



**First-tier Tribunal for Scotland (Housing and Property Chamber)
Decision and statement of reasons under Section 48 of the Housing (Scotland)
Act 2014.**

Reference number: FTS/HPC/LA/22/3117

The Parties:

**Miss Victoria Nedley formerly of 1/3 1117 Cathcart Road Glasgow G42
9BD ('the Applicant').**

**Ross Sales and Letting, 116 Elderslie Street Glasgow G3 7AW ('the
Respondents').**

**Rented Property: 1/3 1117 Cathcart Road Glasgow G42
9BD ('the Property').**

Legal Member: Lesley Anne Ward

Ordinary Member: Gordon Laurie

Decision

- 1. The Tribunal decided that the Respondents have breached paragraphs 26, 93,108 and 113 of the Letting Agent Code of Practice and the Tribunal issued a Letting Agent Enforcement Order which should be read with this decision.**

Background

- 2. This was a hearing in connection with an application in terms of rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017, 'the rules' and section 48 of the Housing (Scotland) Act 2014, 'the Act'. The Applicant attended the hearing. The Respondents were represented by Ms Kimberly Ronald Lettings Manager of Ross Sales and Letting and Mr Russell Fleming Letting Director of Ross Sales and Letting.**
- 3. There was a considerable procedural history to the application. A case management discussion ('CMD') took place on 17 January 2023 and the Tribunal made directions. Further directions were made on 20 March 2023. A hearing due to take place on 12 May 2023 was adjourned on 10 May 2023 at the Applicant's request and the Tribunal made a direction for the Applicant to lodge medical evidence in support of her adjournment request. The medical evidence was**

submitted on 2 June 2023. The Tribunal decided that in the light of that evidence the application should proceed to a fresh hearing. In the intervening period the legal member who had been dealing with the application, Mr David Preston, sadly died. A replacement legal member was arranged. The Tribunal reviewed the application and all supporting information and on 9 October 2023 the Tribunal reissued the direction of 20 March 2023, making it clear that if no further documents were lodged the Tribunal would proceed to make a decision on the available evidence at the hearing. No further documents were lodged. The Respondents made a request on 23 October 2023 to adjourn the hearing on the basis that the Applicant had not fully complied with the direction of 9 October 2023. This was refused as the Tribunal determined that it was in the interests of justice for the hearing to proceed.

4. The Tribunal had the following documents before it:

- (a) Application dated 29 August 2022.
- (b) Formal complaint dated 16 August 2022.
- (c) Respondents' submission of October 2022.
- (d) Applicant's submission of 2 June 2023 with copy emails.

5. Preliminary matters and matters agreed

The Tribunal sought to understand the timeline of dates and to ascertain if any of the dates were agreed. It was agreed that the Applicant's tenancy commenced in July 2019 and the Respondents took over as letting agents in April 2021. Ms Ronald stated that she started work with the Respondents in June 2022. It was also agreed that the washing machine in the property was a washing machine and not a washer dryer. Ms Ronald advised that the Respondents ended the letting agency agreement with the landlord Mr Gordon Miller on 22 August 2022. Ms Ronald also confirmed that the Respondents contacted the Applicant on that date stating that their file would be closed and her complaint of 16 August 2022 was not dealt with. It was agreed that the Applicant first reported the fault with the washing machine on 25 March 2022. The Applicant was abroad looking after her grandmother from 19 May 2022 until 3 July 2022 and the washing machine was replaced and operational on 12 July 2023. A recurrence of the electrical problem was identified by the Applicant on 1 August 2022 and this was rectified on 5 August 2022. The Applicant was given a notice to leave on 25 July 2022 and she moved out on 16 October 2022.

The Applicant did not have any vouchers to lodge in connection with her claim for compensation. She was seeking compensation for her laundrette and taxi outlays and her inconvenience. She was not seeking any compensation for mould or for any medical issue or any rental payments.

The Applicant's position:

6. The Applicant's position was set out in her application, submissions and her oral

evidence. The Tribunal also heard oral evidence from the Applicant's friend Ms Rebecca Davies and her former landlord Mr Gordon Miller. After giving her evidence Ms Davies attended the hearing as a supporter for the Applicant. The Applicant's position is that through the negligence and incompetence of the Respondents and their contractors she was without a washing machine for four months. This meant that she had to go to the local launderette on around five occasions costing around £25 on each occasion to wash and dry her clothes. On two occasions she had to pay £10 for a taxi to another laundrette as the local one was closed. The Applicant does not feel that the Respondents dealt with the matter promptly or competently. She was not aware that the landlord had undertaken to replace the washing machine as her communication was always with the Respondents. They did not proactively deal with matters and keep her properly apprised of what was happening and the reasons for the delay. They also failed to deal with her written complaint of 16 August 2022 and she was obliged to make an application to the Tribunal.

The Respondents' position:

7. The Respondents' position was set out in their written representations sent to the Tribunal in October 2022. The Respondents did not entertain the Applicant's complaint of 16 August 2022 as the Respondents' relationship with both the Applicant and the landlord Mr Miller had broken down. It appeared to the Respondents that the Applicant and the landlord were in communication with each other and the Respondents were not party to those communications. The Respondents therefore felt they could not deal with the Applicant's complaint. They recognise that on reflection the complaint should have been dealt with in accordance with both their complaints procedure and the Code. Their complaints policy is that they seek to reply in the first instance within 5 working days. Their repairs policy is that matters are referred to the landlord seeking instructions within 24 hours. In this instance the landlord asked them to address the issue identified with the washing machine. They arranged a contractor to inspect and provide a quote and they sent this to the landlord. The landlord felt the quote from the contractor was too high and he decided to arrange a replacement washing machine himself. Despite this the Respondents continued to liaise with the Applicant.
8. Both Mr Fleming and Ms Ronald accepted that with the benefit of hindsight the Respondents should have contacted the Applicant and explained the difficulties with replacing the machine in view of the issues with the floor and the worktop and set out a plan to rectify the problem. They both felt it was a false economy for the landlord to attempt to get a company like Curry's or AO to deliver a new machine and remove the old one. It was their position that they did everything they could as quickly as they could to resolve matters and if they did breach the Code, it was to fail to manage the Applicant's expectations. It was Mr Fleming's position that the electrical fault which came to light on 1 August 2022 had not been picked up by multiple contractors who had visited the Property since March 2022 or the Applicant and therefore it was unfair for the Applicant to expect them to identify it.
9. As far as the Applicant's contention that Ms Ronald had lied to her when she came to the Respondents' premises after receiving the notice to leave, she strongly

refuted this. It was her position that she left another meeting to speak to the Applicant and she did not have any papers with her nor would she disclose any matter that had been discussed with the landlord in relation to his intentions with the notice to leave.

10. Both Ms Ronald and Mr Fleming felt it was significant that, by her own admission, the Applicant was contacted on two occasions by the owner of the shop on the floor below the property regarding a leak of water and both times the Applicant dismissed this as not relating to her flat. It was their position that the Applicant should have brought this to their attention and if she had done so, the underlying electrical problem might have been identified and sorted sooner.

Sections of the Code at issue

11. **Section 2 paragraph 17: You must be honest, open and transparent in your dealings with landlords and tenants (including prospective and former landlords and tenants).**

12. The Applicant's position was that Respondents were not being honest and transparent in their dealings with her, principally because she was told by the landlord that he was selling the property due to the issues with the washing machine and the gas safety certificate, whereas Ms Ronald told her that the notice to leave was unconnected with the washing machine. The Tribunal heard oral evidence from the landlord that he and his wife decided to sell the property as he had 'had enough' after dealing with the letting agent and the length of time it had taken to sort the washing machine and obtain the gas safety certificate. He had a second property and he decided to sell it as well. It was put to the landlord that he could have changed letting agents rather than evicting the Applicant. He reiterated that he had 'had enough'. The Respondents denied that there had been a breach of the Code and submitted the Respondents had been of good faith throughout their dealings with the Applicant. Ms Ronald's evidence was that she did not remember telling the Applicant that the sale was unconnected with the washing machine. She gave evidence that Applicant arrived at the office and insisted on waiting to see her. She was obliged to leave another meeting to speak to the Applicant. She had only been in post a few weeks and did not have the papers in front of her and would not have disclosed any confidential information regarding the landlord. Mr Fleming submitted that the landlord was unable to cope with letting his two properties and the washing machine issue was not the fundamental reason for the sale. The Respondents also act for the landlord's daughter and it was Mr Fleming's position that the landlord asked the Respondents if his daughter could deal with any queries as he felt 'overwhelmed'. Mr Miller denied this at the hearing and said his daughter was asked to step in when he was on holiday. It was Ms Ronald and Mr Fleming's position that the landlord was not 'cut out' to be a landlord and decided to sell two properties.

13. The Tribunal accepted that the washing machine issue may have played a part in the landlord's decision to sell but this did not mean that the Respondents had any obligation to disclose the landlord's intentions to the applicant or that the

Respondents had breached this aspect of the Code by the interaction that took place after the Applicant received the notice to leave. The Tribunal preferred the evidence of Ms Ronald and was not satisfied that the Respondents had deliberately or wilfully mislead the Applicant.

14. The Applicant also contended that the Code was breached because she had clearly communicated an electrical fault and the Respondents had arranged shoddy contractors who failed to identify and fix the problem for several months. The Applicant stated in her evidence that she was not aware of any water leaking from her machine but she contended the Respondents were responsible for failing to address the electrical problem. There was no evidence before the Tribunal that the Respondents had been dishonest in their dealings with the Applicant and the Tribunal and did not find that this paragraph of the Code had been breached

15. Section 2 paragraph 18: You must provide information in a clear and easily accessible way.

It was the Applicant's position that the Respondents did not tell her the plan for the replacement of the washing machine and she was constantly chasing them for progress. There was no evidence before the Tribunal to suggest that any information given by the Respondents was not clear and accessible. The Tribunal did not find that this paragraph of the Code had been breached.

16. Section 2 paragraph 19: You must not provide information that is deliberately or negligently misleading or false.

The Applicant reiterated her position that her landlord had emailed her to say that he was selling due to the issues with the gas certificate and washing machine. For the reasons already given above the Tribunal did not accept that the Respondents had deliberately or wilfully mislead the Applicant. There was no evidence before the Tribunal to suggest that the Respondents had deliberately provided information to the Applicant that was false or misleading and did not find that this paragraph of the Code had been breached.

17. Section 2 paragraph 21: You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely manner.

It was the Applicant's position that it took 20 weeks from the initial complaint on 25 March 2022 until 5 August 2022 for the matter to be resolved with the exception of the floor in the kitchen which was still in an unfinished state when she left the property. The Tribunal noted that the washing machine was in fact replaced on 12 July 2022 and was used by the Applicant until 1 August 2022 when the electrical fault came to light again. The Respondents had answered all of the Applicant's enquiries within 5 days and although there appeared to be a delay between 25 March 2022 and 21 April 2022 when the Applicant sent a reminder, the

Respondents had arranged a contractor to arrange a quote and was in regular contact with the landlord to move matters forward. It is likely that when the faulty washing machine was installed (the landlord brought the property around 2019 and the washing machine was already there) it was done incorrectly. The new machine was installed on 12 July 2023 and the problem was not identified. There was no evidence to suggest on the balance of probability that the Respondent should have identified an electrical fault in March 2022 when it was not identified by a suitably qualified contractor until August 2022. The Tribunal did not find that this paragraph of the Code had been breached.

18. Section 2 paragraph 26: You must respond to inquiries and complaints within reasonable timescales and in line with your written agreement.

The Tribunal did not see the Respondents' complaints procedure however it was not disputed that the Respondents' practice was to respond within 5 working days, at least with an initial response. It was not disputed that the Respondents had failed to deal with the Applicant's complaint of 16 August 2022 and this was a clear breach of the Code.

19. Section 5 paragraph 84: You must make it clear to the tenant or occupier beforehand if a third party will visit the property unaccompanied.

The Applicant read this paragraph as meaning third parties attending at her home unannounced. It appears that there was at least one occasion over the course of the period from March until August 2022 when a contractor attended at her home without any prior arrangement. It was Mr Fleming's position that this should not happen and the Respondents' brief their contractors to contact clients and make arrangements directly. It was his position that visits by contractors are arranged via an online portal and that the system is set up so that contractors are given the tenant's contact details and contact them directly. Ms Ronald made reference to an email from the Respondents to the Applicant dated 25 May 2022 in which it is explained that the contractor was unable to reach her on the mobile number she had given, in support of her position that appointments as usually made in advance. The Tribunal did not consider the evidence presented by the Applicant to be relevant to this paragraph of the Code and was not satisfied that there had been a breach.

20. Section 5 paragraph 88: You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of- hours emergencies.

The Tribunal did not have sight of the tenancy agreement however it was the Respondents' submission that the default position was that they would deal with all repairs in the first instance, contact the landlord and obtain instructions. The Applicant did not have the landlord's contact details until around July 2022. It was the Applicant's position that as there was the ongoing issue with the washing machine and the safety certificates for the gas, she was unsure who was contacting her and why. Although the landlord took over the ordering of the washing machine in April 2022 it was the Respondents' position that the tenant continued to deal directly with them and they timeously responded to all of her requests for information and instructed contractors when appropriate. The Applicant had a clear line of contact with the Respondents and although there was a delay in the repairs process, it was clear who was managing it. The Tribunal was not satisfied that there had been a breach of this paragraph of the code.

21. Section 5 paragraph 91: You must inform the tenant of the action you intend to take on the repair and the likely outcome.

There was no evidence before the Tribunal to suggest that the Applicant was not aware of the plan for the replacement of the washing machine and the Tribunal was not satisfied that there had been a breach of this aspect of the code.

22. Section 5 paragraph 92: When access is needed for repairs you must give the tenant reasonable notice of when access is required unless other arrangements have been agreed. Section 184 of the Housing (Scotland) Act 2006 is also relevant here and paragraph 6 of the schedule of the Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017 is relevant in respect of a private tenancy.

The Tribunal heard evidence from the Applicant of one occasion when a contractor called unannounced. The Tribunal accepted the evidence of Mr Fleming that this was contrary to the arrangements that the Respondents had set up with the contractor and was outwith their control. The Tribunal was not satisfied that this was a breach of the Code.

23. Section 5 paragraph 93: if there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with any reason for it as soon as possible.

Both Mr Fleming and Ms Ronald gave evidence that on reflection that the Respondents should have contacted the Applicant and set out the difficulties faced in replacing the washing machine and the various steps that would require to be taken. They both stated that this application and the one made by the landlord (which resulted in a LAEO in his favour) has been a learning experience. This has led to them reviewing all of their procedures and recording all of their telephone calls. The thread running through the hearing and the evidence of the Applicant was the failure of the Respondents to let her know what the plan was. The fact that what seemed like a simple replacement for a faulty washing machine turned into a lengthy process lasting three or four months was not due to the actions of the Respondents. However the Respondents should have addressed the delay, the reasons for it and they failed to do this. This was a breach of the Code.

24. Section 7 paragraph 108: You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with making them informed if you need more time to respond.

The Tribunal found that although the Respondents on the balance of probability responded to the Applicant's enquiries within reasonable timescales, they did not deal with the Applicant's complaint of 16 August 2022 and this was a breach of the Code.

25. Section 7 paragraph 110: You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.

It was the Applicant's position that she was not given a copy of the Code and her attention was not drawn to it. The Applicant did not request a copy of the Code. It was the Respondents' position that all new tenants are given explanatory notes when they sign the tenancy agreement and this constitutes compliance with the Code. The Applicant's tenancy pre dated the Respondent's involvement in the property. On balance the Tribunal was not satisfied that there was a clear breach of the Code.

26. Section 7 paragraph 113: The procedure must also set out how you will handle complaints against contractors and third parties: any recourse to the complaints procedures of a professional or membership body you belong to, whether you provide access to alternative dispute resolution services: if you are also subject to another regulatory body (for example the Scottish Legal Complaints Commission): and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once your complaints process has been

exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.

It was the Applicant's position that she asked for the complaint's procedure on two occasions in July 2022 and she was not given a copy. The Respondents stated in their submission that do not have a record of receiving her request and their complaints procedure is under review. As already noted above, the Respondents failed to deal with the Applicant's complaint. The Applicant was therefore not told of her right to apply to the Tribunal. The Tribunal considered the terms of this part of the Code and decided that it was on balance a partial breach of the Code. Irrespective of whether the Respondents received her request or not, they failed to process her complaint and that meant that the Applicant was not told of her right to apply to the Tribunal.

27. Findings in fact

- The Applicant rented the property from July 2019 until October 2022.
- The Respondents acted on behalf of the landlord as letting agents from April 2021 until 22 August 2023.
- On the 25 March 2022 the Applicant contacted the Respondents about a fault with her washing machine which had been present for around three weeks.
- The Applicant was experiencing an electrical fault when her machine was on the spin cycle.
- The Respondents contacted the landlord who authorised them to instruct a contractor to investigate and report back.
- The Applicant contacted the Respondents to inquire about progress with the fault and to tell them the machine was able to be used with a half load.
- The Respondents contacted the landlord on 21 April 2022 to advise that the contractor was unable to locate the electrical socket where the machine was plugged in as the machine was built in to the worktop and asking how to proceed.
- The landlord suggested that the contractor raise the worktop by fitting a hinge to it.
- A member of staff at the Respondents Andrew Muir looked at photos of the washing machine, flooring and worktop and suggested to the landlord on 26 April 2022 that it may be possible to remove the washing machine without disturbing the floor tiles.
- The contractor identified that a new washing machine was required and provided a quote to supply and fit a new machine and remove the old machine.
- On 28 April 2022 the landlord felt the quote was too expensive and decided to order a new washing machine from the online retailer AO.
- The Applicant provided the dates she was available to have the washing machine delivered on 29 April 2022.
- These dates were sent to the landlord by the Respondents on 9 May 2022.
- AO tried to deliver the washing machine on 18 May 2022 but this was not

possible due to the integrated nature of the existing machine.

- The Applicant contacted the Respondents and on 23 May 2022 the Respondents advised the landlord that the installation of the washing machine had not taken place.
- The Applicant had to go abroad to America at short notice on 19 May 2022 to look after her grandmother who had broken her arm and needed care. She returned on 3 July 2022.
- The Applicant arranged for her friend Ms Davies to move into the property on 19 May 2022 and care for her cat.
- The Respondents were in regular communication with Ms Davies regarding the delivery of the washing machine and removal of the faulty machine.
- The new washing machine was delivered to the property on 16 June 2022.
- The Applicant contacted the Respondents on 5 July 2022 and 7 July 2022 to request an update with her washing machine and to request a face to face meeting.
- The Respondents responded on 6 July 2022 to state that an inspection of the property would be arranged.
- The new washing machine was installed on 12 July 2022 and the old machine was uplifted on 7 July 2022.
- The Applicant was able to use the washing machine until 1 August 2022 when the same fault from 25 March 2022 re-emerged.
- The Respondents arranged an electrician to inspect and it was noted that there was an issue with waste pipe causing water to affect the socket where the washing machine was plugged in. This problem was resolved on 5 August 2022.
- The Applicant contacted the Respondents on 5 August 2022 to request their complaints procedure.
- The Applicant made a formal complaint to the Respondents on 16 August 2022.
- The Respondents ceased to be the landlord's letting agent on 22 August 2022 and they wrote to the Applicant on that date telling her they were closing their file and would not be investigating her complaint.
- The Applicant made around 5 visits to the laundrette between 25 March 2022 and 12 July 2022 costing around £25 each time.
- On two occasions between 25 March 2022 and 12 July 2022 the Applicant had to pay for a taxi at the cost of around £10 on each occasion.
- The Applicant was served with a notice to leave on 25 July 2022 on the ground that the landlord wished to sell the property.
- The Applicant moved out of the property on 16 October 2022.

Reasons

28. The tribunal was satisfied that there had been four breaches of the Code. Some of the breaches were conceded by the Respondents' representatives at the hearing, and others were determined by the Tribunal having heard the available oral evidence and taking into account the written evidence.

29. The Applicant's position at the start of the hearing was that the Respondents had failed to identify an electrical fault in her flat where the washing machine was plugged in, due to their carelessness and lack of attention to detail. She also submitted that the Respondents had to constantly be chased by her for progress. As the hearing progressed however the Applicant's position appeared to be that they had failed to provide her with a clear plan of action to sort out a new washing machine after several months without it. The Applicant's witness Ms Davies gave evidence to the Tribunal that during the few weeks she lived in the property the Respondents were in regular contact with her regarding access for various tradespeople which contradicted the Applicant's position that she was the one chasing the Respondents.
30. The Applicant lodged a substantial bundle of emails in support of her position and the Tribunal considered them carefully. With the exception of an email chasing up the Respondents on 21 April 2022 there was no gap in the email correspondence of more than a few days and there was no evidence that the Respondents ever failed to respond to any inquiry made by the Applicant.
31. The evidence of Mr Fleming was that matters began to 'go wrong' when the landlord decided to save money on 28 April 2022 by ordering the new washing machine himself. On 18 May 2022 the machine could not be installed and at that point the Respondents had to get in touch with the landlord and liaise with the Applicant. He conceded that with the benefit of hindsight the Respondents should have given an explanation for the delay to the Applicant but what seemed like a straightforward replacement for the washing machine became a protracted issue. Both Mr Fleming and Ms Ronald did not accept that there had been any delay by the Respondents. The issue had been referred to the landlord immediately and they had adhered to their 5 day turnaround to respond to emails and inquiries.
32. Regarding the request by the Applicant for a face to face meeting it was their position that they responded by stating that an inspection would be arranged and this was an adequate response to her request.
33. It was not in dispute that the Respondent did not deal with the Applicant's complaint. Mr Fleming's position was that a complaint had also been received from the landlord and the Respondents felt at a disadvantage as the landlord and tenant were in communication with each other. The Respondents also took the view that the landlord encouraged the Applicant to make a complaint and seek compensation to avoid any liability for his own failings. Whilst there may be mitigating factors the Tribunal considered this to be a clear and serious breach.

The view the Tribunal took was that the failure to deal with the complaint was more serious than the matters raised in the complaint itself.

34. Having established four breaches of the code the Tribunal went on to consider the Applicant's losses. The Applicant had made around 5 trips to the launderette at £25 each time. She had incurred £20 in taxi fares. She spent around 20 hours of her time dealing with her laundry. This amounts to £145. For the reasons already given, the Tribunal did not consider that the Respondents' actions directly lead to these losses. The Tribunal did not therefore make an order for this sum.

35. The Applicant had been inconvenienced as a result of the breaches identified by the Tribunal. She had no way of knowing how long she would be without a washing machine and she had to make an application to the Tribunal to have her complaint heard. The Tribunal decided that the sum of £350 was fair proportionate and just in respect of her inconvenience.

Letting Agent Enforcement Order.

36. The Tribunal consider that it is reasonable in all of the circumstances to issue a Letting Agent Enforcement Order.

37. The tribunal awarded £350 for the inconvenience the Applicant has suffered. The total financial penalty is therefore £350.

38. The Letting Agent Enforcement Order accompanies this decision and should be read in conjunction with it.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

In terms of section 51(1) of the Housing (Scotland) Act 2014, a letting agent who, without reasonable excuse, fails to comply with a Letting Agent Enforcement Order commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.



2 November 2023

Lesley A Ward Legal Member

Date