

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland on an Application made under Section 48 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/23/0994

Re: Property at 20 Campbell Road, Edinburgh, EH12 6DT (“the Property”)

Parties:

Mrs Marjory Jardine, PO Box 17535, Edinburgh, EH12 1RG (“the Applicant”)

Murray and Currie, 60 Queen Street, Edinburgh, EH2 4NA (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purposes of determining the application, determined that the Respondent had failed to comply with paragraphs 16, 41 and 91 of the Letting Agent Code of Practice.

Background

1. By application dated 24 March 2023, the Applicant applied to the First-tier Tribunal for Scotland, Housing and Property Chamber (“the Tribunal”) under Section 48 of the Housing (Scotland) Act 2014 (“the Act”) for a determination that the Respondents had failed to comply with the Letting Agent Code of Practice (“the Code”) as set out in the Letting Agent Code of Practice (Scotland) Regulations 2016, as amended.
2. The application stated that the Applicant considered that the Respondent had failed to comply with their duties under Paragraphs 16, 21, 23, 26, 29(e),

41, 69, 85, 90, 91, 93 and 108 of the Code of Practice.

3. Paragraph 16 of the Code states *“you must conduct your business in a way that complies with all relevant legislation.”*
4. Paragraph 21 of the Code states *“You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way”*
5. Paragraph 23 of the Code states *“You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential Property.”*
6. Paragraph 26 of the Code states *“You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.”*
7. Paragraph 29(e) of the Code states *“In your dealings with potential landlord clients you must, if a landlord is not already registered, inform them of the landlord registration requirements under the Antisocial Behaviour etc. (Scotland) Act 2004 and, where necessary, the requirements under the Housing (Scotland) Act 2006 relating to houses in multiple occupation.”*
8. Paragraph 41 of the Code states *“You must comply with relevant legislation on the marketing and advertising of properties for rent. For example, you must include a landlord’s registration number (or clearly state ‘landlord registration pending’) and the energy performance indicator from the property’s energy performance certificate (EPC) in your property advertisements and remove lettings boards within 14 days of the property being let.”*
9. Paragraph 69 of the Code states *“If the tenant is not present for the making of the inventory, you should ask them to check it and to raise, in writing, any changes or additions within a specific reasonable timescale. Once agreed, the inventory should be signed and returned”*

10. Paragraph 85 of the Code states *“If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing; annual gas safety inspections; Legionella risk assessments) on a landlord’s behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.”*
11. Paragraph 90 of the Code states *“Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.”*
12. Paragraph 91 of the Code states *“You must inform the tenant of the action you intend to take on the repair and its likely timescale”*
13. Paragraph 93 of the Code states *“If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible”*
14. Paragraph 108 of the Code states *“You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.”*
15. A Case Management Discussion took place on 11 July 2023 by tele-conference at which the matter was adjourned to a Hearing, to take place in person. A Hearing took place on 23 October 2023. The Applicant was personally present and represented herself. Her husband attended as a Supporter. The Respondent was represented by Ms Claire Green, Office Manager employed by the Respondent. She was accompanied by her colleague, Ms Harkness.

- **Applicant's evidence**

16. The Applicant's evidence at the Hearing is summarised as follows:

17. The Applicant submitted that the Respondents had committed multiple breaches of the Code as well as associated legislation in relation to breaches of health and safety matters within the Property. The Applicant submitted that there had been a lack of response from the Respondents in relation to serious issues raised with them, and a lack of information regarding timescales for rectification of matters.

18. The Applicant submitted that many of the breaches related to health and safety and which were raised in the inventory report of the 20 December 2022, which was carried out prior to the start of the lease. These matters were raised with the Respondents on 23 December 2022, 3 January and 6 January 2023. It was further submitted that the Applicant was concerned that the landlord was not registered with the local authority despite there being a landlord registration number included on the lease. Whilst the Respondents have addressed some of the points raised, many of these have not been addressed. The Applicant was left not knowing when, or if, matters would be attended to. The Applicant was concerned regarding the health and safety aspects of these matters and for these reasons she and her husband did not feel safe in the Property and they accordingly left the Property because of serious and dangerous repair issues. As a result, the Applicant and her husband had to find alternative accommodation which had an emotional impact as well as financial expense.

19. The Applicant referred to page 24 of the inventory report which set out that some of the lights in the hallway were inoperative. It appeared that there may have been a problem with the circuit, as opposed to the bulbs. It was submitted that the hall was partially lit and whilst they were approximately 12 downlighters throughout the hall, approximately 6 at one end of the hall did not work so it appeared as if the whole circuit was not working.

20. The Applicant referred to page 66 of the inventory report which referred to counter lights in the kitchen which were pulsating on and off and not working properly. The Applicant submitted that this lighting issue did not affect the use of the kitchen but it made her feel unsafe as the report had said that a qualified electrician should inspect these and as far as she was aware, that had not been done.

21. The Applicant referred to the utility room having a leak and which was included within the inspection report at page 94. The Applicant confirmed to the Respondents on 23 December, 3 January 2023 and 6 January 2023 that there did appear to be a leak but nothing was done about this.
22. The tenancy started on 22 December 2022. The Applicant submitted her notice to leave on the 14 January and the tenancy ended on 13 February 2023. The tenancy accordingly lasted a period of approximately 8 weeks.
23. The Applicant submitted that on 6 January 2023 she reported that the boiler was operating at low pressure. She again reported this on 19 January 2023 but nothing was done. The boiler operated at a pressure of 0.2 or 0.3 bars when it was meant to operate at 1.5 bars. This was very low compared to normal operating pressure. The Applicant confirmed that the boiler still provided heat and hot water but that she had spoken to Energy Advice Scotland who said that it would not be working efficiently at that level of pressure.
24. The Applicant submitted that there was significant mould throughout the property. This was located around the skylight, the kitchen sink, the ice dispenser and in the shower in the bathroom. It was submitted that this increased over time and was generally very unhygienic. It was submitted that the welcome pack from the Respondents when the Applicant moved into the Property specifically mentioned condensation and set out ways to get rid of this, but that condensation was there when the Applicant moved in.
25. The Applicant submitted that the gas safety documents were not provided to her before or at start of the lease, nor any of the other safety certification documents required. These were received only after she had given notice to leave the Property and after having asked for them on several occasions. The Applicant was concerned as to why they had not been given these. The Applicant has still not seen the original EICR report.
26. In the second week of January the Applicant became increasingly concerned regarding the lack of urgent repairs and lack of response from the Respondent. Further examples were given that the kitchen tap was very loose and she had asked the Respondents to confirm where the stopcock was should there be an issue arising from the tap, but was given no

information in relation to this. A fire extinguisher in the Property did not show any evidence of when it was last serviced.

27. The Applicant became increasingly concerned regarding the ongoing repairing issues, as well as the landlord not appearing to be registered with the local authority.
28. The inventory report stated for the vast majority of the Property that it was cleaned to a professional standard. It was submitted that this was not the case and it was not cleaned even to a domestic standard. The Respondents had cleaners attend the Property on 9 January 2023 and who stated that they could only clean what they were instructed to do otherwise they would not be paid. The cleaners walked around the Property and took notes but did not clean anything. Door handles were sticky, extractor fans were clogged and dirty and everywhere was generally very dirty. The Applicant was told by the cleaner that they would be back in touch with them the next day but this did not happen.
29. As a result of serious repairing issues the Applicant and her husband did not feel safe within the Property and in conjunction with the landlord not being registered with the local authority she felt she had no option but to leave. This was extremely upsetting and disappointing to them and resulted in significant expense.
30. The Applicant submitted that in their notice to leave the Property that requested that they be allowed to terminate prior to their 28 days' notice period, but this was refused. Accordingly, the Applicant is claiming return of the rental paid for the Property during the period in which they also paid rent for their new accommodation. It was submitted that this would not have been incurred had the Applicant felt safe within the Property. This was the sum of £1962.25.
31. The Applicant was claiming £450 for storage of furniture. The Applicant submitted that they had told the Respondents in January that the furniture would be arriving and that repairing and cleaning matters should be dealt with before it arrived. This did not happen and the Applicant did not want to move their furniture into a house that they did not feel safe in and therefore they incurred additional storage costs. The Applicant submitted that they moved into the Property and bought a microwave, some cutlery and plates and slept on the floor in sleeping bags as they did not have any furniture.

32. The Applicant claims £198.38 for heating costs incurred in the period during which their notice was running and they were occupying an alternative property. It was submitted that the tenancy agreement required heating to be on twice a day for a period of four hours. It was submitted that as the boiler was not be operating properly this would incur additional cost. The bill had come to £168.38 and the Applicant had added an additional £30 as an arbitrary figure that she considered would have been due given the boiler was not operating at optimum and would therefore be using more gas.
33. The applicant is claiming £30 for the cost of cleaning materials purchased to deal with the leak (namely a mop and bucket) together with items to clean the mould.
34. The Applicant submitted that they had incurred additional costs which they're not claiming such as hotel expenses while staying in other parts of the country looking for alternative properties, a microwave which had been purchased as they did not wish to use the microwave in the property and other matters.
35. The Applicant submitted that they did not feel that the urgent repairs had been dealt with within the Respondent's own guidelines of 48 hours, nor within the ten working day guideline period for other non-urgent matters.
36. The Applicant submitted that they received the keys on 21 December 2022 and they went to look at the property on 22 December 2022. The Applicant and her husband took notes and sent an e-mail to the Respondents with their concerns. They were away over the Christmas period and in their e-mail of 23 December told the Respondents that they could enter the Property to deal with the repairs whilst they were away. The Applicant and her husband moved into the property on 1 January 2023 without their furniture.
37. The Applicant's husband had viewed the property himself on 5 December 2022 for what was said to be approximately 15 minutes. Mr Jardine stated that he had highlighted one or two concerns to the viewing agent at that stage.

- Respondent's evidence

38. The Respondent's evidence at the Hearing is summarised as follows:

39. Ms Green gave evidence on behalf of the Respondents. Ms Green is the

office manager and is in charge of the maintenance department, which is separate to their lettings team and accounting team.

40. It was submitted that as regards the landlord's registration status, the landlord had applied to renew his landlord registration and that was pending at the commencement of the lease. The existing registration number was used whilst that renewal was pending. The Respondents were satisfied that the landlord was indeed registered with the local authority and had sought to renew his status. It was lawful to lease the Property pending a renewal application being determined.
41. The tenancy was due to start on 22 December 2022 and the Respondents agreed to release the keys on 21 December 2022 so that the Applicant could look at the Property before they went away for Christmas. An independent inventory clerk attended the property on 20 December 2022 to carry out the inventory. That clerk will highlight any issues within the inventory that the Respondents require to attend to. This is an independent company who are not affiliated with the Respondent. The landlord lives in the house next door which adjoins the Property. For several years the landlord has been very hands on as regards maintenance and the Respondent required authority for all matters from the landlord as he generally arranges for these matters to be attended to himself.
42. It was submitted that having looked at the content of the inventory report the Respondents did not see anything showing matters as being unsafe or the Property being unhygienic or unclean. The Respondents did arrange for cleaners to attend to areas of concern raised by the Applicant in an effort to help as best they could. However, the previous tenant had had the Property professionally cleaned and the inventory report did not highlight any cleanliness issues.
43. It was submitted that there were no health concerns regarding the issues of mould. It was noted that there were bits of black on the sealants in the bath and shower and there was some spotting and staining on the sealants themselves. This was not serious.
44. The Respondents had the lights checked by a qualified electrician prior to

the start of the tenancy. The Respondent sent the landlord quote on 20 December 2022 as regards fixing the hall lights and the kitchen cabinet lights. The quote for carrying out this work was £559.20. Some transformers required to be replaced as noted on the inventory report. There was no concern regarding health or safety. The landlord did not give authority to proceed with the quoted works and said that he would deal with matters himself.

45. Ms Green apologised for the safety certificates not having been sent out at the start of the tenancy. It was submitted that it is the Respondent's standard practice to send these out with a copy of the inventory and this had unfortunately not been done on this occasion. However, there was nothing untoward contained within certificates and these were all carried out on the 13 December 2022. The boiler was checked which included a pressure check and this was noted as working. The gas safety certificate, PAT testing and Legionella testing with all done and everything passed.
46. It was submitted that it was unknown why there was a fire extinguisher within the Property as this is not required in a non-HMO property. It was suggested that this may have either been put in the Property by the landlord himself or by a previous tenant. However, the Respondents submitted that they could not comment on this as they did not know where it had originated from and had not been instructed to arrange for it to be serviced.
47. Following the Applicant moving out of the Property, the landlord took the property back to manage himself and had said that he would address the minor issues that were outstanding.
48. It was submitted that there was a large cupola on the stairwell which would require scaffolding or extensive ladders to reach it. The Respondents had asked the landlord if they could have it cleaned as there was some minor staining and to check if this was historic or if there was a leak. The Respondents sent the quote to the landlord for scaffolding and cleaning, but this was not authorised by the landlord. The Respondents did not consider that there was a health and safety risk as the staining appeared to be historic and there was no evidence of an ongoing leak.

49. It was submitted that correspondence was responded to in a timely manner. It may have been that there were a few days in between replies over the Christmas period due to the closure of the office for a couple of days, however all correspondence was receipted and responded to within reasonable timescales. The safety certificates were sent to the applicant on the 17 January 2023.
50. It was submitted that as regards the leak in the utility room, the Respondents had advised the landlord of this and he had said that he would attend at the Property and addressed this himself. As it was not further reported to them they assumed this had been addressed by the landlord directly.
51. There was nothing contained within the inventory report which gave any serious concerns. There were a couple of issues which on reflection the Respondents submitted should have been advised to the Applicant prior to her moving in, but there was nothing of concern and nothing which posed a health and safety issue.
52. When the Applicant gave notice to move out of the Property, the Respondents put this to the landlord and sought authority to allow the tenants to remove prior to their 28 day notice. However, this was not authorised by the landlord.
53. As regards the boiler dropping in pressure, it was submitted that the Respondent had been told by the Applicant that the boiler was slightly low on pressure. They had not been told that it had dropped to 0.2 or 0.3 bars. It was submitted that whilst it was possible that between the boiler being checked on 13 December and the lease starting on 22 December that the boiler pressure could have dropped, this was not reported to them. It was submitted that the boiler was still working and providing heat and hot water and there had been no request for an engineer to attend.
54. It was submitted that based on the content of the inventory report and the information from the landlord, that there may have been some minor inconveniences raised by Applicant which had been unforeseen. However the Respondent's position was that there was nothing which rendered the

Property uninhabitable, unsafe or unhygienic. It was accepted that certain matters were reported to the Respondent by the Applicant following their moving into the Property and that the Respondent took appropriate action within their parameters. However there were certain steps that they could not take without the landlord's authority. At no point did the Respondent consider that there was any health and safety issue with the Property. Had they considered that prior to the start of the lease, they would have delayed the commencement of the lease to address any such serious issues.

55. It was submitted by the Respondent that it had been the landlord's belief that the Applicant and her husband did not in fact move into the Property at all.

Findings of fact

56. The Tribunal makes the following findings of fact:

- (i) The Respondents are letting agents who were appointed by the owner and landlord of the Property to manage the letting of the Property. The Respondents, as agents for the landlord, arranged a lease with the Applicant, on the Landlord's behalf. Accordingly, their work falls within the definition of letting agency work in Section 61(1) of the Act and they are subject to the requirement to comply with the Letting Agent Code of Practice which came into force on 31 January 2018.
- (ii) On 7 March 2023 the Applicant notified the Respondent of her belief that they had failed to comply with the Code of Practice, as required by Section 48(4) of the Act.
- (iii) The Respondents were in breach of paragraphs 16, 41 and 91 of the Letting Agent Code of Practice.

Reasons for the decision

57. The Tribunal found the evidence of Ms Green to be both credible and reliable. The Tribunal found the evidence of the Applicant to be at times

somewhat exaggerated.

58. The Tribunal was not persuaded based on the evidence provided by the Applicant, that the issues within the Property were of a serious nature and further was not satisfied that the issues affected the habitability of the Property. The Tribunal was not satisfied on the evidence before it that there were any evident serious health and safety concerns within the Property.
59. The Applicant and her husband did not move into the property until early January 2023 and submitted their notice to leave on the 14 January 2023. It seemed somewhat strange to the Tribunal that the Applicant would submit their notice to leave so quickly given the fairly minor issues which had been raised with the Respondent. The Tribunal noted that the Applicant submitted that the Property was dirty. This was not borne out by the content of the inventory report and the extensive photographs contained therein. It was noted from the photographs provided separately by the Applicant that there did appear to be certain items within the Property such as the sink in the utility room, a plughole, what appeared to be a light above the extractor fan and the extractor fan itself all of which appeared dirty. However, the Tribunal did not consider that this in itself was a reasonable basis for terminating the tenancy.
60. The Tribunal was not satisfied that the issue with the faulty lights in the hall and the kitchen cupboards presented any obvious health and safety concern. There had been mention of wires showing from an alarm sensor panel, however again there was no evidence before the Tribunal to present any issue of safety concern in this regard. However, it is noted by the Tribunal that this should not be something that is evident in a rental property as standard and should have been rectified prior to commencement of the lease.
61. It was by her own choosing that the Applicant submitted her notice to leave and leased another property concurrently and, in the Tribunal's view, this appeared unnecessary. Accordingly, the Tribunal did not find that the applicant had presented any case for being entitled to an award of return of the rent for that period. The Tribunal noted the Applicant's submissions

regarding the requirements of the lease to have the heating on twice a day for four hours per day. It was noted that this was indeed contained in the lease and is a standard paragraph within the Scottish Government model tenancy. This was a lease which had been signed by the Applicant and therefore she had accepted the terms of this clause. The Tribunal was satisfied on the evidence of the Applicant herself that there was heating and hot water in the Property, and whilst the Applicant submitted that the boiler was not working at appropriate pressure, there was no supplementary evidence presented to the Tribunal in this regard and therefore the Tribunal has simply taken this submission by the Applicant at face value. Regardless, the Tribunal was not persuaded that there was any basis for repayment of the heating costs. As stated hereinbefore, the Applicants chose to incur the costs of two properties at the same time.

62. As regards the claim for additional furniture storage costs, the Tribunal was not satisfied based on the evidence before it that there was any reason that the furniture could not be moved into the Property. Any issues regarding cleaning, or the minor repairs which the Applicant submitted were required, could have been easily carried out around the furniture and therefore the Tribunal was not satisfied that there was any basis for such a claim.
63. The Tribunal was also not satisfied that there was any basis for a claim for the cost of cleaning products, it being reasonably foreseeable that the Applicant would require to purchase cleaning products whilst residing in the Property in any event.
64. The Tribunal was satisfied that there had been a breach of paragraph 16 of the Code. By the Respondent's own admission there had been a breach of this paragraph due to the safety certificates not having been provided to the Applicant on or before the start of the lease, and in particular the gas safety certificate. It was noted that these were sent out to the tenants on 17 January and that there were no issues raised within those certificates.
65. The Tribunal was satisfied that there had been a breach of paragraph 41 of the Code. By the Respondent's own admission the "to-let" boards were not removed within 14 days of the start of the tenancy. However, whilst this does

appear to be a technical breach of part of this paragraph, the Tribunal would wish to note that it does not consider it to be at all serious in its nature and given the time of year, the Tribunal was satisfied with the Respondent's explanation that it may have taken longer to have the boards removed. The Tribunal was satisfied that the delayed removal of these boards would not affect the habitability of the Property in any way.

66. The Tribunal was satisfied that there had been a breach of paragraph 91 of the Code. The tribunal was not satisfied that there was any evidence provided by the Respondent to show that they had communicated effectively by providing timescales to the Applicant regarding the issues raised being dealt with. Whilst it was noted by the Tribunal that this would have been difficult for the Respondent given that they were awaiting instructions from the landlord, there was no evidence before it to show what steps the Respondent had taken to ensure that the Applicant was aware of the stage that any reported issues had reached.

67. The Tribunal was not satisfied that there was sufficient evidence before it to determine that there had been a breach of paragraphs 21, 26, 29(e), 69, 85, 90, 93 or 108 of the Code.

68. The Tribunal was satisfied that issues were addressed and responded to timeously and it appeared to the Tribunal that perhaps the Applicant simply did not get the responses that she wanted, as opposed to not getting responses at all. The e-mail chains contained within the papers showed reasonable responses provided within reasonable timescales. It was also noted by the Tribunal that the start of the tenancy coincided with the Christmas period and therefore it could reasonably be expected that minor issues would take longer to deal with. The Tribunal was not satisfied that anything reported by the Applicant was serious in its nature. All matters appeared to be minor and there was no evidence before the Tribunal to satisfy it that there were any serious health and safety issues within the property. It was noted by the Tribunal that the Respondent had an emergency telephone line for use by tenants over the Christmas period and this was not used by the Applicant. It was not clear to the Tribunal why a number of downlighters not working in the hallway and the kitchen cabinet

lights pulsating would give rise to a serious health and safety concern to the Applicant. The Tribunal was satisfied that the Respondent had obtained a quote from an electrician prior to the start of the tenancy in relation to the faulty downlighters. The Tribunal noted that there was a lack of specific evidence lodged by the Applicant in relation to the issue of the landlord's registration status at the time of the start of the lease, and accordingly the Tribunal could make no determination in this regard.

69. The Tribunal has determined that there have been minor breaches of paragraph 16, 41 and 91 of the Code and which the Tribunal has determined may have caused a minor inconvenience to the Applicant during her stay in the Property. Against that background, the Tribunal makes an award in the sum of £100 in respect of the inconvenience caused to the Applicant.

Right of Appeal

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

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.

Legal Member/Chairperson

25 October 2023