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

Decision with Statement of Reasons by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an Application under Section 48 of The Housing (Scotland) Act 2014 ("The Act")

Reference number: FTS/HPC/LA/23/2762

The Parties:

Mr David Hutton, 12 St Winnoc Road, Lochwinnoch, PA12 4ET "The Applicant"

Belvoir Lettings, 8 Silk Street, Paisley, PA1 1HG ("the Respondent")

The Tribunal Members:

Legal Member: Mr Andrew McLaughlin-

Ordinary Member: Mr Nick Allan

Background

[1] In terms of Section 48 of the Act, the Applicant seeks findings that the Respondent has failed to comply with their obligations under the Letting Agent Code of Practice ("The Code"). The Application alleges that the Respondent has failed to comply with the following standards:

"The Overarching Standards of Practice;" (Standards, 16, 17, 20, 21,
*"Engaging Landlords;" (*Standards, 36, 37*)*
*"Management and maintenance;" (*Standards 74, 80, 81, 86, 87, 88, 89, 90 ,91, 93)
"*Communications and resolving complaints;"* (Standards 107, 108)

[2] The alleged failures to comply are founded around three main grievances:

1. *Failing timeously to fix a leak that developed, out of hours, in a property owned by the Applicant and managed by the Respondent;*
2. *Failing to carry out property inspections but charging for them anyway;*
3. *Losing the Applicant's keys when he attended to collect his belongings, following on from the ending of the contractual relationship between the parties.*

[3] A previous Case Management Discussion ("CMD") took place on 14 December 2023. It had been decided that a Hearing would be required to determine matters. At the CMD, the Respondent had accepted that some of the grievances were well founded. The Respondent acknowledged that they had outsourced their out-of-hours repairs service to a contractor who had gone on holiday instead of making himself available to provide the emergency plumbing services required by the Applicant's tenant. There had been a significant leak in the Applicant's property which had caused damage and disruption. The Respondent had no one available to deal with the issue with the necessary urgency. There was also an admission that inspections had not been adequately managed previously. It was also accepted that the Respondent then lost the Applicant's keys

when he attended to collect them. The Application had been continued to a Hearing for full evidence to be heard and a final decision to be made.

The Hearing

[4] The Application then called for an Evidential Hearing at 10 am on 24 April 2024 at Glasgow Tribunal Centre. The Applicant was personally present. The Respondent was represented by their own Ms Nicola Gill. Neither party had any preliminary matters to raise.

[5] The Tribunal heard evidence from the Applicant and then Ms Gill. Each party had the opportunity to cross-examine the other. The Tribunal asked questions throughout to ensure that it understood each witness' evidence. After the conclusion of evidence, each party then had the opportunity to make submissions. The Tribunal directed parties to address the Tribunal on the specific standards of the Code alleged to have been breached.

Mr David Hutton

[6] Mr Hutton gave evidence in a straightforward and convincing manner. His evidence was sensible and measured. He was entirely credible and reliable. The facts of the situation were easy enough to understand. He was a landlord who had used the services of Belvoir to manage his property at 24 Linister Crescent, Howwood, Renfrewshire since 2014. He explained that he had used Belvoir in part because he was impressed with their out of hours service offering. He explained that in January of 2022 he had received an email from the Respondent's Ms Gill wishing him a happy new year and explaining that there had been "*a bit of a problem*". The Applicant explained that he received this email around 20 January 2022. Ms Gill had told him that he might want to go and "*fix the roof*". Mr Hutton then got permission from his tenant and visited the property. When he arrived, the tenant was not in, but when he entered the property, it was clear that the it was damaged. The roof between the front door and the main lounge had collapsed.

There was damage to the walls. Dirty water was coming through the plaster and there was a light hanging down.

[7] Mr Hutton had had the foresight to attend at the property with a tradesperson. But beyond the scene of initial destruction, it was apparent that Christmas decorations were still on display. It was now 25 January 2023. The tradesperson and Mr Hutton agreed a price for the remedial works. It was confirmed that the necessary repairs would be carried out on the next Saturday morning. Mr Hutton returned to the property, as scheduled, to make payment. He then met his tenant for the first time. The tenant explained to him that the roof had collapsed on Boxing Day. The tenant further explained that he had phoned the out of hours assistance line operated by the Respondent. He had obtained this number via a message left on the Respondent's answering machine. The contractor who answered the phone had said he was in Tenerife and that he was unable to help.

[8] The Respondent's office was closed until 4 January 2023. The tenant had no other means of obtaining out of hours support from the Respondent. The tenant considered it necessary to leave the property temporarily to stay elsewhere. Mr Hutton explained that he was very disappointed because the tenant had been clearly left in the lurch. This could have caused significant problems for Mr Hutton as a landlord. He felt badly let down by the Respondent as their out of hours service was one of the reasons why he had chosen to use Belvoir's services in the first place. Mr Hutton was dissatisfied with the inspections offered by Belvoir. He pointed out that the contract between the parties had provided that the Respondent would inspect the Property once every three months. This was a key service in return for the monthly management fees. Mr Hutton explained that the Respondent had simply stopped doing inspections during the Covid outbreak. They never recommenced them, long after it would have been reasonable to resume the service.

[9] Mr Hutton also explained that the Respondent stopped communicating with him or addressing his concerns about the inspections. The written statement of services between the parties made it clear that four inspections a year were to be carried out.

That was also one of the features of the contract which led the Applicant to do business with the Respondent. The lack of inspections did not appear to cause the Applicant any real hardship but that may well have been simply down to good luck.

[10] The Applicant also explained that he no longer wished to pursue the allegation regarding the Respondent losing his keys. He considered that to have been resolved between the parties.

Ms Nicola Gill

[11] Ms Gill commenced employment with Belvoir in May 2022. At that time there were two staff members in the office. Ms Gill's only colleague, then left in November 2022. This meant that Ms Gill was then, from November 2022 until a week before Christmas 2022, the sole member of staff running the office until ownership of the franchise then changed hands. Another employee, Sharon, had then come in as an administrator. It had been down to Ms Gill to organise the out of hours holiday cover for the festive period over 2022/2023. It appeared that this exercise, which seemed to the Tribunal to be an important one for the delivery of the Respondent's core services, was commenced in mid to late November 2022. The Tribunal took the view such an important exercise ought to have been concluded much earlier.

[12] Ms Gill organised two different contractors to provide emergency service cover over the festive period. There was Paul Ward who covered the gas and electrics. And then a contractor called *RSPS* run by someone called Steven Allen was used for emergency plumbing repairs. These two contractors were the sole source of emergency out of hours assistance for around 400 properties managed by the Respondent from when their office closed on 23 December 2022 until it reopened on 4 January 2023. Ms Gill said that Mr Allen had been in the office a few times before the festive period "*collecting keys*" and everything seemed fine. She also understood RSPS to be a large nationwide company. They had the requisite public liability insurance. Ms Gill said that Mr Allen was aware that he was the sole provider of emergency electrical repairs for the time period.

[13] Ms Gill said that she had direct discussions with Mr Allen about that. This arrangement appeared however to have been largely undocumented. The only email that appeared to be exchanged between the parties seemed more like a request to RSPS to confirm whether they wished to be added to the emergency contact list over the festive period. There appeared to be nothing in writing which confirmed that the Respondent had formally accepted the role and indeed there was nothing outlining what was expected of them and what the remuneration would be. It seemed a casual arrangement.

[14] The system was that when the Respondent's office closed, there was an answer machine message providing a contact number for plumbing and heating emergencies. The Applicant's tenant had a plumbing emergency on Boxing Day 2024. When he phoned the number, he spoke to Mr Allen who explained that he was in Tenerife and was not in a position to help. The tenant was then left without any assistance and left the property to stay elsewhere over the festive period.

[15] Ms Gill acknowledged that this was a woefully inadequate service. She explained that she felt badly let down by Mr Allen and his company. The Respondent had ceased to work with the company. Ms Gill also explained that there had been other tenants and landlords who had been affected by the issue.

[16] As for the inspections, Ms Gill acknowledged that the agreed services of four inspections a year simply hadn't been offered. They had stopped during Covid times and had simply never resumed. Ms Gill explained that the Respondent simply didn't have the resources to offer the agreed services of four inspections a year. They managed around 400 properties which would have resulted in a need to carry out around 1,600 inspections a year. The Respondent's branch had nowhere near the staff resources to carry out these inspections. Accordingly, they simply didn't carry out any. The monthly rent paid by the tenant was £825.00 per year. The management fee was 10 per cent meaning that the management fee paid by the Applicant to the Respondent was £82.50.

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

I. *The Applicant and the Respondent entered into a contract whereby the Respondent agreed to provide services to the Applicant as a Letting Agent within the meaning of the Act.*

II. *In term of condition 5.11.3 of the contract between the parties, the Respondent undertook to provide a fully managed service including providing an out of hours emergency repair management service.*

III. *The Respondent's arrangements for the provision of those emergency repairs services from 23 December 2022 until 4 January 2023 were inadequate.*

IV. *On Boxing day 2022, the Respondent was called upon to provide an emergency out of hours repair service. The Applicant's tenant reported a serious and urgent need for a roof repair. The roof between the front door and the main lounge of the tenant's property was badly damaged. The Respondent's approach to the provision of the necessary out of hours resource was overly casual and lacked rigour. There is no documentary evidence of what was agreed between the Respondent and the contractors entrusted to deliver these services and what standards they were expected to adhere to. The Respondent's failures had a direct consequence on the life of someone over the festive period. Whilst there were little direct financial or legal consequences for the Applicant, the Respondent's failings badly let the tenant down.*

V. *The Respondent also failed to honour the terms of their contract in which they undertook to carry out four inspections of the Property per year.*

VI. *It is understandable that the agreed contractual inspections could not be carried out during Covid times, but the Respondent failed to resume these inspections long after it would have been reasonable for them to recommence.*

VII. *The Respondent simply did not have the necessary staff and resources to honour their commitments;*

VIII. *The Respondent ultimately failed to respond to the Applicant about these failings.*

[18] Having made the above findings in fact, the Tribunal thereafter made the following findings in respect of the standards of the Code alleged not to have been adhered to by the Respondent.

"***Standard 16.*** *You must conduct your business in a way that complies with all relevant legislation*."

[19] The Tribunal does not find that the Respondent has failed to comply with this standard. The detail of specific allegation is not clear and the complaints made are more relevantly considered against other standards.

"***Standard 17*** *You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants*)".

[20] The Tribunal finds the Respondent has failed to comply with this standard. The Respondent offered the Applicant a service which included four inspections of the Applicant's property per year. They simply didn't provide this service due to a lack of resources. In that regard they have not been fair in their dealings with the Applicant.

"***Standard 20.*** *You must apply your policies and procedures consistently and reasonably."*

[21] The Tribunal finds the Respondent has failed to comply with this standard. The Respondent offered the Applicant a service which included four inspections of the Applicant's property per year. They simply didn't provide it due to a lack of resources. In that regard they have not been fair in their dealings with the Applicant.

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

[22] The Tribunal finds the Respondent has failed to comply with this standard. The Respondent offered the Applicant a service which included four inspections of the Applicant's property per year. They simply didn't provide it due to a lack of resources. In that regard they have not been fair in their dealings with the Applicant

"Standard 36. *If a landlord or tenant (including former landlord and tenant) applies to the Tribunal because they think you have failed to meet your Code obligations, the Tribunal may, depending on the nature of the circumstances, expect you to show how your actions meet your agreed terms of business as part of complying with the Code."*

[23] The Tribunal does not find that the Respondent has failed to comply with this standard. The detail of specific allegation is not clear and the complaints made are more relevantly considered against other standards

"Standard 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; and 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 landlord's name and contact details if these have not already been provided, or where relevant, those of any new agent. You must also inform the tenants of any resulting changes that affect them.

[24] The Tribunal considers this part of the Application to have been withdrawn on the basis that the Applicant considers this part of his complaint to have been resolved.

"Standard 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 (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance*)."

[25] The Tribunal notes that the problem is that the Respondent didn't do the inspections when were supposed to, rather than do them and fail to adequately record any issues. The Tribunal therefore determined that the complaints are better expressed in terms of other standards and made no finding of non-compliance in respect of this standard.

"Standard 80. *If you hold keys to the properties you let, you must ensure they are kept secure and maintain detailed records of their use by staff and authorised third parties – for instance, by keeping keys separate from property information and holding a record of the date the keys were used, who they were issued to and when they were returned."*

[26] The Tribunal considers this part of the Application to have been withdrawn on the basis that the Applicant considers this part of his complaint to have been resolved.

"Standard 81. *You must take reasonable steps to ensure keys are only given to suitably authorised people."*

[27] The Tribunal considers this part of the Application to have been withdrawn on the basis that the Applicant considers this part of his complaint to have been resolved.

"Standard 86. *You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required, if you provide this service directly on the landlord's behalf. Your procedure should include target timescales for carrying out routine and emergency repairs*."

[28] This is not upheld. The Respondent had the policy for notifying repairs. The substance of the complaint is better expressed in terms of other standards.

"Standard 87. *If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents, if that is part of the service) and for giving contractors access to properties for emergency repairs*."

[29] The Respondent did not comply with this standard. The procedures for the emergency arrangements over the festive period in 2022/2023 fell way short of offering a credible and business-like service.

"Standard 88. *You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g.you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies*."

[30] The tenant was given the information, the problem was that the person who he spoke to on the emergency line was in Tenerife. This allegation is not upheld. The complaint is better expressed against other standards.

"Standard 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*."

[31] This standard was not complied with by the Respondent. The Respondent did not manage the necessary repairs in line with their agreement with the landlord.

"Standard 90. Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures."

[32] This standard was not complied with by the Respondent. The Respondent did not manage the necessary repairs promptly and appropriately.

"Standard 91. *You must inform the tenant of the action you intend to take on the repair and its likely timescale."*

[33] This standard was not complied with by the Respondent. The tenant was not informed at all about what the Respondent was going to do about the repair.

"Standard 93. *If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible*."

[34] This standard was not complied with by the Respondent. The Applicant was not told about the issue at all until around 20 January 2023.

"Standard 107. *You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act."*

[35] The Tribunal does not find that the Respondent has failed to comply with this standard. The detail of specific allegation is not clear and no evidence was presented regarding an alleged breach of this standard.

"Standard 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."*

[36] The Tribunal finds that the Respondent has not complied with this standard of the Code.

Decision

[28] Having made the above findings in fact and having considered the standards of the Code, the Tribunal finds that the Respondent has failed to comply with standards of the Code. The Tribunal thereafter considered the terms of a Letting Agent Enforcement Order.

[29] The Tribunal took the view that the Respondent failed to provide the Applicant the services that the Applicant paid for. The Tribunal therefore considered that the

correct means of redress was to order the Respondent to pay a sum of money to the Applicant as a means of making good for services paid for but not delivered.

[30] The Tribunal considered that conducting an overly forensic analysis of how this sum might be calculated seemed disproportionate. What the correct method of conducting any such exercise was not obvious in any event. The Tribunal considered that the Tribunal ought to award the Applicant a sum of money that seemed fair and reasonable and that was proportionate to the issues involved. Having done so, the Tribunal considered that the sum of £500.00 was appropriate. The Respondent will therefore be ordered to pay this sum to the Applicant under the terms of the Letting Agent Enforcement Order to be made.

APPEAL PROVISIONS

[31] 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.

[32] Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Andrew McLaughlin

Legal Member: 21 May 2024