



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 50 of the Housing (Scotland) Act 2014

Reference number: FTS/HPC/LA/21/2306

The Parties:

Mr Charles Simpson, 8 Priory Way, Beauly, IV4 7GF (“the Applicant”)

Belvoir (A&A Inverness), 18 Queensgate, Inverness, IV1 1DJ (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

- Background

A Letting Agent Enforcement Order was made by the Tribunal in this case on 10 April 2024 (‘the LAEO’) and was sent to the parties on the same day. It required the Respondent to make a clear statement in a prominent place on its website to the effect that it is subject to the Letting Agents Code of Practice, within four weeks of the order. It also required the Respondent to send a letter to the Applicant and his wife apologizing for making an intimidatory statement in its email of 29 June 2021 to the latter, and copy the same to the Tribunal, within two weeks. The Tribunal is now undertaking a review of compliance with that order in terms of s.50(1) of the Housing (Scotland) Act 2014 (‘the Act’).

- Findings in Fact

1. The Respondent's website was operated by the franchisor, 'Belvoir'.
2. The Respondent was not able to require its franchisor to change the terms of its website, since the granting of the LAEO, as it did not operate the franchise, 'Belvoir,' any longer.
3. The Respondent could have sent the letter of apology required within the time-limit, or subsequently, but has chosen not to do so.
4. The Respondent has not complied with the terms of the LAEO.

- Decision and Reasons

5. The process for reviewing compliance with an LAEO is set out at s.50 of the Housing (Scotland) Act 2014:

“50 Failure to comply with enforcement order

(1) The First-tier Tribunal may, after the period within which a letting agent enforcement order requires steps to be taken, review whether the letting agent has complied with the order.

(2) If the Tribunal decides that the letting agent has failed to comply with the letting agent enforcement order it must notify the Scottish Ministers of that failure.

(3) But the Tribunal may not make such a decision if it is satisfied that the letting agent has a reasonable excuse for failing to comply.”

6. The LAEO has not been complied with. In regard to the first requirement set out in it, the Tribunal is satisfied that there is a reasonable excuse that failure,

insofar as the Respondent is no longer able to make changes to the website of the franchisor. In regard to the second, the Tribunal does not consider there is such an excuse. The Respondent wishes to rely on the assertion that it is no longer operating as a letting agent. That may be the case; but it remains subject to the terms of the LAEO and is required to make amends for its failures when it was so operating. There are potential criminal penalties for failure to comply, so it is not only a question of a company's registration that is of relevance.

7. Having found that, in relation to the second requirement, the Respondent has failed to comply with the LAEO, without reasonable excuse, the Tribunal must notify the matter to the Scottish Ministers, in terms of s.50(2) of the Act. It will therefore do so.

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.

06 August 2024

Legal Member/Chair

Date