



First-tier Tribunal for Scotland (Housing and Property Chamber) Under the Housing (Scotland) Act 2014 (“The Act”)

Reference Number: FTS/HPC/LA/23/0806

Re: Property at Flat 1, 5 East Pilton Farm Crescent, Edinburgh (“the Property”)

The Parties:

Miss Sandra Tersigni and Mr Ricardo Gali, Flat 1, 5 East Pilton Farm Avenue, Edinburgh, EH5 2GF (“the Applicants”)

Harry McLeod, 26 Springfield Road, South Queensferry (“the Respondent”)

Decision.

[1] The Tribunal refuses the Application.

Background

[2] The Applicant alleges that the Respondent is a relevant “*letting agent*” within the meaning of Section 61 of the Act. Accordingly, the Applicant applies for an order under Section 48 of the Act for a determination that the Respondent has failed to comply with the Letting Agent Code of Practice (“The Code.”)

[3] The Application was defended on the basis that the Respondent states that he was not a letting agent but instead was a direct employee of the landlord.

[4] There had been previous Case Management Discussions and The Tribunal had made case management orders in the form of Directions regulating the conduct of the case. The Respondent had been ordered to provide proof of his employment. Certain information had been submitted by him in compliance with this Direction albeit significantly late. The Applicant had submitted further information also better addressing the designation of the Respondent which the Tribunal would itself raise as a preliminary matter.

The Hearing

[5] The Application called for a Hearing at 10 am at Edinburgh Conference and Training Centre, 16 St Mary's Street, Edinburgh. The First Applicant, Ms Sandra Tersigni, was present together with her representative Ms McGourt of Granton Information Centre. The Respondent was personally present.

Preliminary matters

[6] There were three preliminary matters to address.

1. The documents produced by the Respondent;
2. The designation of the Respondent;
3. The scope of any evidential Hearing.

The documents produced by the Respondent

[7] The Tribunal had made a Direction that the Applicant had to supply certain information said to evidence his status as an employee by 26 September 2023. He instead emailed the Tribunal on 22 November 2022 with a copy of a heavily redacted P60 and copies of a page of the Applicants' tenancy bearing to contain the signature of the first-named Applicant.

[8] After hearing from parties, the Tribunal decided to allow the documentation to be received. The Tribunal allowed an adjournment to ensure that the Respondent was given a copy of this documentation and time to consider it before proceeding further.

The Designation of the Respondent

[9] It was apparent to the Tribunal that the Applicants' case was really intended to allege that Harry McLeod was a letting agent- and a letting agent who had breached the Code.

[10] Notwithstanding the above, on the Application Form J submitted by the Applicants, at Part 4, the letting agent details were listed as "*IRD Homes/ASLD homes*". Harry McLeod's name was then added in parts c and d of that section of the form. This meant that in the Tribunal documentation, the Respondent was noted as being *IRD Homes/ASLD homes*. Consequently, any finding made against the Respondent would be against *IRD Homes/ASLD homes*. That was plainly not what was intended by the Applicants. The Tribunal discussed this matter with both parties and decided to amend the designation of the Respondent to be "*Harry McLeod, 26 Springfield Road, South Queensferry*." Mr McLeod had no issue with this as he appeared to understand that the case was against him personally in any event. This seemed to better set out the terms of the actual issues in dispute and parties did not object to this.

The scope of the evidential Hearing

[11] The Tribunal explained that it appeared necessary to limit the scope of the Hearing at this stage to the issue of whether or not the Respondent was a “*relevant letting agent*” within the meaning of Section 61 of the Act. If the answer was in the affirmative, then the Tribunal would go on to consider whether the Respondent had then breached his obligations under the Code. If the answer was in the negative, then the Application must be refused. All parties agreed with this approach.

[12] The Tribunal thereafter began hearing evidence. The Tribunal heard from the First Applicant, Ms Sandra Tersigni.

Sandra Tersigni.

[13] Ms Tersigni gave evidence regarding how she came to become a tenant in the Property and her experiences whilst a tenant. She described her dealings with Mr Harry McLeod. These chiefly related to being shown around the Property by him prior to moving into it and then liaising with Mr McLeod regularly regarding repairing issues at the Property. Her evidence was largely unremarkable. Ms Tersigni claimed not to have signed a written tenancy agreement, telling the Tribunal she had been told she had signed it electronically, but when confronted with a copy of the agreement bearing to have been signed by her, she said she did not recall having signed a copy of the tenancy though she did recognise the signature as hers.

[14] There was nothing to suggest that the copy lodged by Mr McLeod and which bore her signature was anything other than genuine. Effectively, Ms Tersigni’s evidence was that the Respondent was a letting agent because he was always the point of contact for maintenance, his personal address was given in Section 2 of the Tenancy Agreement although the Letting Agent was designated IRD Homes, and that she had subsequently discovered that the money she transferred in rent was being paid into the Respondent’s own personal bank account. Ms Tersigni told the Tribunal “*Harry McLeod is my agent*” and said he had told her “*it’s only me you’re dealing with*”. When asked by the Tribunal

whether these things could be compatible with Mr McLeod being employed directly by the Landlord, she said they could. Beyond that there was nothing at all that suggested that Mr McLeod was operating as an unregistered letting agent in respect of any properties owned by any other landlords. Ms Tersigni did say that there was one month when Mr McLeod asked her to change the bank details that the rent was paid into before it reverted to the usual account from the next month but no documentary evidence of this was offered and Mr McLeod denied this had taken place when giving evidence. It was unclear what inference the Tribunal was supposed to draw from that.

[15] There was no other evidence led on behalf of the Applicants. Mr McLeod was afforded the opportunity to cross-examine Ms Tersigni and the Tribunal asked questions throughout.

Harry McLeod

[16] Mr McLeod gave evidence in an irascible manner throughout. He was clearly unhappy at being here and stated he did not understand why he was. He was a man of few words. Those words that were spoken were often delivered in a harsh and abrasive tone. The Tribunal frequently had to intervene to keep the peace and turn down the temperature of the proceedings.

[17] Looking beyond the manner of delivery however, Mr McLeod's position was simple to understand and was one he had maintained throughout the entire process. He was not a letting agent- he was an employee of the landlord. Mr McLeod explained that he worked for two landlords- Richard Elby and Sunil Dhowan – both of whom had properties in Scotland. These two individuals had businesses with various entities operating with trading names of IRD Homes or ASLD Homes and an umbrella company SD Investments. It all was made to sound very complicated by Mr McLeod and the Tribunal suspected Mr McLeod didn't really understand the structure and confusing relationships between the various businesses and individuals. But Mr McLeod

maintained that he was employed by them and received a stable monthly income. He didn't receive payslips though he stated they were available in the London office of his employer. He had produced a p60 which, after questioning, he explained was from 2019 and showed employment with ASLD Management Services Ltd. Mr McLeod explained that Richard Elby and Sunil Dhowan, through various entities, owned a large number of properties in the same development as the Property. Mr McLeod worked for them exclusively. He had worked in a letting agency before 2008 when he was effectively headhunted by them to work in-house for them. He set up an office initially but this was closed in 2018 whereafter he worked from home.

[18] Mr McLeod explained that he received the rent from tenants and he would immediately then transfer it on to his employers minus any deductions for repairs or other matters he had instructed. This seemed a bit strange to the Tribunal but not incompatible with an employer/employee relationship. He told the Tribunal he had weekly conversations with Richard Elby, the Landlord of the Property, in which he took instructions on what to do about Mr Elby's properties and said he did not work for anyone else, nor did he have any interest in doing so. The Tribunal considered it significant that there was nothing to suggest that any aspect of McLeod's pay was performance related or that any fee of any sort was deducted from the rental income received by him and forwarded. Ms McGourt had the opportunity of asking Mr McLeod questions. Mr McLeod had no other witnesses to call. The Tribunal asked why Section 2 of the Tenancy Agreement had been filled in to show IRD Homes as a Letting Agent with his home address and Mr McLeod said this had been done because he thought it had to be filled in and to give a contact detail for himself as the employee managing the Landlord's business in respect of the Property. It had not occurred to him to do this separately.

[19] Having heard from parties, the Tribunal made the following findings in fact.

Findings in fact

- I. *The Applicants entered into a tenancy agreement whereby an individual known as Richard Elby let the Property to the Applicants by virtue of a Private Residential Tenancy;*
- II. *The tenancy agreement records there being a letting agent, “IRD Homes (London) Ltd”;*
- III. *When the Applicants moved into the Property, they dealt exclusively with Mr Harry McLeod who showed them about and who acted as their main point of contact for any repairing issues and all things tenancy related;*
- IV. *The Applicants now contend that Mr Harry McLeod is in fact a letting agent and that he has breached various aspects of the Code;*
- V. *Mr McLeod states that he is not a letting agent but is a direct employee of Richard Elby in this case;*
- VI. *Mr McLeod received the monthly rental payments directly into his own bank account which he then transfers onwards to the landlord. Mr McLeod uses his own home address as a means for people to contact him;*

Reasons for decision

[20] The Tribunal considered carefully the terms of S61 of the Act. It is in the following terms:

Meaning of letting agency work

(1)For the purposes of this Part, “letting agency work” means things done by a person in the course of that person’s business in response to relevant instructions which are —

(a)carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord’s house as a dwelling, or

(b)for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).

(2)In subsection (1)—

(a)“relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and

(b)“occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the 2004 Act.

(3)The Scottish Ministers may by order —

(a)provide that “letting agency work” does not include things done —

(i)on behalf of a specified body, or

(ii)for the purpose of a scheme of a specified description, or

(b)otherwise modify the meaning of “letting agency work” for the time being in this section.

(4)A scheme falling within a description specified by the Scottish Ministers under subsection

(3)(a)(ii) must be —

(a)operated by a body which does not carry on the scheme for profit, and

(b)for the purpose of assisting persons to enter into leases or occupancy agreements.

[21] The Tribunal considered that there was not any evidence of Mr McLeod carrying out letting agency work *“in the course of that person’s business”*. He claimed that he was doing so in the course of his employment and did not have any business as a Letting Agent. Yes, Mr McLeod had not produced employment contracts, pay slips and the like but there was nothing that could demonstrate that he was anything other than an employee. Much of the Applicants’ case was based on assumptions about Mr McLeod’s status which arose from the fact that throughout the tenancy they had dealt with only him and had no dealings with the Landlord. They went little beyond asking the Tribunal to note that the rent was paid to Mr McLeod’s bank account and that his home

address was his point of contact. There was insufficient evidence to make a finding that Mr McLeod was a letting agent within the meaning of the Act. Accordingly, the Tribunal refused the Application.

Legal Member

Date 11 December 2023