



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014 (“the 2014 Act) and Rule 95 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/LA/23/1896

Parties:

Mr Abdullah Manzoor ("Applicant")

Clyde Property (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Andrew Taylor (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

1. The application submitted on 12 June 2023 was an application under Section 48 of the 2014 Act, namely an application to enforce the Letting Agent Code of Practice (“LACOP”). Supporting documentation was submitted with said application, including some email correspondence between the parties dated between 23 November 2022 and 1 May 2023. There was some communication between the Tribunal Administration and the Applicant and some further documentation lodged by the Applicant on 26 July 2023, following which a Notice of Acceptance of the application was issued by the Tribunal on 8 August 2023 and a Case Management Discussion (“CMD”) fixed to take place.
2. Prior to the first CMD on 9 October 2023, a response, including detailed written representations and some other documentation were lodged by the Respondent on 19 and 20 September 2023. A further communication was received from the Respondent on 5 October 2023, attaching a copy of their

Complaints Procedure which had been referred to in their previous representations but had been omitted from them. These communications from the Respondent were all circulated to the Applicant prior to the CMD.

Case Management Discussion – 9 October 2023

3. The CMD on 9 October 2023 took place by telephone conference call at 10am. It was attended by the Applicant, Mr Abdullah Manzoor who was accompanied by his wife, Mrs Natasha Manzoor who was attending in a supportive capacity. Also in attendance for the Respondent was Mr Jordan Kirkwood, the Respondent's Head of Facilities Management & Service Manager and Ms Alexandra Wooley of Bannatyne, Kirkwood, France & Co, Solicitors.
4. Ms Wooley confirmed that she had three preliminary points to make concerning the application on behalf of the Respondent. The three points, as narrated in the Notes on a Case Management Discussion, dated 9 October 2023, issued following that CMD were as follows:-
 - 1) *Prior to the application being submitted to the Tribunal, the Applicant had not properly notified the Respondent of the alleged breach(s) of the LACOP, in terms of the legislation [Section 48(4) of the 2014 Act]. The Applicant's email of 23 November 2022 did not specify the specific paragraphs of the LACOP or explain how each paragraph had been breached. Although the Applicant had included the specific paragraphs in his application to the Tribunal, it is the Respondent's position that the Applicant's email of 23 November 2022 fell short of what is required by the legislation in terms of prior notification to the Respondent.*
 - 2) *Even if there is found to have been sufficient prior notification given, the Respondent does not accept that there has been breach of any of the paragraphs of the LACOP contained in the application, namely 90, 91, 93, 94 and 113. Ms Wooley referred to the extensive correspondence which has taken place between the parties and clarified that the admissions made by the Respondent are not admissions of breaches of the LACOP but, rather, admissions that the Respondents had not performed to the high standards of practice that they would have wished to. Ms Wooley further clarified that the Respondent does not accept breaches of paragraphs 90, 91, 93 and 94 [Maintenance & Management provisions of the LACOP] as the repairs required within the property stem from water ingress from the property above. The Letting Agent and Landlord have no ability to carry out these repairs and have no right of access. All they can do is inform the Property Factors who deal with common repairs, which they have done. A breach of paragraph 113 [Communications & Resolving Complaints provisions of the LACOP] is not admitted either, given that the Respondent has provided a copy of their Complaints Procedure and complied with that.*

- 3) *The Applicant has not established the losses they claim to have suffered or that these losses are associated with the alleged breaches of the LACOP.*

Mr Manzoor's responses to the three preliminary points made by Ms Wooley, also narrated in the Notes on the Case Management Discussion were as follows:-

- 1) *Mr Manzoor considers that his email of 23 November 2022 did provide sufficient detail to notify the Respondent of the breaches of the LACOP he was claiming and that there is more than enough evidence to support this. He confirmed having made reference and provided links in this email to both the Repairing Standard and the LACOP. He also referred to his email of 25 February 2023 where he gives further detail about the Respondent's failings and indicated his intention to take this matter further, including making a reference to the Tribunal regarding the LACOP.*
- 2) *Mr Manzoor stated that the Respondent is going back on everything they have already stated in their emails where they admitted their failings and had offered compensation. He has produced enough evidence to show that this has been ongoing since March 2019 and that, as at October 2023, is still ongoing as the issue has still not been resolved four and a half years later.*
- 3) *Mr Manzoor thinks that they have already produced sufficient evidence to show their losses including evidence of the mould and damp in photographs sent to the Respondent throughout, evidence of medical involvement in relation to the effects on the health of Mr Manzoor and his wife and costs involved in having to change bedding affected by the mould and damp and multiple cleaning products purchased to try and resolve the issue. Mr Manzoor confirmed that he would be able to produce this evidence to the Tribunal if required. He made the point that he has not been involved in this type of proceeding before and did not know exactly what evidence was required.*
5. The Tribunal, having heard from both parties, were in agreement with Ms Wooley's request for a continuation of the application to allow further written representations to be lodged by both parties. The Tribunal considered that it would be of benefit to the Applicant (and the Tribunal Members) for the Respondent to submit written submissions on the three preliminary points put forward orally at the CMD. This would allow the Applicant fair and proper notice of what was now being argued on behalf of the Respondent and also give him an opportunity to fully consider his position on these matters, take advice of his own if he wished to do so, and fully respond. Whilst aware that the Applicant no doubt wished to make progress with the application as quickly as possible, the Tribunal was of the view that an Evidential Hearing could not be fixed until the preliminary issues raised had been further explored. It was accordingly decided that a further CMD would require to be fixed and that a Direction would be issued to parties, together with Notes on the CMD, outlining details and timescales for the written submissions to be lodged.

Direction and Written Submissions

6. The Direction issued following the CMD, dated 9 October 2023, directed the parties as follows:-

“1. The Respondent is required to submit to the Tribunal written submissions in support of the three preliminary issues raised orally at the Case Management Discussion on 9 October 2023 (as outlined in the CMD Note dated 9 October 2023), said written submissions to make reference to any relevant legislation, statutory or other guidance or caselaw in support of said submissions; said written submissions to be lodged with the Chamber no later than 5pm on 30 October 2023.

2. The Applicant is thereafter required to submit to the Tribunal a written response to the Respondent’s written submissions, said response also to make reference to any relevant legislation, statutory or other guidance or caselaw in support of said response; said written response to be lodged with the Chamber no later than 5pm on 20 November 2023.”

7. Both parties complied with the Direction and lodged written submissions. The submissions on behalf of the Respondent were lodged on 27 October 2023 and attached in support a previous Tribunal Decision, namely *Cameron v Rockford Properties* (Case Reference FTS/HPC/LA/18/1108) which was a decision rejecting an application under Rule 8 of the Regulations dated 27 May 2018. The Applicant thereafter lodged written submissions on 19 November 2023.

Case Management Discussion – 16 January 2024

8. A further CMD took place by telephone conference call on 16 January 2024 at 10am. It was attended by the Applicant, Mr Abdullah Manzoor and Ms Alexandra Wooley of Bannatyne, Kirkwood, France & Co, Solicitors.
9. Following introductions and introductory remarks by the Legal Member, reference was made to the written submissions which had been lodged by both parties and it was confirmed that the Tribunal Members had read these in advance of the CMD.
10. Ms Wooley was asked if anything contained in the Applicant’s submissions changed the Respondent’s position in any way and she stated not. She briefly summarised the three points covered in terms of her written submissions, as follows:-
 - 1) The email dated 23 November 2022 relied on by the Applicant as his prior notification to the Respondent before submitting this application to the Tribunal is not sufficient in terms of the legislation. It does not specify the paragraphs of the LACOP allegedly breached and just mentioning the

LACOP is not sufficient. She referred to the *Rockford* Decision lodged in support of this and stated that, in her view, this application should have similarly been rejected at the sifting stage.

- 2) The actions of the Respondent do not constitute a breach of the LACOP. In terms of paragraphs 90, 91, 93 and 94 (Management and Maintenance obligations) of the LACOP, the Applicant's landlord does not have the necessary access rights to carry out the relevant repairs and there is a property factor involved, so there is no breach of duty by the landlord in terms of the 2006 Act and no instructions to the Respondent to make arrangements for these repairs. In terms of paragraph 113 (Communications and Resolving Complaints obligations), there can be no breach of this as the Respondent has provided a copy of their Complaints Procedure and have complied with it.
 - 3) The compensation claim of the Applicant is not directly linked to any breach of the LACOP by the Respondent and abatement of rent is only a remedy available between the Applicant and landlord, not against the Respondent.
11. Mr Manzoor was then asked if he wished to make any comments additional to what he had stated in his written submissions or in response to Ms Wooley's comments. He responded in relation to the three points as follows:-
- 1) Mr Manzoor stated that he is not a solicitor but that, in his view, the email of 23 November 2022 was sufficient prior notification to the Respondent and it did refer to breaches of the LACOP (although not the specific paragraphs of the LACOP) and provide a link to the LACOP. It also referred to having taken advice from Shelter and that if their complaint was not resolved, they would make a Tribunal application under the LACOP. It was the Respondent's management practices in relation to the repairs that was the main problem and the situation had been ongoing for four years, so the Respondent was well aware of the position and was given a reasonable period of time to rectify things before this application was made. The facts of the *Rockford* case referred to by Ms Wooley were therefore different to this. The Legal Member referred to the guidance on the Tribunal website in relation to making this type of application and asked Mr Manzoor if he had looked at that guidance. He confirmed that he had and thought he had complied with the guidance. Mr Manzoor was asked about the communications he initially had with the Tribunal following the submission of his application and if he recalled being advised that a Legal Member of the Tribunal had considered the application and that there were issues with the application, including that the documentation submitted as evidence of prior notification on the letting agent was considered to be insufficient, and that a template notification letter had been provided to him. Mr Manzoor explained that he chose not to use the template letter as he considered that he had already adequately notified the letting agent by virtue of the email of 23 November 2022.
 - 2) Mr Manzoor was asked about the current status of the repairs required to address the issue of water ingress. He confirmed that the issue is still not

resolved but that the property factor is involved and he thinks things are underway. He was asked about whether he had made a Repairs application against his landlord as that may have resulted in any necessary repairs being expedited or a rent abatement, which appears to be one of the remedies he is seeking in this application. Mr Manzoor stated that he had not made such an application to the Tribunal as he considered that it was the management practices of the letting agent which are at fault and that it is unjustified that they were charging [the landlord] management fees when no proper management of the repairs has been provided. Mr Manzoor confirmed that he has not had any direct dealings with the property factor. He deals with the letting agent and the letting agent deals with the property factor on behalf of the landlord [the homeowner].

- 3) As to the compensation aspect of his application, the Legal Member explained that the Tribunal had expected him to submit more evidence in support of this in response to the Direction. Mr Manzoor stated that he does have further evidence available that could be submitted but had not realised that it was needed at this stage.
12. Ms Wooley was asked if she had any further comments to make on anything Mr Manzoor had said. She stated that, in connection with the lack of prior notification, she appreciated that Mr Manzoor is not a solicitor but that the legislation is the legislation and the requirements of the legislation must be met.
13. The Tribunal Members then adjourned the CMD in order to consider these preliminary points in respect of the application. On re-convening, the Legal Member advised that the Tribunal had decided that the first preliminary point made on behalf of the Respondent should be upheld on the basis that the Tribunal did not consider that the Respondent had been given prior notification of the application which met the requirements of the legislation. Accordingly, the application was being refused, at this stage, on that basis. Parties were thanked for their attendance at both CMDs and for submitting their respective written submissions in response to the Direction. Parties were advised that the written Decision would follow and would include information about the right of appeal.

Reasons for Decision

1. The Tribunal carefully considered the written submissions on behalf of both parties and the oral representations of both Mr Manzoor and Ms Wooley at the CMDs.
2. The Tribunal considered that neither the second or third preliminary points raised on behalf of the Respondent would have prevented the application proceeding further. Those points would ultimately have been determined following an Evidential Hearing. However, the Tribunal considered that the first preliminary point had been established and was fatal to the application. The

application was not properly made as the requirements of prior notification on the Respondent had not been met.

3. Relevant Legislation

Section 48 of the 2014 Act deals with applications to the Tribunal to enforce the LACOP and is as follows:-

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

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

(2) A relevant letting agent is—

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

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

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

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

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

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

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

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

(8) A letting agent enforcement order—

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

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

(9) References in this section to—

(a) a tenant include—

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

(ii) a former tenant,

(b) a landlord include a former landlord.”

The relevant subsections here are 48(3), (4) and (5) which deal with the requirements of the application itself and the prior notification of the alleged breaches of the LACOP. The Tribunal agrees with Ms Wooley’s submission that the terms of Section 48(4) are mandatory in that it states “*No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question*”.

The importance of prior notification in the application process is also reflected in the Tribunal Procedure Regulations relating to this type of application. Rule 95 of the Regulations is as follows:-

“Application to enforce letting agent code of practice

95. Where a tenant or landlord makes, or the Scottish Ministers make, an application under section 48(1) (applications to First-tier Tribunal to enforce code of practice) of the 2014 Act, the application must—

(a) state, in addition to the applicant’s reasons as required under section 48(3) of the 2014 Act—

(i) the name and address of the tenant, landlord or the Scottish Ministers;

(ii) the name, address and profession of any representative of the tenant, landlord or the Scottish Ministers;

(iii) the name, address and letting agent registration number (if any) of the letting agent;

(iv) the name, address and profession, if known, of any representative of the letting agent; and

(v) information as to any loss suffered by the applicant as a result of the failure to comply;

(b) be accompanied by a copy of the notification to the letting agent as required under section 48(4) of the 2014 Act; and

(c) be signed and dated by the applicant or a representative of the applicant.”

The relevant part of Rule 95 is paragraph 95(b) which ties in with Section 48(4) of the 2014 Act and specifies that the application “*must..... be accompanied by a copy of the notification to the letting agent as required under section 48(4) of the 2014 Act*”.

4. Mr Manzoor did not disagree with the fact that prior notification on the letting agent was a mandatory part of the application process. However, he did disagree with Ms Wooley’s submissions that the email of 23 November 2022 submitted in support of his application was not sufficient in its terms to meet the requirements of the legislation. Although the email was fairly detailed in its terms and mentioned the LACOP, as well as providing a link to the LACOP in the body of the email, the Tribunal agreed with Ms Wooley’s submissions that the reference to the LACOP in the email was only in general terms and did not specify which particular paragraphs (other than a reference to “Section 86” of the LACOP) the Respondent had allegedly breached or how they had been breached. It was noted by the Tribunal that, although paragraph 86 of the LACOP was mentioned in the email, paragraph 86 did not subsequently form part of the application, which specifies only paragraphs 90, 91, 93, 94 and 113.
5. It was clear from Mr Manzoor’s submissions and from the supporting documentation that he submitted with his application that the email of 23 November 2022 formed part of a lengthy course of correspondence between the parties arising from outstanding repairs issues at the property and Mr Manzoor’s complaints that the Respondent had not dealt with these issues satisfactorily nor within a reasonable timescale. The email of 23 November 2022 details the background circumstances and summarises these complaints and it is clear from the correspondence which followed that the Respondent had dealt with this email as a formal complaint and indicated that they would carry out an internal review and deal with the matter in accordance with their complaints procedures. Against this background, the Tribunal understood Mr Manzoor’s submissions that he considered the email of 23 November 2022 to be sufficient prior notification to the Respondent in terms of this application, his argument being that the Respondent was fully aware of the background and the basis of his complaints as to how the Respondent had dealt with matters. Mr Manzoor also made reference to the fact that the email stated that, if matters were not resolved, this type of application to the Tribunal may be made and also that the Respondent had been given a reasonable timescale to rectify matters, following that email, but had not done so. The Tribunal noted that the application was not lodged with the Tribunal until 12 June 2023 and considered

that, had the email of 23 November 2022 been otherwise sufficient in its terms, then it would have considered this timescale as more than sufficient to satisfy Section 48(5).

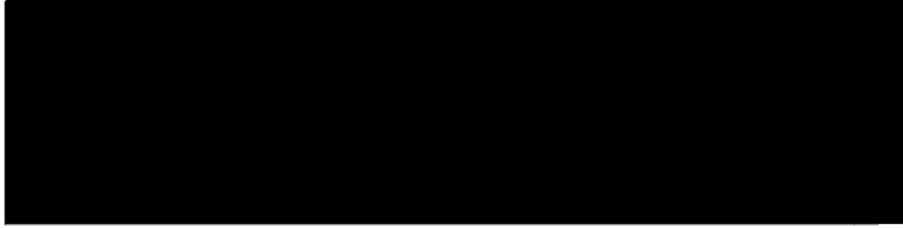
6. The Tribunal's understanding of the purpose of adequate prior notification being an essential pre-requisite of this type of application accords with Ms Wooley's submissions in this regard, namely that only sufficiently specific notification allows the letting agent to respond appropriately and, if necessary, rectify any alleged breaches of the LACOP. The Tribunal considered that it is really a matter of fair notice being given to the Respondent and an opportunity to resolve matters before the Tribunal process is invoked. However, in terms of this application, the Tribunal considered that the first notification to the Respondent of the detail of the application being made against them would have been when they received intimation from the Tribunal of the application in August/September 2023. Indeed, the Tribunal noted that, following initial consideration of the application by a Legal Member of the Tribunal, Mr Manzoor had required to submit an amended application form specifying "the relevant paragraph number(s) of the Code". The communication Mr Manzoor received from the Tribunal at that time (6 July 2023) also stated "To comply with the requirement to give notification in terms of the Act, an applicant is required to write to the letting agent, setting out in turn each specific paragraph of the Code s/he believes that it has failed to comply with, and setting out the reasons why it is considered that it has failed to comply with each of these paragraphs. It is not considered that what has been submitted constitutes sufficient notification. We enclose a template notification letter relating to breaches of the code of conduct, which you may wish to use". Mr Manzoor explained at the second CMD why he chose not to do so, wishing to rely instead on the previous email to the Respondent of 23 November 2022. He also confirmed that he had looked at the guidance available in respect of this type of application on the Tribunal website when making his application but was of the view that the email met the prior notification requirements. As to the *Rockford* case which Ms Wooley had produced in support of her submission that the Tribunal has previously rejected similar applications for want of proper notification, Mr Manzoor submitted that his notification went further than the notification in that case, as detailed in paragraph 5 of the Reasons for Decision above. The Tribunal accepted that, although in some respects, the criticisms of the notification in the *Rockford* case did not apply here, in other significant respects they did. At paragraph 7 of the Reasons for Decision in that case, the Legal Member had stated "*Although the*

Applicant has written to the letting agent outlining her concerns with various issues relating recent repairs to the property, stating that an application may be made to the Housing and Property Chamber of the First Tier Tribunal as a result....[There is] no reference to specific sections that the Applicant believes have been breached, no detail as to how, in the Applicant's view, the Code has been breached.” and at paragraph 9 “.....although the Applicant has expressed her dissatisfaction with the Respondent, she has failed to comply with the provisions of Section 48 above, in particular Section 48(4) and 48(5).”

7. The Tribunal considered that it was regrettable that the Applicant had not re-considered his position, or perhaps taken some advice on the matter, when it was first raised during the initial application process, or following the first CMD when he learned of the preliminary objection being taken to this aspect of the application on behalf of the Respondent by their solicitor. The Tribunal fully understood the Applicant's frustration at the length of time the repairs issue had been ongoing (and was still not resolved) and his wish to make progress with his application against the Respondent at the initial stages of the application and currently. The Tribunal was aware that the Applicant is not a solicitor and that this is a technical and complex area of law. However, the Applicant had been given an opportunity to argue his point, both in terms of written and oral submissions. The Tribunal considered that the terms of Section 48(4) of the 2014 Act had not been met and determined that the application should therefore be refused.

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.



Legal Member/Chair

18 January 2024
Date