



Written Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 48(1) of the Housing (Scotland) Act 2014 (“the Act”) and Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/LA/24/0365

Re: Property at 26 Rockwell Place, Dundee, DD3 6UZ

Parties

Mrs. Melody McKay Burton residing at 50, Whitecroft Road, Meldreth, Cambridgeshire, SG8 6LR (“the Applicant”)

Belovoir Dundee, top floor, India Buildings, 36, Bell, Street, Dundee, DD1 1HN (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Nick Allan (Surveyor and Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the Letting Agent Code of Practice in respect of Overarching standards of practice at 21, 24, 26 and 27, Management and maintenance at 73, 74 and 75, Ending the tenancy at 98, 101, 102, 104 and 105, Communications and resolving complaints at 108 and Handling landlords’ and tenants’ money and insurance arrangements at 125.

Background

1. By application received on 23 January 2024 (“the Application”) the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondent had failed to comply with the Code of Practice for Letting Agents (“the Code”).
2. The Application comprised the following documents: -(i) application form in the First-tier Tribunal standard application form indicating that the parts of the Code complained of are Overarching standards of practice at 21, 24, 26 and 27, Management and maintenance at Rules 73, 74 and 75, Ending the tenancy at 98, 101, 102, 104 and 105, Communications and resolving complaints at 108 and Handling landlords’ and tenants’ money and insurance arrangements at 125, (ii) copy correspondence between the Applicant and the Respondent (iii) copy short

proof of notification of the complaints to the Respondent and a detailed statement setting out the complaint in full.

3. A legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (CMD) was fixed for 3 May 2024 at 10.00 by telephone conference call.

CMD

4. The CMD took place on 30 April 2024 at 2pm by telephone conference call. The Applicant was present on the call and was unrepresented. The Respondent was not present and was not represented. The Tribunal was satisfied that the Respondent had been notified of the CMD and had not responded in any way. The Tribunal noted that the Respondent had not replied to the Applicant's formal notification of the complaint. The Tribunal, therefore, took the view that the Respondent did not oppose or wish to make representations.
5. The Tribunal had regard to Rule 2 of the Rules which states: *"(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly. (2) Dealing with the proceedings justly includes (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; (b) seeking informality and flexibility in proceedings; (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take; (d) using the special expertise of the First-tier Tribunal effectively; and (e) avoiding delay, so far as compatible with the proper consideration of the issues."* The Tribunal took the view that it was bound by Rule 2 and that, in terms of Rule 2(2)(e), the proper course of action was to proceed with the CMD in the absence of the Respondent.

Discussion at CMD

6. The Tribunal took the Applicant through the complaints as set out in the Application.

Overarching standards of practice

Code 21. You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.

Code 24. You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code's requirements.

Code 26. You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.

Code 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.

7. The Applicant, Mrs. McKay Burton, explained that this part of the complaint related to the general conduct of the Respondent, their complete lack of response and their inaction. She explained that she and her late husband had lived abroad and, since 2015, had employed a letting agent to fully manage the rental of the Property. The Property had been managed without issue until it was taken over by the Respondent in 2021.
8. Mrs McKay Burton stated that the incident which is core to the complaint is that the Respondent did not advise the Applicant that her tenants had given notice to quit. Following this incident, it became apparent that the Respondent had not carried out inspections, had not kept records of management activity, had not attended to possible repairs and had not kept her apprised of possible repairs.
9. Mrs. McKay Burton stated that, despite frequent and numerous emails and telephone calls to the Respondent, the Respondent did not reply or did not reply in a meaningful way. She listed numerous occasions of a lack of contact and response from the Respondent and occasions when misleading or incorrect information was provided to her.

Management and maintenance

Code 73. If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

Code 74. If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (on property access and visits, and on repairs and maintenance).

Code 75. Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.

10. Mrs. McKay Burton confirmed that the agency agreed was a fully managed service. She confirmed stated that, despite frequent and numerous emails and telephone calls to the Respondent, the Respondent did not reply or did not reply in a meaningful way. She explained that her requests for inspection reports were either met with unfulfilled promises to issue these or were ignored as the reports were not provided to her.
11. With regard to a breaches of tenancy, Mrs McKay Burton advised that, following the tenants vacating the Property, the solicitor whom she appointed to sell the Property, reported to her that the Property required to be cleaned and that repairs were needed to the kitchen and bathroom. These works were beyond fair wear and tear and so were the responsibility of the tenants. Mrs McKay Burton's position was that the Respondent had failed to manage the Property properly in respect of the tenants' obligations.

Ending the Tenancy

Code 98. You must have clear written procedures in place for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information.

Code 101. Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit unless there is good reason not to. For example, evidence of violent behaviour.

Code 102. If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began.

Code 104. You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared.

12. Mrs. McKay Burton explained that this part of her complaint related to the way in which she was informed that the tenancy had ended and the lack of information provided to her and to the vacating tenants.

13. Mrs. McKay Burton stated that she became aware that the tenants had left the Property in a phone call to her from the Respondent on 18 September 2023 advising that the tenants had given notice to quit and that the tenancy had ended on 8 August 2023. She stated that despite her requests for an end of tenancy inspection report and promises that reports would be sent to her, none was provided.

14. Mrs. McKay Burton explained that she engaged a company to carry out the cleaning works and minor repairs. The company reported back to her that there was a serious leak in the bathroom which would require investigation and repair. Mrs. McKay Burton's position is that this repair ought to have been picked up during routine inspections and so she asked the Respondent to provide reports of the inspections carried out but had no response. Accordingly, she arranged to travel from Cambridgeshire to Dundee to inspect the Property herself. As the repair was a major one, Mrs. McKay Burton claimed on her insurance policy, but as there was a lack of property inspection reports from the Respondent, there was a delay of over three months in the insurance company accepting the claim and to the work being carried out. Mrs. McKay Burton explained that, following her formal complaint to the Respondent, Aimi Lewis, an employee of the Respondent met with her by Zoom on 29 November 2023 and confirmed that an end of tenancy inspection had not been carried out. Ms. Lewis undertook to inspect the Property and to send photographs but did not do so. Mrs.

McKay Burton advised that Ms. Lewis offered to send a report from an inspection which had taken place on 22 February 2022 but again did not do so.

Tenancy deposits

Code 105. Where you manage the tenancy deposit on behalf of a landlord you must take reasonable steps to come to an agreement with the tenant about deposit repayment. Where agreement is reached you must make a claim to the relevant Tenancy Deposit Scheme.

15. Mrs. McKay Burton explained that the Respondent had responsibility for managing the tenancy deposit and that, during the Zoom meeting in November 2023, she had instructed Ms. Lewis to arrange for the cleaning and minor repair costs to be retained from the deposit. Although, Ms. Lewis agreed to do this, Mrs. McKay Burton heard no more in respect of the deposit and has not received payment of the deposit from the Respondent. She explained that she is unaware if a claim was made to the approved scheme on her behalf.

Communications and resolving complaints

Code 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 fully as possible and to keep those making them informed if you need more time to respond.

16. Mrs. McKay Burton's position is that, as outlined above, the Respondent has consistently failed to reply to her and has failed to acknowledge or deal with enquiries and complaints.

Handling landlords' and tenants' money, and insurance arrangements

Code 125. You must pay or repay client money as soon as there is no longer any need to retain that money. Unless agreed otherwise in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.

17. Mrs. McKay Burton's position is that, as outlined above, the Respondent has consistently failed to repay the tenancy deposit to her.

Loss suffered as a result of the Respondent's failures.

18. Mrs. McKay Burton set out her monetary losses as:

- i) £300.00 in respect of cleaning;
- ii) £100.00 in respect of minor repairs to the kitchen and bathroom;
- iii) £300.00 in respect of travel and accommodation to visit the Property;
- iv) £500.00 insurance excess, given that had the leak been identified earlier, the repair cost would not have been so costly;
- v) £700.00 in loss of rental income as the Property could not be re-let due to its condition and

vi) £150.00 in respect of Council Tax which had to be paid whilst the Property was unlet.

19. Mrs. McKay Burton explained that she is a widow in her Seventies who relied on the rent from the Property as her income. She explained that the condition of the Property was such that she had been unable to either re-let it or sell it for five months while the repair work was being carried out. Had the Respondent acted properly and promptly, her losses would not have been so great.

Issues for Tribunal

20. As the Respondent did not oppose the Application, the issue for the Tribunal was sufficiency of evidence to make a decision in terms of Rule 17 (4) of the Rules. The Tribunal was satisfied that it had sufficient information to make a decision and so proceeded to do so.

Findings in Fact.

21. The Tribunal had regard to the Application in full, which set out the complaint and the monetary losses clearly and in detail, and to the submissions made by the Applicant at the CMD, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.

22. The Tribunal found the Applicant, Mrs. McKay Burton, to be truthful, straightforward and measured in her submissions and that she did not attempt to exaggerate her complaints or the extent of her frustration and the inconvenience caused to her to any extent.

23. The Tribunal found the following facts established:

- a) The Parties are as set out in the Application;
- b) The letting agent contract between the Parties was a fully managed service for the Property;
- c) The contract began in 2015 and continued until around December 2023;
- d) Since around 2019, the Respondent has failed to provide an adequate service;
- e) The Respondent did not carry out routine property inspections in a reasonable manner and with due care and attention;
- f) Since 2019, the Respondent failed to carry out property inspections as required;
- g) The Respondent did not deal with correspondence from the Applicant within reasonable timescales;
- h) The Respondent did not provide the Applicant with full and accurate information in response to her written requests;
- i) The Respondent appears not to have proper procedures in respect of property inspections as required by the Code;
- j) The Respondent did not comply with the Code in respect of ending the tenancy;
- k) The Respondent did not take action to resolve the Applicant's complaints;
- l) The Respondent did not advise the Applicant that her tenants had given notice to quit;
- m) The Respondent did not keep records of management activity;
- n) The Respondent did not attend to possible repairs and did not keep the Applicant apprised of possible repairs;
- o) The Respondent did not advise the Applicant that the tenants had given notice to quit;

- p) The Respondent did not advise the Applicant that the tenancy had ended on 8 August 2023 until September 2023;
- q) The Respondent did not carry out an end of tenancy inspection;
- r) The Respondent did not contact or deal with the tenants in respect of possible breaches of the tenancy agreement;
- s) The Applicant required to travel from Cambridgeshire to Dundee to inspect the Property herself;
- t) The Respondent's failure to carry out property inspections caused a major repair to develop unchecked;
- u) The Respondent's failure to carry out property inspections had a negative impact on the Applicant's insurance claim and caused a significant delay;
- v) The Respondent gave the Applicant wrong or misleading information in respect of property inspections and the ending of the tenancy procedure;
- w) The Respondent had responsibility for managing the tenancy deposit;
- x) The Applicant instructed the Respondent to arrange for the cleaning and minor repair costs to be retained from the tenancy deposit;
- y) The Respondent failed to secure the repayment of the tenancy deposit to the Applicant;
- z) The Applicant has the following monetary losses as a direct result of the Respondent's failures: £300.00 in respect of cleaning; £100.00 in respect of minor repairs to the kitchen and bathroom; £300.00 in respect of travel and accommodation to visit the Property; £500.00 insurance excess, given that had the leak been identified earlier, the repair cost would not have been so costly; £700.00 in loss of rental income as the Property could not be re-let due to its condition and £150.00 in respect of Council Tax which had to be paid whilst the Property was unlet.
- aa) The Applicant is a widow in her seventies who relied on the rent from the Property as her income.
- bb) The Applicant was unable to either re-let it or sell the Property for five months as a direct result of the Respondent's failures;
- cc) The Applicant suffered inconvenience due to the Property Factor's failures.

Decision of the Tribunal with reasons

24. From the Tribunal's Findings in Fact, the Tribunal, in terms of Section 48(6) of the Act, had no hesitation in finding that the Respondent had failed to comply with the Code as complained of in the Application.

Letting Agent Enforcement Order (LAEO)

25. Having made a decision in terms of Section 48(6) of the Act that the Respondent has failed to comply, the Tribunal, in terms of Section 48(7) of the Act, must by Order require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.

26. In terms of Section 48 (8) of the Act, a letting agent enforcement order "*(a) must specify the period within which each step must be taken and (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.*"

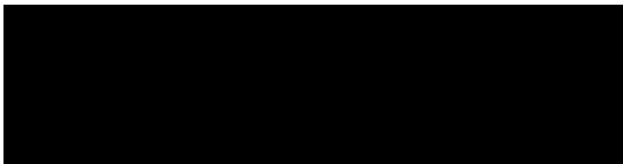
26. The Tribunal's view is that the Respondent's conduct and treatment of the Applicant to be totally unprofessional in all respects. In the Tribunal's opinion, the Respondent has shown complete disregard for their statutory duties and their customer. The Respondent's conduct has caused the Applicant unnecessary frustration and direct financial loss for which she ought to be compensated. Therefore, the Tribunal makes a LAEO in the sum of TWO THOUSAND THREE HUNDRED pounds (£2,300.00) in compensation of both the direct loss and the inconvenience and frustration caused and orders that this sum be paid direct to the Applicant no later than 30 June 2024.

27. The decision is unanimous.

Appeal

28. 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.

Signed

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Karen Moore, Chairperson

21 May 2024

