

# Housing and Property Chamber First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 48 of the Housing (Scotland) Act 2014 ('The Act').**

**Chamber Ref:FTS/HPC/LA/23/3573**

**87 Maitland Hog Lane, Kirkliston, Edinburgh, EH29 9DU ('the Property')**

**The Parties:**

**Pearl MacLeod ('the Applicant')**

**Lothian Homes Sales and Letting ('the Respondents')**

**Tribunal members:**

**Jacqui Taylor (Chairperson) and Andrew McFarlane (Ordinary Member).**

## **Background**

- 1.** The Applicant is heritable proprietor and Landlord of the Property 87 Maitland Hog Lane, Kirkliston, Edinburgh, EH29 9DU, along with her husband Murdo MacLeod.
- 2.** The Respondents are the Letting Agent appointed by the Applicant to manage the letting of the Property.
- 3.** Lothian Homes Sales and Letting are registered Letting Agents.
- 4.** By application dated 29<sup>th</sup> September 2023 the Applicant applied to the Tribunal for a determination that the Respondents had failed to comply with the following Sections and Paragraphs of the Letting Agent Code of Practice ('The Code'):

Section 4: Lettings

Paragraph 62

Section 5: Management and Maintenance

Paragraphs 73, 74 and 85

## Section 6: Ending the Tenancy

### Paragraph 102

5. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 1<sup>st</sup> February 2024 he intimated that he had decided to refer the application (which application paperwork comprises documents received between 29<sup>th</sup> September 2023 and 22<sup>nd</sup> January 2024) to a Tribunal.

6. The Applicant had sent the Respondents notification of her complaints.

### **7. The parties Written Representations.**

#### **7.1 The Applicant's Written Representations.**

The Applicant had advised the Letting Agent in April 2022 that she would be returning to occupy the Property in September 2022, which gave the Letting Agents plenty of time to give the tenants notice to leave. The Tenants should have vacated the Property by the end of June 2022. The Letting Agents served the Tenants with the eviction application in July 2022.

The Applicant had to stay in temporary accommodation for three weeks when she returned to the UK from Australia in September 2022.

On entering the Property she was greeted with an over powering smell of pet and human urine throughout the Property. It was extremely filthy and uninhabitable. The hall carpet was wet, smelly and sticky underfoot. The living room, dining room, stair and bedroom carpets were badly stained and had to be lifted right away. There was cat spray evident on most of the walls. Two laminated bedroom floors had glue and resin damage which had hardened onto the floor. A dog had chewed the stair, the banister, a door surround and kitchen units. The two bedroom and living room walls had had glitter applied to them which is very hard to cover up before redecorating. The blinds throughout the Property had been bent and broken.

She arranged for the carpets and blinds in the Property and the Tenants belongings to be removed by a company called Junk-it. She also arranged for Paterson Cleaning Company to clean the house. It took them 28 person hours in total to clean the Property. They cleaned all of the rooms except for the kitchen. All of the kitchen units had to be replaced due to dog chewing. The kitchen cupboards were black and extremely dirty and cat food and cat excrement had been left on the work surfaces.

The smoke detectors were covered in dust and cobwebs.

She had asked the Letting Agents for photographs of inspections but was advised that they could not be provided due to data protection provisions.

Two exit doors (front and back were damaged). The front door had been forced and some of the facing was cracked. The back door had a cracked panel which the

police had advised had been deliberately damaged. The window frames had also been damaged.

She considered that the Letting Agent had failed to ensure that the Property was returned in the state the Tenants had received it, allowing for normal wear and tear.

The Property had been redecorated by the Agent's decorators before the last tenancy and it had been in a good condition at the start of the tenancy.

She had incurred significant expense to repair and restore the Property. She had replaced the carpets, the kitchen and had some redecoration carried out. There is further work they are undertaking.

Expenditure to date has been:

Cleaning	£525
Removal of damaged items	£985
New carpets	£2,613
New Blinds	£600
New Kitchen	£4,470
Redecoration	<u>£2,000</u>
Total	£11,193

She is not seeking full recompense for all of these costs but believes the Letting Agency have failed to provide the service they offered and due to their negligence in not inspecting the Property regularly, or managing the tenancy effectively, they are liable to compensate her for an element of these costs.

Her insurance company made a payment of £2,221 in respect of the claim they made under the Landlord's policy.

## **7.2 The Respondents' Written Representations.**

The Respondents submitted a time line:

January 2017 – Lothian Homes contacted by Pearl MacLeod as she was apparently having issues with her current management company from March 2016 – December 2016 and was requiring advice / assistance. The Management company were CMC Property, Edinburgh and Lothian Homes assisted until April 2017.

March 2017 – Lothian Homes were approached by Kelly Malone / Steven Fair who were the current tenants from another property they managed at 16 King Edwards Way, Kirkliston. They wanted to rent Maitland Hog Lane and knew the owners. They had previously vetted these tenants prior to moving into a property with them and

had a reference from Edinburgh Council stating that there were no issues. There were no rent arrears and no anti-social behaviour recorded.

29 July 2015 – 20 March 2017 – They managed the previous property the tenants had leased. The rent had been paid direct to the Letting Agents at £808 pcm and the deposit was held with Safe Deposits Scotland. There had been no rent arrears during or at the end of the tenancy as the rent had been fully covered by housing benefit. Deposit deductions following the exit inspections amounted to £245 for ripped vinyl / damaged work top. The balance of £563 was transferred to 89 Maitland Hog Lane with tenants agreeing to top up the deposit to £808 in terms of the short assured tenancy agreement.

20 March 2017 – 25 August 2022 (confirmed by Council) duration of tenancy of 89 Maitland Hog Lane no forwarding address given due to data protection. No forwarding address given by Kelly / Steven. Rent @ £1200 paid direct to Lothian Homes and increased to £1220 from 20 May 2019 which was paid direct to them from Council. Last rent paid to Pearl / Murdo covering period 1-31 August 2022 which was confirmed as last payment due to tenants as they had requested any final payment be made direct to them. Deposit released to Pearl / Murdo of £653. Tenants did top up amount transferred initially by £100 but failed to top up to the agreed £808 leaving a shortfall of £155.

13 November 2018 – email from Pearl thanking Lothian Homes for taking pictures inside the Property and of the garden.

11 January 2019 – e-mail response from Pearl to Lothian Homes: 'Hi Isla It was lovely having a wee chat with you yesterday. I am just writing to confirm that Kelly can get rid of the wardrobes as long as she doesn't dump them or leave them out in the back garden as it looks bad enough at the moment and she is told she takes her wardrobes away with her when she leaves. We are happy for you to get Joe in to reseal the shower down the stairs or whatever he thinks is best and happy for you to get your handy man in to fix the light fitting. I am not bothered about the wardrobes as they are 25 years old and been to Australia twice so I think we've had our money's worth. The door might not have fallen off if she hadn't had stuff hanging on them but like I say we are not bothered just noting that fact. Can we ask you at the next house inspection to take photos again of all the rooms and flooring in the kitchen and bathrooms etc. thank you. We are happy to replace the carpet in a year or two but she has that dog which we think won't help matters as we are not spending money on a carpet to get spoilt by the dog she was only meant to be looking after it's really too big for the house and not good for the garden but we will cross that bridge when we come to it ... Hope you have a lovely weekend end.'

15 December 2021 – E-mail from Pearl as per text below: 'Good Morning Isla, I hope you have recovered from your visit to 87. We have read over your email and are assuming that Kelly is moving out as she has told you she needs to give you two

months notice in writing. She has to repaint all the rooms to the colour they were when she moved in and get a professional carpet cleaner in to clean the carpets since she had her dog and now has had another one in the house. We will probably throw the carpets out but that's is not the point she signed the term of tenancy so let's keep her to them as much as we can ...She'll be getting no bond back with all that's got to be done and all the expense she has caused us with neglecting things and damage. We were just wondering if Steven was in his bed and that is why she got abusive with you which is still no excuse to speak to you as she did. Maybe Steven was in the kids room sleeping who knows. I have had no contact with Kelly since the 3rd August 2019 so I think she is trying to stir things up between us Isla, I am afraid we do not trust her and believe anything she says as she is a compulsive liar and has been found out a few times. You do what you can do with the tribunal and anything else that you can think of and we will put anything in writing for you and Lothian Homes. I will try and give you a call sometime on Thursday so you can fill us in with any more developments but if you are not going to be around do not worry as the time difference is now 8 hrs ahead of the UK. Hope you have a good week.'

19 March 2022 – email from Pearl to Lothian Homes advising of a puppy in property and requesting a pet bond and advising garden is a mess.

14 April 2022 – notice to quit issued at the request of Pearl with a leave date on notice by 20 June 2022. Notice received confirmation from Kelly / Steven 20 April 2022.

17 June 2022 – last e-mailed received from Kelly Malone advising she has not been rehomed by Council as yet and advised to keep Lothian Homes updated. Pearl e-mailed same day with an update on the above.

21 June 2022 – application completed / submitted to FTT at the request of Pearl. Section 11 e-mailed and confirmed to Council advising of potential homelessness of tenants.

27 June 2022 – application confirmed as received by FTT.

25 July 2022 – e-mail send to Pearl / Murdo requesting confirmation that Lothian Homes can represent them at the FTT. E-mail confirmation received.

1 September 2022 – e-mail received from Revenues / Benefits advising Kelly / Steven had been suspended – e-mail sent to Pearl. 5 September 2022 – e-mail from FTT advising case had been accepted and we will be contacted with further information.

6 September 2022 – e-mail from Pearl to Lothian Homes 22:48pm advising a window had been left open in the house and reply sent to her on 7<sup>th</sup>.

7th September 2022 – e-mail from Pearl: I would appreciate if you told her to close all the windows, I really can't understand how she left them open in the first place.

The kitchen window is wide open. I know she is be responsible for any damage but really, you would get no money from her as her bond is well gone and she has not even finished paying that and she is £40 in debit with rent money and it would and will be such a hassle to get any money from her. I guess she is still owing us rent money for the time she is hanging on to the keys that will be another drama with her. I guess you do a final walk-through inspection with her present when she hands over the keys or you'll never see her again. I fully understand you can't change the locks until she completely moves out and hands the keys over. I know we are all glad for her just to be moving out but she is not walking away leaving debit behind her and us out of pocket. I know it won't be easy for you but she needs to face up to her responsibilities and have a bit of common sense.'

19 September 2022 – e-mail from Pearl advising overflow is flowing at back of property and could we go check in case there is water inside.

22 September 2022 – email from sheriff officers advising they couldn't execute service on tenants for FTT.

30 September 2022 – e-mail confirming that Pearl's agreed to Isla Maree (Letting Agent) to dispose of tenants belongings left in property.

14 October 2022 – e-mail from FTT confirming case conference has been set for 10am on 16 November 2022

14 October 2022 – e-mail sent to FTT with a withdrawal request which was responded to confirm by the FTT.

September – October 2022 – various e-mails sent to Revenues / Benefits from Lothian Homes to see if we can in any way have rent paid up to and including 30 September 2022 but response was no as final payment was paid to Kelly / Steven at their request.

19 October 2022 – e-mail from Safe Deposits advising they are releasing the £653 which was and full payment sent to Pearl / Murdo.

October – November 2022 – Lothian Homes sent all required information to Alan Boswell Insurance at the request of Pearl / Murdo. 28 October 2022 – e-mail from Pearl requesting Lothian Homes complaints procedure which was sent via e-mail.

30 October 2022 – e-mail from Pearl confirming she received complaints procedure and deposit of £653.

November 2022 – Lothian Homes sent to Sedgwick Insurance all information requested as per Pearl / Murdo

11 December 2022 – first complaint received to Lothian Homes via e-mail from Pearl Murdo McLeod

8 January 2023 – e-mail sent from Lothian Homes to Pearl Murdo confirming complaint and timeline for full response.

9 January 2023 – full response to complaint sent via e-mail to Pearl / Murdo answering each point in full. Sent separately to FTT as evidence of dealing with complaint as per procedure.

19 January 2023 – e-mail response from Pearl advising: Thank you for answering our email regarding our complaint and your offer of compensation which is highly unsatisfactory considering all the damage done to our property. We have taken legal advice so we will move forward regarding the case.

April – May 2023 – various e-mail between Lothian Homes / Pearl with requests for more information which was sent via e-mail to her at her request.

22 August 2023 – e-mail from Pearl requesting her management agreement with Lothian Homes which was e-mailed by return. Request for Lothian Homes to agree an appropriate level of a settlement with a list of damages / costs.

1 September 2023 – e-mail to Pearl advising her Lothian Homes had treated the e-mail received on 22 August 2023 as the next stage of the complaints procedure and sending her requested information. Sent separately to FTT as evidence of dealing with complaint as per procedure.

2 September 2023 – e-mail from Isla Maree with all property inspections attached. Sent separately to FTT as evidence of inspection visits being carried out by Lothian Homes Agent.

14 September 2023 – e-mail received from Pearl with LA code of practice notification letter to Lothian Homes.

30 October 2023 – written confirmation from Agent to Lothian Homes regarding discussions between tenants / owners regarding dogs that were found in the property and action taken during the tenancy. Sent separately to FTT as evidence of action being carried out by Lothian Homes Agent.

### **Respondents' Written Representations dated 9<sup>th</sup> April 2024**

Documents provided:

- Time line from start to finish of managing the Property
- Conclusion from Lothian Homes on managing the Property
- Statement from Isla Maree Case (sic) – Letting Agent managing the Property from beginning to end of process.

She was with Lothian Homes for 10 years but has since emigrated and left the company at end of December 2023 due to husband being relocated to another country. She has sent a written statement to Lothian Homes.

- Statement from Samantha Fraser, who accompanied Isla Maree when there had been a report from the Landlords of the windows being left open by Tenants. This occurred a few days prior to Isla Maree meeting with the Landlords out of hours at their request.
- Copy of the abandonment letter sent to Property to ensure that the Tenants had left.
- Invoice from October 2019 confirming that the kitchen drawers could not be repaired due to age of kitchen.
- Estimate for works required from March 2020 including works to kitchen at that time. These works were never carried out.
- Exit report – October 2022
- Emails between Lothian Homes / landlords / tenants between November 2018 and September 2022 keeping everyone updated on any issues –They have over 500 e-mails for this one Property.
- E-mails between Lothian Homes to Landlords showing the complaints process was adhered to and all information requested from Landlord was provided.
- The good will offer from Lothian Homes. They had discussed with cleaning companies how much they would take to do a deep clean and carpets in a property of this size.

The costs would be the following: Deep clean: £250 Cooker clean: £60 Carpet clean: £160

They cannot be held responsible for any other costs as the Applicant had been made aware over the years of any issues within the Property. They attached the life span document published by Safe Deposits Scotland showing the depreciation on the products within the Property given the heavy traffic of this large family for the number of years they lived within the property along with the time it was rented by previous agency. They offered settlement of £607 plus cleaning costs totaling £1077. They advised that the Landlord had rejected the offer.

- What's app messages between Lothian Homes and the Applicant.
- A screenshot the Tenant had sent showing that the Applicant had been posting on social media about the Tenants, which was the final step for the relationship breakdown between Tenants and the Landlords given that they were very good friends prior to 87 Maitland Hog Lane.



## **8. The First Case Management Discussion.**

An oral Case Management Discussion ('CMD') by conference call took place in respect of the application on 29<sup>th</sup> April 2024 at 2pm.

The Applicant attended along with her husband Murdo Macleod.

The Respondents were represented by Mrs Diane Graham.

### **8.1. Copy of lease agreement.**

At the start of the First CMD Mrs Graham sent a copy of the lease agreement to the Tribunal administration who forwarded a copy to the Tribunal members and Mrs MacLeod. Mrs MacLeod confirmed that the lease agreement was correct and she did not need additional time to consider it.

### **8.2 Mrs MacLeod and Mrs Graham confirmed the following factual details:**

8.2.1 Pearl MacLeod is owner of the Property, 87 Maitland Hog Lane, Kirkliston, Edinburgh, EH29 9DU, along with her husband Murdo MacLeod.

8.2.2 Mr and Mrs MacLeod purchased the Property in 2001 and they first rented out the Property in 2015.

8.2.3 The Property is a semi detached property. The accommodation includes lounge, three bedrooms, dining room (sometimes used as a fourth bedroom), kitchen, bathroom and hall.

8.2.4 The Respondents are the Letting Agent appointed by the Applicant to manage the letting of the Property.

8.2.5 The Respondents first acted for the Applicant in managing the Property in January 2017.

8.2.6 Kelly Malone and Steven Fair had leased the Property from 20<sup>th</sup> March 2017 to 25<sup>th</sup> August 2022.

8.2.7 The rent was £1220 per month from 20<sup>th</sup> May 2019.

8.2.8 The Tenant had paid a deposit of £653 which had been lodged with Safe Deposit Scotland.

8.2.9 Safe Deposit Scotland returned the deposit to the Landlord in full.

8.2.10 The Respondents prepared the lease in favour of the Tenants Kelly Malone and Steven Fair.

8.2.11 The lease was a short assured tenancy.

### **8.3 The parties' oral representations at the First CMD are as follows:**

#### **Section 4: Lettings**

**Paragraph 62:** If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the landlord; type; length of tenancy where it is a short assured tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on taking care of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number.

#### **Applicant's Oral Representations:**

Mrs MacLeod explained that her complaint is about the very poor condition of the Property at the end of the lease. If the Letting Agents had been properly carrying out inspections throughout the tenancy they would have been advised of the poor condition earlier.

#### **The Respondents' Oral Representations:**

Mrs Graham explained that they had managed the previous property the tenants had leased and there had been no difficulties apart from damage that had been caused to a kitchen worktop. Mrs MacLeod had been friends with the Tenants but they had fallen out. The lease states that the Tenants must keep the Property in good order. The exit Inventory explains the actions to be taken by the Tenants at the end of the lease.

#### **Section 5: Management and Maintenance**

**Paragraph 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.

#### **Applicant's Oral Representations:**

Mrs MacLeod explained that the Letting Agent had not properly inspected the Property throughout the tenancy. The smoke detector was covered in cobwebs. The condition of the bathroom was a disgrace.

### **The Respondents' Oral Representations:**

Mrs Graham confirmed that the inspections were carried out every four months. She confirmed that she would be able to provide copies of the reinspection reports.

**Paragraph 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.**

### **Applicant's Oral Representations:**

Mrs MacLeod explained that her complaint is that the Letting Agent did not provide photographic evidence of the condition of the Property before and after repairs were carried out. In connection with the quotation from Tommy's Handyman Services she explained that she did not instruct the work to proceed as she obtained a cheaper quote from her own contractor. She confirmed that the kitchen was small. There were a total of 6 wall units and four bottom units plus the sink unit.

### **The Respondents' Oral Representations:**

Mrs Graham advised that they have copies of over 500 emails that were sent to Mrs McLeod during the tenancy providing her with updates. There had been very little maintenance carried out during the term of the tenancy. She referred to an estimate for repairs to be carried out to the kitchen dated 28<sup>th</sup> October 2019 from Tommy's Handyman Services which details the repairs required to the kitchen.

### **Paragraph 85:**

**If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing; annual gas safety inspections; Legionella risk assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.**

### **Applicant's Oral Representations:**

Mrs MacLeod confirmed that the safety checks had been carried out and advised that she wished to withdraw this complaint.

## **Section 6: Ending the Tenancy**

### **Paragraph 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.**

**Applicant's Oral Representations:**

Mrs MacLeod questioned the exit report as she knew that the Letting Agent had been unable to gain access on 22<sup>nd</sup> September 2022. She had not initially received the report from the Letting Agent. The Letting Agent had sent it to her insurance company. She only received a copy of the exit report last year.

She confirmed that the floor coverings had been fitted new in 2003. The kitchen was a Magnet and Southern's kitchen and it had been installed before she bought the Property. The blinds had been fitted in 2004 and the downstairs blinds (other than the blinds in the living room) were bent.

**The Respondents' Oral Representations:**

Mrs Graham advised that she only became aware that the Tenants had vacated the Property when the Housing Benefit payments were stopped on 1<sup>st</sup> September 2022. Mrs MacLeod had reported to the Letting Agents that the window of the Property was open. The property manager had called at the Property on 22<sup>nd</sup> September 2022 to close the windows. They could see that the Property had been abandoned and consequently they sought advice from the Scottish Association of Landlords and then arranged to meet Mrs MacLeod at the Property following confirmation from the Scottish Association of Landlords that this was in order. The property manager returned to the Property to prepare the exit report and found the Mrs MacLeod was already carrying out the required work.

**8.3 Outcome of the First Case Management Discussion.**

The Tribunal continued the Case Management Discussion (i) to enable Mrs Graham to send the interim inspection reports to the Tribunal and (ii) to enable Mrs MacLeod to send the Tribunal written representations detailing the sums she is seeking taking account of the age of the kitchen units, the age of the blinds and the age of the carpets; the fact that the Tenant's are not responsible for wear and tear to the fittings and fitments in the Property; the fact that the Property had not been decorated since 2017; the sums she had received from the insurance company and also the return of the deposit.

**9. Additional Written Representations.**

**9.1 Additional Written Representations by the Applicant.**

The Applicant provided the Tribunal with additional written representations dated May 2024. She advised that she is not disputing the wear and tear of the Property but stated that the additional malicious damages and neglect had been caused by the Tenant without the Letting Agent noticing it as it had occurred over a period of time. She agreed to deduct 50% for wear and tear and reduced her claim to £4,676.50 which does not include the cost incurred for accommodation of £1306.00. She provided a large number of photographs of the Property.

## **9.2 Additional Written Representations by the Respondent.**

The Respondent provided copies of the inspection reports that had been prepared throughout the tenancy.

2017: 3 reports.

2018: 3 reports.

2019: 3 reports.

2020: 2 reports

2021: 1 full report and one partial report.

2022: 1 report.

They also provided a timeline of events throughout the tenancy.

## **10. The Second Case Management Discussion**

An oral Case Management Discussion ('CMD') by conference call took place in respect of the application on 4<sup>th</sup> September 2024 at 10.00 am.

The Applicant attended along with her husband Murdo Macleod.

The Respondents were represented by Mrs Diane Graham.

### **10.1 The parties' oral representations at the second CMD are as follows:**

#### **Section 4: Lettings**

**Paragraph 62: If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the landlord; type; length of tenancy where it is a short assured tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on taking care of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number.**

#### **Applicant's Oral Representations:**

Mrs MacLeod advised that she had nothing to add to the details already provided.

#### **The Respondents' Oral Representations:**

Mrs Graham advised that she had nothing to add to the details already provided.

#### **Section 5: Management and Maintenance**

**Paragraph 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.**

**Applicant's Oral Representations:**

Mrs MacLeod explained that the report she had received from the insurance company stated that the damage had taken place over a period of time. The Letting Agent had not picked up the fact that the fan was filthy. Mrs MacLeod confirmed that she had received the reinspection reports.

**The Respondents' Oral Representations:**

Mrs Graham advised that the letting agent who prepared the inspection reports is no longer employed by the Respondents. All the reports that were prepared during the period of the tenancy have been provided. Copies were sent to Mrs MacLeod. They also sent Mrs MacLeod over 500 emails during the period of the tenancy.

**Paragraph 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.**

**Applicant's Oral Representations:**

Mrs MacLeod advised that she had nothing to add to the details already provided.

**The Respondents' Oral Representations:**

Mrs Graham advised that she had nothing to add to the details already provided.

**Section 6: Ending the Tenancy**

**Paragraph 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.**

**Applicant's Oral Representations:**

Mrs MacLeod explained that she purchased the Property in 2004. The Property had been upgraded before they leased the Property. She had arranged with the Letting Agent that she would meet her at the Property at 4pm on the day they returned. The Letting Agent was late and had arrived at 6pm. The Letting Agent prepared the end of lease report several days later. The report missed the fact that there was glitter on the walls; there was cat urine throughout the Property, the fan was filthy and there were cigarette butts in the fan, the appliances were filthy and the smoke detector was covered in cob webs. The Property had been left in an unacceptable condition.

### **The Respondents' Oral Representations:**

Mrs Graham advised the Letting Agent had taken timeout during the evening to meet the Applicant at the Property. On reflection the Applicant should have been told that she would not be able to return to the Property until the exit report had been repaired and the Property had been cleaned. The Letting Agent had felt under pressure to allow the Applicant access. The Tenants have been rehoused by the Local Authority and they should be held responsible.

### **10.2 The Steps the Applicants should take to rectify the failure to comply with the Code of Practice.**

#### **The Applicant's Oral Representations:**

Mr McLeod sought payment of £4,676.50, as detailed in her written representations. She advised that the Property has three bedrooms, a living room, a dining room and kitchen and bathroom. The carpets in the living room, hall and one bedroom had been replaced. She had purchased and fitted the hall carpet in 2004 and the living room and bedroom carpets had been purchased and fitted in 2015.

The blinds in the Property were venetian blinds which she had installed in 2004/2005. They had been restrung in 2018.

The kitchen had been installed in 2004 by the previous owner.

The whole Property had been redecorated by stripping wallpaper and repainting at the end of the tenancy.

The deposit of £653 had been returned to her due to the rent arrears.

The sums paid by the insurance company were in respect of replacement external doors.

#### **The Respondents' Oral Representations:**

Mrs Graham referred the Tribunal to the lifespan leaflet provided by the Tenancy Deposit companies.

Carpets: 5-15 years depending on the quality.

Decoration 3-15 years depending on the quality.

In addition she explained that the lifespan depends on the number of occupants. She advised that there were two adults and five children living in the Property at one stage.

At the start of the tenancy they had arranged for the Property to be painted white and magnolia.

She had previously offered Mrs MacLeod a goodwill payment of £1,077 in respect of cleaning and repairs.

She has paid a Sheriff Officer £30 to ascertain the current address of the tenant. Mrs MacLeod could do the same to enable her to pursue the tenant. The tenant is responsible for the condition of the Property.

## **11. Decision.**

The Tribunal determined that a hearing was not required and they were in a position to make a decision on the basis of the oral and written representations of the parties.

### **11.1 Paragraph 62 of the Code of Practice.**

The Applicant has not specified a complaint in relation to the preparation of the tenancy agreement. The Tribunal determine that the Respondents have not breached Paragraph 62 of the Code of Practice.

### **11.2 Paragraph 73 and 74 of the Code of Practice.**

The Tribunal make the following finding in facts in relation to this complaint:

The Respondents prepared the following inspection reports which had been sent to the Applicant:

Inventory 20<sup>th</sup> March 2017; 3<sup>rd</sup> April 2017; 6<sup>th</sup> July 2017; 5<sup>th</sup> October 2017; 7<sup>th</sup> February 2018; 20<sup>th</sup> June 2018; 15<sup>th</sup> October 2018; 9<sup>th</sup> January 2019; 22<sup>nd</sup> May 2019; 18<sup>th</sup> October 2019; 20<sup>th</sup> February 2020; 28<sup>th</sup> October 2020; 25<sup>th</sup> June 2021; 13<sup>th</sup> December 2021; 4<sup>th</sup> April 2022 and 4<sup>th</sup> October 2022.

The Respondent's Terms of Business Letter states that the Letting Agent will carry out periodic inspections every 12-16 weeks.

The Tenant had signed the reports. The Applicants had received copies of the reports.

The Tribunal determine that the Respondents have breached Paragraph 73 of the Code of Practice as the inspections were not carried out every 12-26 weeks throughout the period of the lease. The inspections on 20<sup>th</sup> June 2018, 22<sup>nd</sup> May 2019; 18<sup>th</sup> October 2019; 28<sup>th</sup> October 2020, 25<sup>th</sup> June 2021 13<sup>th</sup> December 2021 and 4<sup>th</sup> October 2022 were late. The Tribunal acknowledge that covid restrictions were in place in 2020 and 2021 and find that it was reasonable for the inspections to be late during this period. However, the inspection on 20<sup>th</sup> June 2018 was 3 weeks late; the inspection on 22<sup>nd</sup> May 2019 was three weeks late and the inspection on 4<sup>th</sup> October 2022 was eight weeks late.



The Tribunal determine that the Respondents have not breached Paragraph 74 of the Code of Practice as the Respondents sent the inspection reports to the Applicant.

### **11.3 Paragraph 102 of the Code of Practice.**

The Tribunal make the following finding in facts in relation to this complaint:

The Exit report prepared by the Letting agent did not make links to the initial inventory.

The Tribunal accept the Applicant's evidence that the condition of the Property at the end of the tenancy included glitter on the walls; cat urine throughout the Property, the fan was filthy, there were cigarette butts in the fan, the appliances were filthy and the smoke detector was covered in cob webs.

The Tribunal find that the Exit report had not been thoroughly prepared by the Respondents. The Report did not refer to the missing items referred to by the Applicant namely the glitter on the walls; the cat urine throughout the Property, the fan being filthy, there were cigarette butts in the fan, the appliances were filthy and the smoke detector was covered in cob webs.

The Tribunal determine that the Respondents have breached Paragraph 102 of the Code of Practice.

11.4 Section 48(7) of the Housing (Scotland) Act 2014 provides that where a Tribunal decides that a Letting Agent has failed to comply with the Code of Practice they must make a Letting Agent Enforcement Order requiring the Letting Agent to take such steps as the Tribunal consider necessary to rectify the failure.

The Applicant claims that she is entitled to compensation in the sum of £4,676.50 as a result of the Letting Agent failing to comply with the sections of the Code of Practice detailed in the application.

In relation to the Applicant's claim for reimbursement of the cost of cleaning the Property the Tribunal find that the Tenant is responsible for this cost in terms of Clause 11.4 of the lease. In addition, the Tribunal accept the evidence of Mrs Graham that her letting agent had felt pressured into allowing Mrs MacLeod access to the Property before they had had an opportunity to deep clean the Property and as a result the Tribunal find that the Applicant was partly responsible for the fact that the Property had not been deep cleaned at the end of the tenancy.

In relation to the Applicant's claim for reimbursement of the cost of the replacement items the Tribunal find that the Respondents are not liable for these costs for two reasons:

First, in terms of clause 11.4 of the lease the Tenants agreed to take reasonable care of the accommodation and also to ensure that the property and the fixtures and fittings are kept clean during the tenancy.

Second, the Tribunal also accept the evidence of Mrs Graham as to the lifespan of the carpets and decoration. The Tribunal also considers that a reasonable lifespan of a fitted kitchen is between eight and fifteen years. The Tribunal find that the carpets, blinds and kitchen were older than their reasonable lifespan at the end of the tenancy and the Respondents cannot be held responsible for the cost of their replacement.

However, the Tribunal acknowledges that the Applicant has suffered stress and inconvenience as a result of breaches of sections 73 and 102 of the Code of Practice and proposes to make the following Letting Agent Enforcement Order:

***‘The Letting Agent must pay the Applicant £250 for the inconvenience she had suffered as a result of the breaches of the Code of Practice. The said sums must be paid to the Applicant by 30<sup>th</sup> October 2024.’***

## 12. 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.**

Signed ...

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Date 9<sup>th</sup> September 2024

Chairperson