

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/23/1539**

#### **Parties:**

**Anthony Grayson, 3 Hollywood Court, Oathall Road, Haywards Heath, West Sussex; Vincent Grayson, 8 Castle Close, Sunbury on Thames, Middlesex ("the Applicants")**

**Premier Property Letting & Management Ltd, 20 Mote Hill, Hamilton ("the Respondent")**

#### **Tribunal Members:**

**Josephine Bonnar (Legal Member)  
Helen Barclay (Ordinary Member)**

### **DECISION**

**The Tribunal determined that the Respondent has failed to comply with Section 2 paragraphs 16, 17, 19, 21, 26 and 27, Section 3 paragraph 37, Section 4 paragraphs 62 and 66, Section 5 paragraphs 85, 91, and 93 and Section 7 paragraphs 108 and 109. The other complaints are not upheld.**

**The decision is unanimous.**

#### **Background**

- 1. The Applicants lodged an application in terms of Rule 95 of the Tribunal Procedure Rules 2017 and Section 48(1) of the 2014 Act. The application comprises documents received by the Tribunal on 15 May 2023 and states that the Respondent has failed to comply with Overarching Standards of Practice ("OSP") 16, 17, 19, 21, 26, 27 and 28 and paragraphs 37(a), 37(b), 38, 62, 66, 85, 89 – 91, 93, 108, 109, 111, 118 – 121, 123 and 124 of the Letting Agent Code of Practice. A letter to the letting agent notifying them of the complaint was lodged with the application.**
- 2. A Legal Member of the Tribunal with delegated powers of the President referred the application to the Tribunal. The parties were notified that a case management discussion ("CMD") would take place on 15 August 2023 at**

10am by telephone conference call.

3. The CMD took place on 15 August 2023. The Applicants participated. The Respondent was not represented and did not lodge a written submission or contact the Tribunal prior to the CMD .
4. The Applicants told the Tribunal that they have owned the property specified in the application form since 2009. Although they own other rental properties, this is the only one in Scotland. They appointed the Respondent to manage the property in 2018. They have terminated their agreement with the Respondent and have had no recent contact with them. The tenant is still in occupation of the property which they currently manage themselves, although this is not ideal.
5. The Tribunal noted that the principal complaints identified in the application relate to a failure by the letting agent to lodge the tenancy deposit in an approved scheme, attend to an essential repair at the property, provide accurate contact details, arrange safety inspections such as the gas safety check on time and respond to correspondence and telephone calls. The application also indicates that false and misleading information was provided about a number of matters and that threatening correspondence was issued. The Applicant's told the Tribunal that there has been one change since the application was submitted. The tenancy deposit was lodged in a scheme in May 2023, although not within the 30 working days required by the Regulations. The Tribunal noted that the complaints are clearly articulated in the application and were properly notified to the Respondent before the application was made.
6. The Applicants confirmed that they were in a position to lodge relevant documents to support the application. The Legal Member of the Tribunal indicated that a direction would be issued which would specify the documents which are required but that the Applicants can chose to submit other relevant documents if they wish. Following discussion, the Tribunal indicated that the application would proceed to a hearing and noted that telephone conference call or video conference would be most suitable.
7. The parties were notified that a hearing would take place by WeBex on 11 January 2024 at 10am. They were provided with an opportunity to carry out a test in advance of the hearing. The Respondent did not participate in the test and did not contact the Tribunal prior to the hearing or lodge any documents in response to the direction. The Applicants lodged a detailed submission and a paginated bundle of documents.
8. The hearing took place by WeBex on 11 January 2024. The Applicants participated. The Respondent did not participate and was not represented.

## **The Hearing**

### **Failure to lodge a tenancy deposit in an approved scheme – Sections 2(16), 2(21), 4(66), 8(118), 8(119), 8(120), 8(123), 8(124).**

9. The Applicants told the Tribunal that the current tenancy started in 2021. It was agreed in the agency agreement that the Respondent would lodge the tenant's deposit in an approved scheme. Mr Pittams told them that the tenant's deposit from a previous tenancy was to be used as their deposit for the new tenancy. In response to questions from the Tribunal, they said that they didn't know whether that meant it would not be paid until after the tenancy had started. The Applicant's referred to an email from Mr Pittams regarding the deposit (page 123 of the bundle). The deposit was not lodged with Safe Deposits Scotland until 9 May 2023, a month after the agency agreement was terminated. (SDS certificate page 129).

### **Misleading/false information in relation to annual safety checks, repairs, membership of organisations, the postal address of the agency– Sections 2(17), 2(19), 4(38), 4(62),**

10. The Applicants stated that they had to chase up the gas safety check and legionella assessment every year, as Mr Pittams was not proactive about such matters. They referred to page 186, an email to the Respondent dated 17 February 2022, asking about the gas safety certificate and legionella report. These had been due in December 2021, as Mr Pittams was aware. The Applicants asked for an update. They received a response on 22 February with a copy of both certificates (page 185). The email stated that the checks had been carried out in December but that there was a delay in the engineer issuing the certificates. The certificates are both dated 21 February 2022 (p188 - 190). The Applicants told the Tribunal that they expected the date on the reports to be the date that the inspection was carried out and they therefore assumed that the checks were not actually undertaken until 21 February, after they had sent the email asking about them. They told the Tribunal that the email of 22 February contained false information about when the inspections took place.
11. The Applicants referred the Tribunal to page 75 and 76, an email from Mr Pittams dated 28 March 2023, when he advised that the tenant has reported some repair issues at the property and states, " Front door handle sticking; I will have a locksmith attend and repair/replace the lock". This was misleading and false because he did not do so. When the Applicants spoke to the tenant on 11 April 2023, they discovered that the locksmith had not yet attended, and they had to arrange this. A locksmith attended the same day. (Copy invoice page 201). The Applicants stated that this was an urgent matter, and the Respondent ought to have actioned it as soon as he became aware of it.
12. The Applicants referred the Tribunal to documents where the Respondent has claimed membership of certain professional bodies. Page 115 - information on the website which states that they are "accredited to the Council of letting agents (CLA)" and that all staff are members of SAL, the Scottish Association

of Landlord. Pages 9 and 31 – the agency agreement which states that the Respondent is a member of The Property Ombudsmen ( TPO) scheme and CLA. They referred the Tribunal to p114, an email from the TPO scheme dated 23 October 2023, which states that there is no record of the Respondent being currently or formerly registered with them. They also referred to p112, an email from SAL, which states that Mr Pittams and the Respondent do not hold a membership. They also discovered that the Respondent is not a registered letting agent. The Applicants told the Tribunal that, having had problems with their previous letting agent, they made the decision to appoint the Respondent because they were accredited.

13. The Applicants told the Tribunal that the Respondent's registered address is Mote Hill, Hamilton which is a residential property. However, documents issued by the Respondent have other addresses on them which have turned out to be unrelated to the Respondent. On the agency agreement (p28) the address is stated to be 20 Bothwell Road, Hamilton. This is the address of an Indian Restaurant called Spice. This address also features on rent statements (p137/138) and the tenancy agreement. In the agency agreement, the address for complaints is stated to be 49 Cadzow Street, Hamilton. The Applicants stated that they contacted the letting agent which currently occupies this unit. They said that the Respondent had been the previous occupant but that the businesses were not associated with each other.

**Failing to respond to emails and phone calls, failing to provide regular monthly statements, failing to ensure safety inspection were carried out when due, threatening and intimidating correspondence, failing to respond to complaints, failing to provide correct contact details – Sections 2(21), 2(26), 2(27), 2(28), 7(108), 7(109), 7(110), 7(111)**

14. The Applicants referred to page 165, a list of calls made to Mr Pittams between 14 January and 27 March 2023. The calls went unanswered and there was no call back. They then referred to p186 – an email to the Respondent dated 17 February 2023. This acknowledged receipt of the February statement but requested the January statement which had not been received. The Applicants said that the Respondent had initially sent monthly statements automatically as had been agreed, but latterly these had to be requested. The January statement was sent the same day. In relation to phone calls, the Applicants said they usually called Mr Pittam's mobile number, However, they are sure that they also tried the landline without success. In response to questions from the Tribunal, the Applicants said that Mr Pittams referred at times to his staff, but he was the only person they ever dealt with. The Applicants then referred the Tribunal to pages 97 and 96, an email exchange which related to the EICR which was carried out. Remedial work had been required due to C3 issues. On 11 December 2020, Mr Pittams told the Applicants that the remedial work had been carried out and a new satisfactory EICR issued. However, he did not provide them with a copy of the report, and they recently had to contact the electrician for a copy of it.
15. The Applicants referred the Tribunal to their email of 8 April 2023 (p69), when they terminated the contract with the Respondent. There was no

acknowledgement or response. A further email was sent on 17 April 2023 (p68). Mr Pittams replied on 18 April 2023 (p67). This email noted that the contract had been terminated and referred to attached outstanding invoices. Legal action was threatened if these were not paid. Communication had become a major concern with calls being promised but not taking place. The Applicants said that they were very upset by the threats in the email of 18 April as they had never given the Respondent any cause for concern regarding payments which were due. They found the email to be unnecessarily aggressive and threatening. They were annoyed because they had been very accommodating in relation to Mr Pittams' personal difficulties when his wife had been ill. However, they were trying to deal with things remotely because the Respondent was not doing its job.

**Failure to respond to termination notice, return the keys for the property or advise the tenant that the contract had been terminated – Section 3(37(a) and (b)).**

16. The Applicants stated that it was not clear from the email received on 18 April 2023, that the Respondent accepted that the contract had been terminated. They expected the Respondent to confirm that the contract was at an end and then return the keys, notify the tenant, and arrange for the tenancy deposit scheme to be notified of the change in management. In relation to the tenant, the Applicants told her that they had taken over the management of the property on 10 April 2023. She then received a text message from the Respondent about the rent. She was very confused.

**Failure to ensure that safety inspections were carried out when due and within reasonable timescales, failing to arrange prompt repairs - Sections 5(85), (89), (90), (91) and (93).**

17. The Applicants referred to their earlier evidence in relation to the gas safety and legionella checks and the door repair which were not arranged.

**Failures in relation to money handling, accounting procedures – Sections 8(118), (119), (120), (123) and (124).**

18. The Applicants said that the Respondent's accounting practices are inadequate or faulty as evidenced by a number of issues. If these had been adequate, the Respondent would have realised that the deposit funds had not been lodged in a scheme. There was also an occasion when the tenant asked to pay their rent in 2 instalments instead of one. The statement issued to the Applicants indicated that full rent had been paid but there was a shortfall in the payment received. They had to query the discrepancy. The Applicants referred to p75, an email from them dated 30 March 2023 when they raised this with Mr Pittams. The response ignored this enquiry.

## **Losses**

19. The Tribunal noted that the application form listed various losses which the Applicants state have been caused by the Respondent's failure to comply with the Code. These previously included £500, being the tenancy deposit paid by the tenant. This was removed from the application when the Respondent arranged for the deposit to be lodged with SDS in the name of the Applicants. The losses also include the sum of £1500, being the maximum penalty that might be imposed on the Applicants by the Tribunal if the tenant makes an application in terms of the tenancy deposit regulations. The Tribunal noted that the tenancy is ongoing, and the tenant has not made an application, although they still have time to do so. The Applicants confirmed that they have also specified a figure of £750 for stress and inconvenience and £175 for a lock change when the Respondent failed to return the keys for the property. The Applicants also invited the Tribunal to make an order which would establish that the termination fee is not due. They referred to a previous decision of the Tribunal – HPC/LA/21/2294.

## **Findings in Fact**

20. The Respondent failed to lodge the tenancy deposit with an approved scheme within 30 working days of receipt of the deposit.
21. The tenancy started on 12 February 2021 and a deposit of £500 was paid. The deposit was not lodged with an approved scheme until 9 May 2023.
22. The Respondent told the Applicants that the gas safety inspection and legionella check had been carried out in December 2021. They were not carried out until 21 February 2022.
23. The gas safety and legionella inspections for 2023 were not carried out until 28 March 2023.
24. The Respondent's website and documents issued by the Respondent state that the Respondent and/or the Respondents' staff are accredited by or members of SAL, CLA and TPO.
25. The Respondent and the respondent's staff are not accredited by or members of SAL or TPO.
26. Documents issued by the Respondent contain incorrect postal addresses for the Respondent.
27. On 28 March 2023, the Respondent advised the Applicants that they would arrange for a locksmith to repair or replace a defective lock at the property.
28. The Respondent did not tell the tenant when the repair would be instructed or carried out.

29. On 11 April 2023, the Applicants discovered that the lock repair had not been carried out and instructed a locksmith to attend. The repair was carried out on the same day.
30. The Respondent failed to issue a monthly statement for January 2023 until the Applicants requested this in February 2023.
31. The Respondent failed to respond to phone calls from the Applicants between 3 and 27 March 2023.
32. The Respondent generally responded to emails from the Respondents but frequently did not provide a full response to the enquiry which had been made.
33. The Applicants terminated the agency agreement by email on 8 April 2023. The Respondent did not acknowledge the termination until 18 April 2023, following a further email from the Applicants on 17 April 2023.
34. The email dated 18 April 2023 contained a demand for payment but was not intimidating or threatening.
35. The Respondent did not return the keys for the property or notify the tenant that the agreement had been terminated.

## **Reasons for Decision**

36. Section 48(4) of the Housing (Scotland) Act 2014 states that, “No application may be made (to the Tribunal) unless the applicant has notified the letting agent of the breach of the code of practice in question”. Section 48(3) requires an Applicant to set out in their application, the Applicant’s reasons for considering that the letting agent has failed to comply with the Code. The Tribunal is satisfied that the application clearly sets out the complaints and that the Respondent was properly notified of the complaints in a detailed letter dated 25 April 2023.

## **Section 2(16) of the Code – You must conduct your business in a way that complies with all relevant legislation.**

37. The Applicants lodged a copy of the tenancy agreement for the property which establishes that the tenancy started on 12 February 2021 and that a deposit of £500 was to be paid. The Applicants also lodged a copy of their agency agreement with the Respondent. This contains a section on tenancy deposits (Section 9) which stipulates that deposits taken from tenants will be lodged in a scheme in terms of the 2011 Tenancy Deposit Regulations. These Regulations require a landlord who receives a tenancy deposit to lodge it in an approved scheme within 30 working days of the start of the tenancy.

38. In their email of 8 April 2023, which terminated the agency agreement, the Applicants asked the Respondent to confirm which scheme had been used. When no response was forthcoming, the Applicants contacted the three approved schemes and ascertained that the deposit had not been lodged with any of them. The deposit was not lodged by the Respondent until 9 May 2023, this being confirmed by email to the Applicants on 12 May 2023 from SDS and the deposit certificate issued on the same date.
39. Although the Regulations apply to landlords rather than letting agents the Tribunal is satisfied that the responsibility for lodging the deposit had been delegated to the Respondent in terms of the contract between the parties and the failure by the Respondent to comply with the 2011 Regulations is a breach of Section 2 (16) of the Code.

**Section 2(17) – You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)**

40. The Tribunal is satisfied that the Respondent failed to arrange the gas safety check and legionella assessment for the property until they received an email from the Applicants on 17 February 2022. The certificates are both dated 21 February 2022. These documents are completed and signed by the engineer who carried out the inspection on the date of the inspection. Mr Pittams claimed that the inspections had actually been carried out in December 2021, but that the engineer had failed to complete and send him the paperwork. No evidence of this was produced and, since the engineer could not expect to be paid for his work until the certificates were issued, it seems an unlikely explanation. The Tribunal is satisfied that the Respondent was not honest, open or transparent about the date of the inspections.

**Section 2(19) – You must not provide information that is deliberately or negligently misleading or false.**

41. The first complaint under this section relates to an email dated 28 March 2023, when the Respondent states. “ Front door handle sticking. I will have a locksmith attend and repair/replace the lock.” When the Applicants spoke to the tenant on 11 April 2023, this repair had not been carried out and the Applicants had to contact a locksmith. However, the Tribunal notes that the email did not state that a locksmith **had** been instructed nor did it provide a timescale for the repair to be arranged. The Respondent may have intended to contact a locksmith and forgotten to do so. Alternatively, he may have taken the view that it wasn’t an urgent matter and that it would be arranged in due course. As the Respondent did not participate in the hearing, this is only speculation. However, the Tribunal is not persuaded that the Applicants have established that this communication was “deliberately or negligently misleading or false”.
42. The Applicants also complained that the Respondent had breached this section of the Code by providing false addresses for the business and claiming membership/accreditations which do not exist. The Tribunal is



satisfied that a breach of this section has been established in relation to the following:- the agency agreement (membership of TPO scheme, addresses 49 Cadzow Street and 20 Bothwell Road); the website (membership of SAL), rent statements (address 20 Bothwell Road) and tenancy agreement (address 20 Bothwell Road). The Applicants also stated that the claim of membership of CLA was also a breach of this section. However, although the Applicants referred to page 112 of the bundle, this is an email from SAL and not CLA. The Tribunal is therefore not persuaded that the Applicants have established that this was a false claim.

43. Lastly the Applicants state that the claim made about the date of the gas safety and legionella checks is also a breach of this section. For the reasons outlined in paragraph 40, the Tribunal is satisfied that this has also been established.

**Section 2(21) – You must carry out the services you provide to landlords and tenants using reasonable care and skill and in a timely way.**

44. The Applicants gave evidence that 11 telephone calls were made to Mr Pittams between 14 January and 27 March 2023, and not answered. Messages were left but the calls were not returned. On one occasion, Mr Pittams returned a call. The Applicants did not answer the phone quickly enough but returned the call within a few minutes. It was not answered. Mr Pittams advised the Applicants by email on 28 March 2023, that he preferred to communicate by email because he was not always able to answer the phone if he was at the hospital (as his wife was ill) or dealing with other clients. While the Tribunal is of the view that routine matters can easily be communicated by email, the Applicants had made it clear that they required to discuss urgent concerns and the failure by the Respondent to answer or return the calls made between 3 and 27 March is unsatisfactory. The documents lodged establish that the Respondent generally replied to emails promptly, except for the email of 8 April 2023.
45. As this section of the Code relates to the **services** provided the Tribunal is not persuaded that poor communication by the Respondent is a failure to comply with this section of the Code.
46. The Applicants' other complaints under this section relate to the failure to arrange a locksmith for the door, having indicated on 28 March that they would do so, failure to lodge the deposit in an approved scheme, the failure to provide monthly statements and ensure that the safety inspections were carried out on time.
47. The Tribunal is certainly satisfied that the failure to lodge the deposit and instruct an engineer to carry out the inspections in December 2021 are breaches of this Section of the Code. The agency agreement made specific provision for the Respondent to do these, and both resulted in the Applicants failing to comply with relevant legal requirements. However, The Tribunal is not satisfied that the failure to arrange the locksmith between 28 March and 8 April 2023 is a breach of this section. Only 8 working days elapsed between

the undertaking to instruct the work and the termination of the contract by the Applicants. The repair may have been required but it was not an emergency. Similarly, the Applicants have not established a breach of this section in relation to the issuing of monthly statements. The evidence only established that the statement for January 2023 was not received until requested in February. This could have been simple oversight, and it was only a few weeks late.

**Section 2(26) – You must respond to enquires and complaints within reasonable timescales and in line with your written agreement.**

48. For the reasons outlined in paragraph 44, the Tribunal is satisfied that the failure to respond to the telephone calls in March 2023 was a failure to comply with this section.

49. As previously indicated, the Respondent appears to have replied promptly to most emails although the responses did not always address all matters raised in the enquiries. The Tribunal is satisfied that the Respondent has failed to comply with this section in relation to the email of 8 April 2023. The Respondent failed to respond to this until 18 April, and then only because a further email on had been sent on 17 April. The Respondent ought to have acknowledged this email by 12 April. The response issued on 18 April was withing 7 working days, but it was not a full response to the communication.

**Section 2(27) – You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.**

50. The Applicants stated that the failure by the Respondent to notify them that the deposit had not been lodged in a scheme, when they asked about this on 8 April 2023, is a breach of this section of the Code. Although the examples given in the section are repair and breach of tenancy, the Tribunal is satisfied that the Respondent ought to have advised both landlord and tenant that the deposit had not been secured, when it came to light after the enquiry on 8 April 2023, even if the failure to lodge it in a scheme had been the result of error or oversight.

**Section 2(28) – You must not communicate with landlord or tenants in a way that is abusive, intimidating or threatening.**

51. The Applicant's complaint is that the email from the Respondent on 18 April 2023 breached this section because it threatened legal action in relation to termination fees if these were not paid. The Applicants were concerned about the threat which was they felt was not justified. The Tribunal notes that the email states, " if you fail to pay the outstanding sum, then I will take civil legal action to recover my full costs". This threat was certainly premature. The Applicants had asked for details of the final account and indicated a willingness to pay whatever was due. However, the Tribunal is not persuaded that the language used was abusive, intimidating or threatening. A letting

agent is entitled to advise their client that they will exercise their legal right to pursue unpaid sums. Indeed, it is appropriate that they do so. A breach of this section is not established.

**Section 3(37) ;– When either party ends the agreement, you must: a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; the arrangements including timescales for returning the property to the landlord – for example the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed. You must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill. B) If tenants are still living in the managed property or properties, inform the tenants you will no longer be acting as an agent for the landlord and inform them of the landlords name and contact details if these have not already been provided, or where relevant, those of the new agent. You must also inform the tenants of any resulting changes that affect them.**

52. The evidence clearly established that the Respondent failed to comply with most of this section of the Code. They acknowledged and confirmed that the agreement was at an end in their email of 18 April 2023, and issued a final account. However, they did not return the keys or notify the tenant of the change. In fact, they sent a text message to the tenant on 18 April 2023, asking about when the rent would be paid. This caused a great deal of confusion . The Respondent has failed to comply with this section.

**Section 4(38) – Your advertising and marketing must be clear, accurate and not knowingly or negligently misleading.**

53. The complaint under this section relates to misleading information on the website and elsewhere about membership of CLA. As previously indicated, the Applicants did not establish that the Respondent is not a member of this organisation as the emails submitted relate to SAL, TPO scheme and the register of letting agents. For this reason, this complaint is not upheld.

**Section 4(62) – if you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of letting agent.....**

54. The Applicant's complaint is that the tenancy agreement prepared by the Respondent for the current tenant has an incorrect address for the Respondent. Clause 2 and the signing page of the agreement state that the address is 20 Bothwell Road, Hamilton. The evidence established that this is the address of an Indian restaurant with no connection to the Respondent. A breach of this section has been established.

**Section 4(66) – if you lodge tenancy deposits on a landlord behalf, you must ensure compliance with the legislation.**

55. The deposit was not lodged until 9 May 2023, more than 2 years after the start of the tenancy. As the Regulations require a deposit to be lodged within 30 working days of the start of the tenancy, the Respondent has failed to comply with this section of the Code.

**Section 5(85) – if you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety obligations (eg electrical safety testing; annual gas safety inspections; legionella risk assessments) on a landlords behalf, you must have appropriate systems and controls in place to ensure that these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.**

56. The Applicants complaint is that the gas safety check and legionella assessment were instructed late and were only arranged when the Applicants asked about them in February 2022. Reference is made to the Tribunal's conclusions in paragraph 40. In their written representations the Applicants also referred to the gas safety and legionella checks required the following year. Again, the Applicants had to chase these up. When provided, both were dated 28 March 2023, which means they were more than a month late. Based on the evidence, which included the emails between the parties and the certificates themselves, the Tribunal is satisfied that the Respondent did not have "appropriate systems and controls in place to ensure" these essential safety checks were carried out within the appropriate timescales.

**Section 5(89) – When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement, you should inform the landlord in writing of the work required and seek their instructions on how to proceed.**

57. The Applicants state that the failure to attend to the door repair was a failure to comply with the agency agreement and this section of the Code. The Applicants refer to clause 22.3 of the agreement. This stipulates that minor repairs up to a value of £150 will be undertaken without consultation, as will emergency repairs. However, the agreement does not stipulate any timescales. As previously indicated, the Tribunal is not satisfied that the door repair could be classed as an emergency. A burst pipe, water leak, problem with the boiler or electrical installation would all require and justify an immediate response. This was reported to the Respondent as "front door handle sticking", a more routine repair. The Respondent notified the Applicants on 28 March 2023 that it had been reported and a locksmith would be arranged. The agency contract was terminated with immediate effect on 8 April 2023, only 8 working days later. The Respondent did not have the authority to arrange the repair after that date. The Tribunal is not persuaded that a breach of this section is established.

**Section 5(90) - Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.**

58. For the reasons outlined in the previous paragraph, the Tribunal is not persuaded that a breach of this section has been established.

**Section 5(91) – You must inform the tenant of the action you intend to take on the repair and its likely timescale.**

59. The Applicants advised the Tribunal that the tenant told them on 11 April 2023, that although someone had come to look at the damaged lock, she had heard nothing further, and the repair had not been carried out. The Tribunal is satisfied that the Respondent did not give the tenant a timescale for the repair and that a breach of this section is established.

**Section 5(93) – if there is a delay in carrying out the repair and maintenance work, you must inform the landlord, tenants or both as appropriate about this along with the reason for it as soon as possible.**

60. Although the Tribunal is not persuaded that the repair in question was urgent, the email of 28 March 2023 may have led the Applicants to believe that the repair would be arranged quickly. The Respondent ought to have updated the Applicants and the tenant and provided information as to the timescales for the repair. A breach of this section is established.

**Section 7(108) – You must respond to enquiries and complaints within reasonable timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible and to keep them informed if you need more time to respond.**

61. For the reasons previously outlined, the Tribunal is satisfied that the Respondent failed to respond to several telephone enquiries in March 2023 and did not provide a full, timely response to the email of 8 April 2023. Prior to 8 April 2023, the Respondent generally responded promptly to emails but did not always address all the matters raised in these emails. A breach of this section is established.

**Section 7(109) – You must provide landlord and tenants with your contact details including a current telephone number.**

62. For the reasons previously outlined the Tribunal is satisfied that the Respondent breached this section when they provided false postal addresses on several documents. The Tribunal also notes that in March 2023, the Applicants' telephone calls to the numbers provided were not answered. This suggests that a current telephone number was not available to the Applicants during this period.

**Section 7(111) – You must not communicate with landlord or tenants in any way that is abusive, intimidating or threatening.**

63. For the reasons outlined in paragraph 51, the Tribunal is not satisfied that there has been a breach of this section.

**Section 8 (118) – You must have robust and transparent procedures for handling client money.**

64. This complaint is based on the failure by the Respondent to lodge the deposit in a scheme. As the Respondent did not attend the hearing or lodge written submissions, the reason for the failure to lodge the deposit was not explained. The Respondent also failed to provide the Applicants with an explanation. Although it is possible that it was due to poor accounting practices, there are other possible explanations, including simple human error. During the hearing, the Applicants also mentioned that although they received a statement in March 2023 which indicated that full rent had been paid that month, this was not in fact the case. The Tribunal is not satisfied that either of these situations clearly establish an absence of robust and transparent procedures. The Respondent acted for the Applicants for three years and there are no other complaints in the application in relation to accounting procedures.

**Section 8(119) – You must keep adequate records and accounts to show all dealings with client money.**

65. The Applicant again relies on the failure to lodge the deposit, For the same reasons as in the previous paragraph, the Tribunal is not satisfied that this is enough to establish inadequate record keeping.

**Section 8(120) - You must be able to account immediately to them for all money held on behalf of clients.**

66. The Applicants again rely on the issue with the deposit. However, this section of the Code appears to apply when a client asks the agent to account for all sums held. The Applicants do not appear to have made any such request at any point although they did expect/request monthly statements which were provided. The Tribunal is not persuaded that this section is relevant to the Respondent's failures in relation to the tenancy deposit.

**Section 8(123) – You must regularly record and monitor all transactions and reconcile these monthly as a minimum.**

67. For the reasons previously outlined the Tribunal is not persuaded that the failure to lodge the deposit is enough to establish a breach of this section of the Code.

**Section 8 (124) – You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing,**

68. The Applicants again rely on the issue with the tenancy deposit and the Respondent's failure to pass this to them following termination of the agreement. Arguably, a deposit is not "clients' money". This section would usually apply to rental income which should be passed on promptly to the client. The Applicants had no entitlement to the deposit at the time it was requested by them because the tenancy was ongoing and the deposit ought

to have been secured. For that reason, the Respondent's late lodging of the deposit on 9 May 2023 was probably the most appropriate course of action. The Tribunal is not persuaded that a breach of this section has been established.

69. The Tribunal is therefore satisfied that the Respondent has failed to comply with section 2 paragraphs 16, 17, 19, 21, 26 and 27, section 3 paragraph 37, Section 4 paragraphs 62 and 66, Section 5 paragraphs 85, 91, and 93 and section 7 paragraphs 108 and 109. The other complaints are not upheld.
70. The Tribunal is also of the view that some of breaches are particularly serious. The Applicants were misled by the Respondent's claims of membership of certain bodies. They were also given false addresses. The only possible explanation is that the Respondent wanted potential clients to think that they had business premises which did not exist and to induce them to enter contracts based on false information. The failure in relation to the tenancy deposit is a very serious matter, potentially exposing the Applicants to legal proceedings and a penalty being imposed.
71. The Tribunal considered the losses listed in the application. The Applicants paid the sum of £175 to a locksmith because the Respondent failed to return the keys. This was an appropriate course of action, and they are entitled to be re-imbursed. The Tribunal also notes that the Applicants received a demand for payment for termination fees of £650. This does not appear to have been rescinded or withdrawn. The Tribunal is not persuaded that they can make an order which would prohibit the Respondent from pursuing this sum at court since it is technically due in terms of the agency agreement, but the Tribunal has taken it into account in assessing the compensation since the Applicants had grounds for terminating the contract with immediate effect. The Tribunal has not taken the potential penalty faced in relation to the late lodging of the tenancy deposit since there is no evidence that an application is likely to be made by the tenant and even if she did so, the Tribunal would have to take the circumstances into account when assessing the penalty. The Tribunal is satisfied that the Applicants have experienced significant inconvenience as a result of the Respondent's failure to comply with the Code. The Tribunal determines that an award of compensation in the sum of £1825 should be made.

## **Appeals**

**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.**

Josephine Bonnar, Legal Member

23 January 2024