



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

Chamber Ref: FTS/HPC/LA/24/0573

Re: Property at Flat 2, 7 Bridge Street, Stranraer, DG9 7JA (“the Property”)

Parties:

Mr Pye Edgerton, Flat 2, 7 Bridge Street, Stranraer, DG9 7JA (“the Applicant”)

Galloway & Ayrshire Properties (GAP) , 28 Victoria Street, Newton Stewart, DG8 6BT (“the Respondent”)

Tribunal Member:

Nicola Irvine (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Respondent was not in breach of the Letting Agent Code of Practice and therefore made no order.

Background

1. An application dated 5 February 2024 was submitted in terms of Rule 95 (Application by a tenant, landlord or Scottish Ministers to enforce the Letting Agent Code of Practice) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the 2017 Rules”).
2. The Applicant sought an order against the Respondent arising out of an alleged failure to comply with The Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code”). In particular, the Applicant stated that the Respondent had failed to comply with the following provisions of the Code:-
 - i) Paragraph 17 of Section 2 (Overarching standards of practice)

- ii) Paragraph 19 of Section 2 (Overarching standards of practice)
 - iii) Paragraph 26 of Section 2 (Overarching standards of practice)
 - iv) Paragraph 28 of Section 2 (Overarching standards of practice)
 - v) Paragraph 108 of Section 7 (Communications and resolving complaints)
 - vi) Paragraph 112 of Section 7 (Communications and resolving complaints)
3. In support of his application, the Applicant submitted a copy of postal and email correspondence between the parties.
 4. By decision dated 10 March 2024, a Convenor of the Housing and Property Chamber having delegated powers of the Chamber President, referred the application under Rule 9 of the Rules to a Case Management Discussion (“CMD”).
 5. The Tribunal issued letters to the parties dated 17 April 2024 advising them that a CMD had been assigned for 8 August 2024 at 2pm. The parties were provided with the conference call details to join the CMD. No written representations were lodged on behalf of the Respondent.

The Case management discussion – 8 August 2024

6. The CMD proceeded by conference call. The Applicant joined and represented himself. The Respondent was represented by Mr Euan Alexander. The Tribunal explained the purpose of the CMD. The Respondent’s representative explained at the outset that he did not accept that there has been a breach of the Code. The Tribunal noted the position of both parties in relation to the relevant sections of the Code and a summary of their positions is summarised below. The summary is not a verbatim account of what was said at the CMD but rather an outline of the matters relevant to the Tribunal’s consideration of the application. After parties set out their position, they each confirmed that they had no further evidence they wished the Tribunal to consider. The Tribunal adjourned the CMD briefly to allow the Tribunal member to discuss the submissions made. The parties were advised that a written decision with a statement of reasons would be issued in due course.

The Applicant’s position

7. The Applicant provided his submissions on the relevant paragraphs of the Code as follows:

Paragraph 17

8. The Respondent’s letter of 15 December 2022 is a complete lie; it is not transparent or truthful. The Applicant has never spoken to the tradesman in question. It is an outrageous letter to be issued without any prior warning and

concerns matters the Applicant knows nothing about. The letter is not honest and fair.

Paragraph 19

9. The Respondent's letter of 15 December 2022 is deliberately misleading and false.

Paragraph 26

10. The Applicant issued emails to the Respondent on 12 October and 6 November 2023. Although he received a response to the email of 12 October 2023, it was not a sufficient response.

Paragraph 28

11. The letter from the Respondent of 15 December 2022 was very intimidating. In particular, the terms of paragraph 4 of the letter are intimidating. The Applicant would never have refused access for works to be carried out in his flat.

Paragraph 108

12. Although the Applicant received responses from the Respondent, the Respondent has not dealt with his complaint.

Paragraph 112

13. The Applicant did not ask the Respondent for details of the complaints procedure.
14. The Applicant would like a response from the Respondent in relation to the issues raised by him about the letter of 15 December 2022. Although the email from the Respondent dated 19 February 2024 mentions the word apology, it does not address the threats made in the letter of 15 December 2022.

The Respondent's position

Paragraph 17

15. The terms of the letter of 15 December 2022 are fair. The Respondent's representative was reporting the information that had been given to him. He has used the same tradesman for many properties over many years and has never had any adverse issues arising. He does not know what offence he has caused in issuing the letter to the Applicant.

Paragraph 19

16. The Respondent's representative was not present when the tradesman attended the property, so the Respondent proceeded on the basis of the information given by a third party. The Respondent did not provide information which is deliberately misleading and false.

Paragraph 26

17. The Respondent answered the points raised by the Applicant. The Applicant has asked for contact details for the landlords on a number of occasions but the Respondent has been advised that the landlords do not wish any direct contact with tenants.

Paragraph 28

18. There is nothing intimidating about the letter of 15 December 2022.

Paragraph 108

19. The Respondent has answered the Applicant's complaint by email.

Paragraph 112

20. The Respondent has a complaints procedure but the Applicant has never asked for that.

Reasons for Decision

21. Having considered the submissions and taking account of the terms of the Code, the Tribunal determined that the Respondent did not breach the Code. There was no factual dispute between the parties about the documentary evidence lodged. However, the parties disagreed over the interpretation of the correspondence which had passed between them. The Tribunal formed the view that there was no requirement to assign a Hearing.

22. The genesis of the Applicant's complaint is the letter dated 15 December 2022. Although there was subsequent email correspondence, that largely related to the letter of 15 December 2022. The Tribunal sets out below the reason for the decision, taking each of the relevant paragraphs of the Code in turn.

Paragraph 17

23. There was no evidence before the Tribunal which supports the contention that the Respondent was anything other than honest, open and transparent with the Applicant. The letter reported that the Respondent had received "official complaints from our tradesmen" and that the "workmen are reluctant to return due to the reception they receive when carrying out repairs." The Tribunal explained during the CMD that it cannot determine the veracity of the "official complaints" and that the Tribunal's function is to determine whether the Respondent has breached the Code.

Paragraph 19

24. There was no evidence before the Tribunal that the Respondent had provided information that was deliberately or negligently misleading or false. Whilst the Applicant clearly disputed that he had any interaction with the tradesmen which justified a complaint, there was no information to support the contention that the Respondent had breached this paragraph of the Code.

Paragraph 26

25. The Tribunal had no information about the Respondent's written agreement. Given the terms of the correspondence produced, it was clear that not all correspondence had been produced. For example, the Applicant sent an email to the Respondent's representative on 12 October 2023, the first paragraph of which states "I received your email this morning and I note the contents therein." The Tribunal has not had sight of the email from the Respondent which was referred to in the email of 12 October 2023. The Respondent's representative responded to the email of 12 October 2023 by email of 17 October 2023. Although the Respondent's representative did not answer every point in the Applicant's email, the Respondent cannot adjudicate on the dispute about whether the tradesmen's complaint about the Applicant was true or justified. The Tribunal considered that the Respondent responded to the Applicant's complaint within a reasonable timescale and therefore found that there was no breach of this paragraph of the Code.

Paragraph 28

26. The Applicant relied on the terms of the letter of 15 December 2022 in relation to this paragraph. The Tribunal disagreed with the Applicant about the interpretation of the letter. The Tribunal considers that the letter was not abusive, intimidating or threatening in its terms. The Tribunal concluded that there was no breach of this paragraph of the Code.

Paragraph 108

27. As set out in paragraph 25 of this decision, the Tribunal considered that the Respondent responded to the Applicant's enquiries and complaints within a reasonable timescale. There was no evidence supporting a breach of this paragraph.

Paragraph 112

28. The Respondent's representative explained that the Respondent has a complaints procedure. The Applicant accepted that he had not asked for the Respondent's complaints procedure and the Tribunal had no information about the complaints procedure. The Tribunal found no breach of this paragraph.

Legal Member

____ 8 August 2024
Date