



## **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 of the Housing (Scotland) Act 2014**

**Reference number: FTS/HPC/LA/23/2370**

#### **The Parties:**

**Mr Frank Damesi, 56 Spring Garden, First Floor, Aberdeen, AB25 1GN (“the Applicant”)**

**Stonehouse Lettings - Aberdeen, Stonehouse Lettings - Aberdeen, Neo House, Riverside Dr, Aberdeen, AB11 7DG; CO Stonehouse Lettings, Neospace, Riverside Drive, Aberdeen, AB11 7LH (“the Respondent”)**

**Tribunal Members: Alison Kelly (Legal Member) and Nick Allan (Ordinary Member)**

#### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with paragraphs 19, 108 and 112 of the Letting Agent Code of Practice, and that a Letting Agent Enforcement Order should be granted.

#### **Background**

1. On 18<sup>th</sup> July 2023 the Applicant lodged an application in terms of Section 48 of the Housing (Scotland) Act 2014 being an application by a tenant, landlord or Scottish Ministers to enforce the Letting Agent Code of Practice.
2. On 11<sup>th</sup> October 2023 the Respondents sent an email with a written response and several emails which they wished to refer to.

## **Case Management Discussion**

3. The first Case Management Discussion (“CMD”) took place on 20<sup>th</sup> November 2023 by teleconference. The Applicant represented himself. The Respondent was represented by Samantha Bell, their Senior Portfolio Manager.
4. The Chairperson confirmed the purposes of a CMD in terms of Rule 17 of the Rules.
5. The Chairperson outlined the scope of the application and told the Applicant that the Tribunal’s role was to determine if the Respondent had breached the paragraphs of the letting Agent Code of Practice he had referred to, and not to determine if compensation should be due, or the amount, if any, for the loss of his suitcases and contents.
6. The Tribunal’s intention was to work through the paragraphs of the Code of Practice which the Applicant was alleging were breached and seek each side’s position. However, it quickly became apparent that the documents were not sufficiently inventoried or labelled to allow everyone to find them quickly and identify which document was being referred to.
7. The Tribunal decided to postpone the Case Management Discussion to a date to be arranged, and issue Directions regarding the documentation that should be lodged and what written submissions were required.
8. On 21<sup>st</sup> December 2023 the Applicant lodged a submission in accordance with the Direction.
9. The Respondent did not lodge anything in response to the Direction.

## **Continued Case Management Discussion**

10. The continued Case Management Discussion (“CMD”) took place on 15<sup>th</sup> February 2024 by teleconference. The Applicant represented himself. The Respondent was represented by Miss Leah Low of DJ Alexander. She said that DJ Alexander and the Respondent had now merged. She is their Senior Portfolio Manager. She said that the previous CMD had been conducted by Samantha Bell but she was unwell. Miss Low had only picked up the case that morning.
11. Miss Low confirmed that the Direction, and the Applicant’s submission had both been received. She could not give a reason why the Direction had not been complied with.
12. The Tribunal went through the Applicant’s submission. The Tribunal noted that the Applicant had omitted paragraphs 18 and 26 of the Code, which had been in his original application, but had replaced them with paragraphs 19 and 21. The tribunal noted that these paragraphs had not previously been intimated to

the Respondents and the Applicant would need to address the Tribunal at the Hearing on why they should be allowed now.

13. Miss Low confirmed that the Respondent disputed that it had breached any of the paragraphs.

14. The Tribunal decided as there were matters in dispute to fix a hearing.

15. Disputed issues are:

- (a) Whether paragraphs 19 and 21 can be allowed to be introduced at this stage
- (b) If they are allowed, have they been breached by the Respondent
- (c) Have paragraphs 108, 112 and 130-132 been breached by the Respondent.

16. The parties were told to notify the Tribunal if they wished to call any witnesses, as per the Tribunal's rules.

### **Subsequent to CMD**

17. The Tribunal issued a further Direction to the Respondent. The Respondent lodged a short submission on 28<sup>th</sup> February 2024, and a longer one on 17<sup>th</sup> April 2024, dealing with all of the points in the Direction.

### **Hearing**

18. The Hearing took place on 3<sup>rd</sup> June 2024 by videoconference. The Applicant represented himself. The Respondent was represented by Raphael Bar of DJ Alexander.

19. The Applicant said that he intended to call a witness, his cousin, Sydney Gyesi, who was the original tenant of the property. Mr Bar said that he did not intend to call any witnesses.

20. The Tribunal noted that the Respondent accepted that it had assumed full responsibility and liability for acts and omissions of Stonehouse Lettings. Mr Bar also accepted that he was prepared to deal with allegations of breaches of paragraphs 19 and 21 as opposed to 18 and 26, he had tailored his Written Submissions accordingly.

21. The Tribunal decided to deal with the application by taking each paragraph of the Code in turn.

**19. You must not provide information that is deliberately or negligently misleading or false.**

23. The Applicant reiterated his position from his Written Submission. He said that he was instructed by the Property Manager, Harry Robinson, to leave his items in the wardrobe during Mr Gyesi's check out inventory procedure.
24. Mr Bar referred to the Respondent's Written Submission and the email chain. He referred to the email from Harry Robinson dated 26<sup>th</sup> October 2022. He said that he did not see and had not been able to find any subsequent email where it was actually agreed that the Applicant could leave his belongings in the flat.
25. In response to questions from the Tribunal he said that he could understand the suggestion that it could be inferred from the emails of Harry Robinson, subsequent to the items allegedly going missing, that agreement had been reached, but he posed that the apology given by Mr Robinson was not necessarily an admission that a mistake had been made. He said that in his job he did a lot of work investigating complaints in relation to young, inexperienced property managers. He would not normally agree to any type of arrangement such as this.
26. The Applicant said that Mr Gyesi had had conversations with Mr Robinson both before and after the email of 26<sup>th</sup> October 2022 and agreement was reached in those conversations.

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

27. The Applicant said that his position was as per his Written Submission. He said that Stonehouse failed to exercise reasonable care in handling his property after its removal from the apartment. He said that Stonehouse had acknowledged a breakdown in communication between them and their cleaners and had committed to compensation, an offer on which they later reneged. He said he was misled.
28. Mr Bar said that the Respondent's position was as per its Written Submission. He reiterated his point that there was no evidence of an agreement to leave the items in the property. The Written Submission states that it is not clear what the breakdown in communication was as there was no evidence of an agreement. The normal procedure for dealing with a compensation request would be for the claimant to submit full details and receipts if appropriate.

**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.**

29. The Applicant said that Stonehouse had failed to respond to enquiries and complaints. He referred to the email sent on his behalf on 27<sup>th</sup> February 2023 by Aberdeen Citizens Advice Bureau, the response received from Stonehouse advising that the complaint should be sent to their complaints email address, and to the email of 24<sup>th</sup> April 2023 to Stonehouse's complaints email address

and the reminder email sent by him direct to Paige Wilson on 19<sup>th</sup> May 2023. He had not received a reply.

30. Mr Bar said that he had checked with the IT provider and there was no record of the email coming to the complaints email address. If it had been received it would have been acknowledged and a copy of the complaints procedure sent. He did not know if the one sent direct to Paige Wilson had been received. He did say, in response to questions from the Tribunal, that DJ Alexander would have treated the email from Aberdeen CAB as a complaint and dealt with it as such.

**112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.**

31. The Applicant said that he was not provided with the complaints procedure despite it having been requested by Aberdeen CAB in the email of 27<sup>th</sup> April 2023.
32. Mr Bar conceded that DJ Alexander would have treated the email from Aberdeen CAB as a complaint and dealt with it as such.

**130. You must have, and maintain, adequate professional indemnity insurance that is appropriate for your agency's level of income and type of work unless you can demonstrate equivalent or greater protection through another body or membership organisation.**

**131. Cover must be on a full civil liability basis and if feasible, this insurance should be fully retroactive.**

**132. You must give further details (such as the name of your provider, your policy number and a summary of your policy) to them on request.**

33. These paragraphs were dealt with together. The Applicant said his position was in his Written Submission. He said therein that despite assurances of compensation by Harry Robinson his goods were disposed of without reparation. He said that Stonehouse, in collaboration with their insurance company failed to honour their commitment.
34. Mr Bar referred to the Respondent's Written Submission. It states that the relevant insurance was in place and that there had been no request for the insurer's details. He said that he had spoken to the insurance broker. They had no log of a claim ever having been made. He accepted that Mr Robinson's email of 12<sup>th</sup> January 2023 states that he had passed the receipts and invoices provided by the Applicant to his managing director and they passed it to the insurance agents. He had no explanation for the email, and

conceded that it was reasonable for the Applicant to assume that the matter had been passed to insurers.

### **Sydney Gyesi**

35. Mr Gyesi gave evidence. It had been hoped to take evidence from him at the outset of the Hearing, but he was not able to join the call at that point.
36. Mr Gyesi spoke to the email of 7<sup>th</sup> October 2022 between him and Harry Robinson. He said that he had had phone conversations with Mr Robinson about the Applicant taking over the tenancy and his possessions being left in the flat during handover. He discussed handing in the keys with Mr Robinson and informed him that the Applicant items were still in the flat. He accepted that there was nothing in writing to confirm agreement, but reiterated that it had been agreed in the telephone calls.

### **Findings In Fact**

- i. Sydney Gyesi was the tenant of the flat at 150F Hutcheson Street, Aberdeen;
- ii. Stonehouse Sales and Lettings were the letting agent;
- iii. DJ Alexander have taken over Stonehouse and are liable for their actions;
- iv. Sydney Gyesi gave notice to terminate the tenancy;
- v. Sydney Gyesi asked if the Applicant could take on the tenancy;
- vi. Sydney Gyesi asked Harry Robinson, by email and by telephone call if the Applicant could leave items in the flat during the handover process;
- vii. Harry Robinson agreed by telephone call that items could be left;
- viii. Harry Robinson sent an email to Sydney Gyesi and the Applicant dated 23<sup>rd</sup> November 2022 apologising for the disposal of items during the handover process;
- ix. Harry Robinson sent an email to the Applicant dated 12<sup>th</sup> January 2023 stating that matters had been passed to the insurers;
- x. Aberdeen CAB sent an email dated 27<sup>th</sup> February 2023 detailing the complaint, mentioning the insurers and asking for a copy of the Complaints Procedure to be forwarded to the Applicant;
- xi. Stonehouse did not send a copy of the Complaints Procedure;
- xii. Stonehouse responded to CAB's email on 6<sup>th</sup> April 2023 asking for the complaint to be sent to Stonehouse's complaints email address;
- xiii. The Applicant sent a complaint to Stonehouse's complaints email address on 25<sup>th</sup> April 2023;
- xiv. The Applicant sent a reminder to Paige Wilson's email address on 19<sup>th</sup> May 2023;
- xv. No response was received to the Applicant's complaint.

### **Reasons For Decision**

37. The Tribunal found both the Applicant and Mr Gyesi to be credible and reliable witnesses. The Tribunal also appreciated that Mr Bar was dealing with a matter which had taken place before DJ Alexander took over Stonehouse.

38. With regard to paragraph 19 the Tribunal considered that Mr Robinson had provided information to the Applicant and Mr Gyesi which was deliberately or negligently misleading or false. Mr Robinson's emails were poorly worded and open to misinterpretation. In particular he said that the matter had been passed to insurers when this was clearly not the case.
39. With regard to paragraph 21, the Tribunal did not consider that it applied to the situation as the Applicant was neither a landlord, nor was he the tenant of the property at the time the agreement was reached.
40. With regard to paragraph 108 the Tribunal considered that there had been a breach. The Applicant had clearly made a complaint, both via the email from Cab and by his own email and reminder email. Mr Bar conceded that DJ Alexander would have treated the CAB email as a complaint. The Tribunal considered it somewhat disingenuous of Stonehouse to request that what would be essentially the same information be sent to a different email address.
41. With regard to paragraph 112 the Tribunal considered that there had been a breach. The Applicant had clearly made a request for the Complaints Procedure, both via the email from CAB and by his own email and reminder email, and no copy had been sent.
42. With regard to paragraphs 130 to 132 the Tribunal considered that there had been no breach. Insurance cover was in place. The Applicant's complaint does not fall within these paragraphs.

## **Disposal**

43. Having determined that the Respondent has failed to comply with the Code, the Tribunal is required by section 48(6) of the 2014 Act to make a Letting Agent Enforcement Order requiring the Respondent to take such steps as the Tribunal considers necessary to rectify the failure ("the LAEO").
44. 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."
45. In respect of the breaches of paragraphs 19, 108 and 112 the Tribunal considers that a monetary penalty of £250 is appropriate given the stress and inconvenience caused to the Applicant.
46. The Tribunal also considers that the correct course of action for Stonehouse would have been to have passed the claim to the Respondent's insurance company and the Tribunal orders the Respondent to do so within 28 days.

47. The Decision is unanimous.

### **Appeal**

**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**

**25 June 2024**

**Date**