

Housing and Property Chamber First-tier Tribunal for Scotland



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

Statement of Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 48 of the Housing (Scotland) Act 2014 (“The Act”)

Chamber Ref:

Re: FTS/HPC/LA/23/2364

Parties:

Mr Ruari Cormack, 2 Dalhousie Chesters Court (“the Applicant”)

Lewis Residential Ltd, 37 St Stephen Street, Stockbridge, Edinburgh (“the Respondent”)

The Tribunal comprised:-

Mr Andrew McLaughlin-
Ms Sandra Brydon -

Legal Member
Ordinary Member

Background

[1] The Applicant seeks an order to enforce alleged breaches of the Letting Agent Code of Practice (“The Code”).

Tribunal

[2] The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 27 October 2023. The Applicant was personally present. There was no appearance by or on behalf of the Respondent. The Application and information about how to join the conference call had been served on the Respondent by Sheriff Officers. Accordingly, the Tribunal decided to proceed in the absence of the Respondent.

Preliminary Matter

[3] The Tribunal discussed a preliminary matter with the Applicant. He accepted that he was neither a tenant nor former tenant nor a landlord nor a former landlord of the

Respondent. He was a potential guarantor. As such, he had no standing under section 48 of the Act to bring this Application.

[4] The relevant legislation is section 48 of the Housing (Scotland) Act 2014:-

“48 Applications to First-tier Tribunal to enforce code of practice

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is—

(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,

(b) in relation to an application by a landlord, a letting agent appointed by the landlord,

(c) in relation to an application by the Scottish Ministers, any letting agent.

(3) An application under subsection (1) must set out the applicant’s reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.

(8) A letting agent enforcement order—

(a) must specify the period within which each step must be taken,

(b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.

(9) References in this section to—

(a) a tenant include—

(i) a person who has entered into an agreement to let a house, and

(ii) a former tenant,

(b) a landlord include a former landlord.”

Decision

[5] The Tribunal therefore refused the Application on the basis that the Applicant had no standing to bring the Application.

[6] A party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

[7] Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Andrew McLaughlin

Legal Member

27 October 2023