Cochrane tenancy. The PDF document produced by the Respondent following the end of tenancy inspection contained images of poor quality and questionable relevance, did not show all issues present at the end of the tenancy and had very few notes.

16.4. On the basis of the evidence and submissions, the tribunal was satisfied on the balance of probabilities that the Respondent should have and did not produce a sufficiently detailed Report with a photographic record, with relevant links to the inventory produced at the start of the tenancy.

16.5. The tribunal finds that the Respondent has failed to **comply with the Code of Practice, paragraph 102.**

17. **Paragraph 104 -** ***"You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared."***

17.1. Mr King accepted that the Respondent had not given the tenant clear written information (or photographic evidence) about any damage identified during the checkout process and the proposed repair costs with reference to the inventory.

17.2. Deductions were made from the tenant's deposit for damage to a light fitting (caused during removal) and for full cleaning of the property.

17.3. The tribunal accepted the evidence of the Applicant that there was damage behind a living room door which had not been reported or recharged to the tenant. There was no report to the tenant about the moth damage to the carpets (which may have given rise to a charge to the tenant as a result of failure to report to the Respondent). There as no report to the tenant or charge for cat damage to the Property. There was no report to the tenant or charge for blu tack marks on the walls.

17.4. The Respondent took a unilateral decision not to thoroughly inspect, or to report to the tenant and Applicant at the end of the tenancy, due to his views about the age, condition and lifespan of items in the Property and his views on how matters may be treated by the deposit protection company. This was never discussed with the tenant or Applicant.

17.5. On the basis of the evidence and submissions, the tribunal was satisfied on the balance of probabilities that the Respondent did not give the tenant clear written information (with or without supporting photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory.

17.6. The tribunal finds that the Respondent has failed to comply with the Code of Practice, paragraph 104.

18. Letting Agent Enforcement Order

18.1. As the tribunal decided that the Respondent has failed to comply with the Code of Practice, paragraphs 17, 18, 65, 74, 102 and 104, the tribunal is required to make a Letting Agent Enforcement Order ("LAEO") in terms of Section 48(7) of the 2014 Act. Said LAEO requires the Respondent to take steps the tribunal considers necessary to rectify the failures within the specified period.

18.2. The tribunal notes that the parties are no longer in an ongoing relationship as landlord and managing agent and that the Property has now been sold.

18.3. The tribunal considers that it is appropriate for the Respondent to make a payment to the Applicant to rectify the Respondent's failures to comply with the Code during the period in which the Respondent was managing the Property.

18.4. The tribunal considered the remedies sought by the Applicant and the Respondent's position on each.

18.5. **Claim for clearance: (£360.00 claimed)**. The tribunal is not satisfied that the Respondent should pay anything for the clearance of the Property. The decision to clear the Property was made by the Applicant following her decision to sell the Property. The Property was handed back to her in April 2019 professionally cleaned and with excess items removed. The tribunal also took into account the age of the fixtures, fittings and contents in the Property (all 11+ years old by April 2019) and the fact that it had not been redecorated for in excess of 11 years. The Respondent had recommended Council clearance which would have cost the Applicant £55.00 for 10 items and she chose to proceed privately.

18.6. **Moth treatment: (£144.00 claimed)**. The tribunal is satisfied that the Respondent should pay a contribution to the cost of moth eradication. This could have been identified and treated at an earlier stage. Although this would have been an expense to the Applicant or tenant (depending upon the facts and the interpretation of the terms of the tenancy agreement), the Respondent's inaction has led to the infestation being at an advanced stage by April 2019. The Respondent took the decision not to report on the moth infestation after the end of tenancy inspection or to recharge any of the cost to the tenant. The tribunal considers that the sum of **£50.00** is appropriate for this element of the claim and orders the Respondent to pay said sum to the Applicant within seven days.

18.7. **Cost of cooker: (£250.80 claimed)**. The tribunal is not satisfied that the Respondent should pay for the cost of the cooker. It was secondhand, when installed two years previously. The only damage was a catch on the door which the Respondent offered to have fixed at his expense. The Applicant decided to dispose of the item which was her prerogative but the tribunal is not prepared to order any of the sum against the Respondent.

18.8. **Management Fees (inc VAT), 50% of fees paid (£3564.00): £1782.00 claimed.** The Applicant seeks a rebate of 50% of the management fees for the period of 66 months, from October 2013 to April 2019.

18.9. In considering this aspect of the claim, the tribunal considered facts it had found proved in relation to a number of breaches of the Code of Practice. In particular, the tribunal took into account the Respondent's failure to regularly inspect the Property on a quarterly basis as provided for in the management agreement, which had resulted in a number of issues which should have been identified at an early stage not coming to light until the end of the Cochrane tenancy in April 2019, such as the moth infestation and presence of a cat / cat

damage. The tribunal also took into account the failure to inform her of her obligations in relation to deposit protection, the inadequate inventory prepared at the start of the tenancy and the end of tenancy processes in April 2019, all of which were found to be lacking to the extent that they amounted to breaches of the Code of Practice.

18.10. However, the tribunal has also taken account of the fact that the Respondent conducted many aspects of the management of the Property and that the Respondent collected rent, remitted the same to the Applicant with statements, carried out safety inspections, lodged the tenant's deposit when the scheme came into force and attended to repairs and renewals when issues were reported by the tenant. All of the contents were extremely old and dilapidated at the end of the Cochrane tenancy in April 2019. The Applicant had decided, against advice from the Respondent, not to replace or renew carpets and furnishings during the tenancy and not to redecorate. She did so as a result of her stated financial circumstanced but she continued to collect rent from tenants (via the Respondent) over the period of 11 years. As at April 2019, the carpets and most items of furniture in the Property were at least 11 years old. The Property had not been decorated for the same period of time. In that context the some of the reported damage noted at the end of the tenancy, even had a thorough inspection been conducted and appropriate repotting carried out, is unlikely to have resulted in the Applicant being able to recoup any sums via the tenancy deposit scheme.

18.11. The tribunal therefore orders the Respondent to pay to the Applicant the total sum of £550.00 (comprising £50.00 towards the moth eradication and £500.00 in respect of a percentage of the management fee paid by the Applicant to the Respondent); said sum to be remitted to the Applicant within seven days of intimation of this Decision and LAEO.

18.12. Accountability, ownership and apology by Mr King for his actions, sought by Applicant.

18.13. The tribunal is not satisfied that it is appropriate to order the Respondent to apologise to the Applicant for its failures, although the Respondent may of course choose to do so. There was some recognition during the hearing of the distress, worry and inconvenience to which the Applicant had been put as a result of the Respondent's actions.

18.14. **Other orders.** The tribunal is not satisfied that there are any other orders required to rectify the Respondent's breaches, given that the relationship between the parties has now ended.

19. Appeals

19.1.1. An Applicant or Respondent 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.

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Susanne L M Tanner QC
Legal Member and Chair

17 December 2019