

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision on an application made under Section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/23/3255

Property: 34 Sir William Wallace Wynd, Old Aberdeen, AB24 1UW (“the property”)

The Parties:-

Ms Jill Brangan, 19 Tanfield Walk Aberdeen AB24 4AN (“the Applicant”)

Caroline Walker Leasing, The Basement no 3, 1-3 Albyn Terrace, Aberdeen AB10 1 YP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)
Robert Buchan (Ordinary Member)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) having made such enquiries as it saw fit for the purposes of determining the application determined that the Respondent had breached Section 2 - paragraphs 19 and 26 and Section 5 paragraph 90 and Section 6 paragraph 100 of the Letting Agent Code of Practice and further determined to make a Letting Agent Enforcement Order.

The decision is unanimous

Introduction

In this decision the Housing (Scotland) Act 2014 is referred to as “the 2014 Act”; the Letting Agent Code of Practice is referred to as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as “the Rules”

The Respondent’s duty under section 48(1) of the 2014 Act to comply with the Code arises from the date it came into force namely 31 January 2018.

1. By Application dated 6 September 2023 the Applicant complained to the Tribunal that the Respondent had breached Section 2, paragraphs 17, 19 and 28, Section 4, paragraphs 38, 53 and 69, Section 6, paragraphs 82, 83 and 90, Section 6, paragraph 100 and Section 7, paragraph 111.
2. The Applicant provided the Tribunal with written submissions in support of her application together with photographs, copies of text messages and emails between herself and the Respondent.
3. By Notice of Acceptance dated 1 November 2023 a legal member with delegated powers referred the Application to a Tribunal.
4. The Respondent submitted written representations to the Tribunal by correspondence dated 14 February 2024.
5. The Applicant submitted further written representations by email dated 19 February 2024.
6. A Case Management Discussion (“CMD”) was held by teleconference on 1 May 2024. Both parties were in attendance. As it was apparent that there was a dispute as to the facts the Tribunal adjourned the proceedings to an in-person hearing and issued oral directions to the parties.
7. By email dated 18 June and 20 September 2024 the Applicant submitted further written submissions and video evidence to the Tribunal.
8. By email dated 23 September the Respondent submitted further written submissions to the Tribunal.
9. By email dated 25 September 2024 the Applicant submitted a List of Witnesses to the Tribunal.

Hearing

10. The hearing was attended by the Applicant and the Respondent was represented by Ms Caroline Walker and Ms Katie Hutcheon.
11. By way of a preliminary matter the Tribunal ascertained if there were any objections to the Applicant’s mother giving evidence and noted that there was not. The Tribunal also noted that the Applicant was seeking £204.00 for the cost of purchasing a mattress, £15.70 for dry cleaning, £720.00 for hotel costs and a further £1125.00 by way of compensation for loss of use of one bedroom and £938.00 for a further 2.5 months of issues with damp and moths but explained that any financial award in the event of the Tribunal finding that the Respondent was in breach of one or more sections of the Code would be a matter for the Tribunal to decide.

Summary of Submissions

Applicant's evidence

12. The Tribunal noted that the tenancy had commenced on 6 June 2023 and ended on 6 October 2023. The Applicant submitted that the Respondent had misrepresented the condition of the property when offering it for rent as a two-bedroom property professionally cleaned at a rent of £750.00 per month. The Applicant said that this was in breach of Section 17 of the Code as the property suffered from damp and mould with stained mattresses and a moth infestation and in need of cleaning at the commencement of the tenancy.
13. The Applicant said that when she moved in she had been sent an inventory to check, which she did and she said she returned it with comments about the condition of the property. The Applicant said that the Respondent failed to handle the repairs or the concerns she had as regards the property. The Applicant submitted that the Respondent was in breach of Section 19 of the Code.
14. The Applicant also submitted that the Respondent had been in breach of paragraph 53 of the Code by failing to give reasonable notice before attending at the property. She said that the Respondent did not respect proper procedures but rather they asked her if they could gain access and then assumed they could use their key to the property.
15. The Applicant referred the Tribunal to the issues over the hob not igniting and to the timeline submitted with the application. The Applicant also said that the Respondent had refused to allow her to be present during an inspection carried out by the Respondent's surveyor. The Applicant submitted that the property was unsafe and uninhabitable and posed a health risk. The Applicant submitted that the Respondent ignored the effect the property was having on her health and that the Respondent was in breach of paragraphs 19, 38 and 100 of the Code.
16. The Applicant referred the Tribunal to the medical records she had submitted and went on to describe the unpleasant smell in the property that had worsened over the duration of the tenancy. She described it first as a musty smell then as a rotten smell. The Applicant also said that the Respondent was abusive and unprofessional in its communications and referred the Tribunal to correspondence on pages 24 and 28 of the documents submitted with the application namely a text messages from Ms Hutcheon dated 9 June and 27 July 2023 and also correspondence regarding the moth infestation and the hob (pages 117 and 116) and correspondence from Ms Walker (pages 115). The Applicant spoke of being told that the Respondents would not put up with the continuous barrage of emails and wondered if it was all in her head. The Applicant went on to say that the Respondents regularly asked her to leave. she also said that she had spent three days trying to clean the property.

17. The Applicant explained that when Ms Walker and Ms Hutcheon came to visit the property, she showed them that one of the rings on the hob was not igniting. She said that Ms Hutcheon had squared up to her in a threatening way. The Applicant referred the Tribunal to Ms Walker's text message of 3 July where she refers to the Applicant being able to leave on giving 28 days' notice. The Applicant also referred the Tribunal to Ms Hutcheon's text of 11 July also saying the Applicant can give a month's notice if she is not happy.
18. The Applicant spoke of finding the bins being dirty at the commencement of the tenancy, curtains covered in mould and again referred to the smell in the property and said that she had started to notice a smell emanating from the couch in the living room. The Applicant referred the Tribunal to the email from Ms Hutcheon dated 6 September 2023 and the involvement of Aberdeen City Council (page 118) and also Ms Hutcheon's email of 27 July 2023 (page 112).
19. The Applicant submitted that the Respondent had failed to handle her complaints properly. The Respondent had ignored issues such as damp and the moth infestation. They had suggested at an inspection that there needed to be a lot of moths present before it was an issue and had also accused the Applicant of introducing the moths into the property. The Applicant said that when it came to carrying out repairs the Respondent had needed to be reminded they needed doing and had just painted over the mould in the bathroom and had ignored the smell in the property rather than address the issue. The Applicant said that despite it being a warm summer she had been told to heat and ventilate the property. She also said that the windows could not be opened properly and once the blinds had been removed so that they did open there was no privacy. The Applicant went on to say that she had been told she did not know how to operate the hob even although the Respondent's plumber had agreed the hob was not safe and that he would order the part to repair it. The Applicant said she had sent videos showing the problem with the hob but the Respondent did nothing until finally they did send someone around who did have a lot of trouble getting it to ignite. The Applicant said the plumber cleaned the burner with a wire brush and after that it worked better.
20. The Applicant referred to there being damp in the property and to an infestation of moths and referred the Tribunal to photographs of balding areas of carpet. The Applicant said that Ms Walker had suggested that the Applicant had introduced the moths to the property but the Applicant said that the marks on the walls that were there when she took entry to the property were the remains of squashed moth .and the infestation had been there before she arrived. The Applicant spoke of having to clean out the wardrobe in her bedroom because of damp and mould and moths. The Applicant said that she had the place properly ventilated but the smell continued to get worse. The Applicant also spoke of the issues over the stained mattresses and that although the Respondent had replaced one mattress, they had refused to change the other and as a result she had been embarrassed to have friends over to stay.

21. The Applicant said that the Respondent had arranged for a surveyor to inspect the property but that she had not been permitted to be present during the inspection (Page 20 text message 24 August 2023) and that she would have to accept their findings but that if she had instructed her own surveyor the Respondent would not have had to accept their findings. The Applicant also said that the Respondent had contacted the Council and that she had not felt comfortable about that and had not been informed in advance. The Applicant also said that she had complained to Ms Walker that she did not wish to deal with Ms Hutcheon but that Ms Walker had still copied Ms Hutcheon in to all correspondence.
22. The Applicant went on to say that after all the issues with the mould on her clothes and the smell it started to affect her work and she also left food in the oven and was starting to believe it was in her head. The Applicant said that she asked the Respondent if she could move into temporary accommodation but this was refused. The Applicant said that she could no longer remain in the property and moved into a hotel from 19 September until 4 October 2023.

The Respondent's Evidence

23. Ms Walker said that the Applicant's tenancy had been the first time the Respondent had let the property and the owner was a new client. She said the owner had previously let the property to another tenant for four years. She said the property had been painted prior to the tenancy commencing and looked lovely and was rented out at market value. She said that an ingo inventory was prepared and that the property was professionally cleaned prior to the Applicant taking entry. Ms Walker said that the property had not met the Applicant's expectations and that her business was based on having happy tenants and the Respondent would not upset a tenant on purpose. Ms Walker went on to explain that any comments about the Applicant being unhappy then she could leave was her way of saying after the Respondent had tried to make the property better that it would save time and expense for everyone if the Applicant found somewhere else that was more suited to her needs.
24. With regards to the moth infestation Ms Walker said that it was very unfortunate but that it had not been known about when the Applicant moved into the property. The Applicant first mentioned the moths in August and they were exterminated in September. Ms Walker said that it was the same with the mould in the bathroom, the painter had missed some black spores and the Respondent arranged to have the bathroom painted. Ms Walker said that there were no obvious signs of damp at the property or she would have dealt with it but that she had instructed a damp expert. Ms Walker said she had not wanted the Applicant present during the inspection as she had been so upset but that if there had been damp present he would have said.
25. With regards to the mould in the wardrobe Ms Walker said that if they are packed too full that can be a cause of damp and mould. Ms Walker said there was no visible damage when she attended at the property.

26. Ms Walker said that during her inspection of the property which was attended by herself and Ms Hutcheon the Applicant had sworn at Ms Hutcheon and the whole scenario had been very difficult. Ms Walker said that Ms Hutcheon had done wrong when she had taken a step forward towards the Applicant.
27. Ms Walker said that the repairs required at the property had been addressed immediately and that she considered the property met the repairing standard. Ms Walker said that one of the gas rings on the hob needed to be turned on two or three times before it would ignite but that the Applicant kept trying to turn it on repeatedly whereas one just had to take a minute and it did work.
28. Ms Walker said that she had been upset that the Applicant had been upset and felt unwell and had to go to her doctor.
29. Ms Walker said that the Respondent had never entered the property without permission. She said that generally the Respondent's property managers like the tenants to be present. Ms Walker went on to say that she encouraged her staff to use the telephone to communicate with tenants as she saw this as a softer option as texts and emails can be misunderstood and that was the reason for trying to speak on the phone to the Applicant.
30. With regards to the mattresses, Ms Walker said that one mattress was stained but that she thought the other mattress was fine and that one mattress was replaced but that the Applicant chose to purchase a new mattress which she removed when she left the property.
31. Ms Walker said that the Applicant had put in a complaint to the Council and that she had been contacted by the Council in this regard. She said that she had prepared all the relevant documentation detailing everything that had been done and this was sent to the Head of Department and copied to the Applicant. Ms Walker said that the Applicant had then complained about the Council dealing with the complaint.
32. Ms Walker said that the owner of the property had agreed to replace the flooring at the property but that the Applicant moved out of the property before this was done. Ms Walker said that she had not been aware of the Applicant moving into temporary accommodation until after she had ended the tenancy. Ms Walker said it was her company policy that tenants don't pay rent when in temporary accommodation but that they pay for their own accommodation and then pay rent again when they move back in. Ms Walker said the Applicant had never informed them she had moved into temporary accommodation. Ms Walker said that the Applicant's deposit had been returned in full at the end of the tenancy.
33. Ms Walker said that new tenants had moved into the property and had not had any issues with the property. She said the new flooring had been installed but that no other furniture had been removed or replaced.

34. Ms Hutcheon said that she had not meant to be passive aggressive in her communications with the Applicant but that she had been struggling to keep up with the emails that were being sent and that it would have been much easier to have dealt with the issues in a phone call.
35. In response to the Respondent's evidence the Applicant said that the moth infestation had been present from the beginning of the tenancy only not so obvious. She said that she thought Ms Walker would have more knowledge about this issue than herself.
36. In response to a query from the Tribunal the Applicant confirmed she was still using the mattress she had purchased.
37. With regards to whether or not the Applicant had given permission to the Respondent to enter the property in her absence the Applicant referred the Tribunal to page 121 of her written submissions. The Tribunal also noted that in a previous email it had been agreed that Ms Hutcheon could let herself in to the property.
38. The Applicant said that at the commencement of the tenancy she had arrived to find the heating on in the property. Ms Walker said that this was always done to make sure the heating was working properly.
39. The Applicant said that Ms Walker had told her she had a business relationship with the Council and that was why she had not wished to have them involved in her complaint.
40. The Applicant said that it had been agreed that the carpets and curtains at the property would be replaced but this was not done until after she had left the property and she had never been told that they had been ordered.
41. The Applicant said that she had advised the Respondent that she was moving into temporary accommodation due to the condition of the property and that she was staying in a hotel (Page 117 email 19 September 2023).
42. The Applicant said she had never been provided with the surveyor's damp report and referred the Tribunal to her note at page 148 of her written submissions and that the surveyor had referred to the carpets being wet and smelling and that the Respondent should supply a dehumidifier. The Applicant referred the Tribunal to an email exchange with the Respondent (Page 150) where the Respondent confirms that no dehumidifiers are supplied in any of the Respondent's properties. The Tribunal was provided with a copy of a text from the surveyor dated 2 October 2023 to Ms Walker that confirmed there was no evidence of rising damp but that there was a condensation issue and recommending a full clean of the property and installation of a dehumidifier.
43. With regards to the altercation with Ms Hutcheon the Applicant said she had been talking to Ms Walker about the blinds and curtains and since the start

of the tenancy had found Ms Hutcheon to be quite aggressive in her emails and had been attacking her mental state. The Applicant said she had gone into the kitchen to show Ms Walker the hob and Ms Walker had said it was working. The Applicant said she had sworn under her breath and Ms Hutcheon had stepped forward and mentioned the gas safety certificate. The Applicant said she had felt bullied and intimidated. She also spoke of the black area at the wall at the back of the bin which she said was not wear and tear.

44. The Applicant referred the Tribunal to the video of the hob not working and that it was the large ring not the small ring. She said the fault had been reported on 5 July and not made any better until 15 September.

Evidence of Mrs Patricia Brangan

45. Mrs Brangan said that she initially had been happy that her daughter had found somewhere to live but that once she had moved in she had not found it so agreeable. Mrs Brangan said that she had gone to visit the Applicant at the property between 30 August and 5 September during what had been a warm spell. She said the property was in a nice location with large bedrooms but it was not so comfortable due to there being moths in the bedroom. Mrs Brangan said she tried to keep the door of the room closed but that was not possible as the door did not close firmly. Mrs Brangan went on to say that the Applicant slept in the other bedroom and that there was more of a smell in that room and there was a damp patch in the back right hand corner of that room. Mrs Brangan said that the Applicant had installed a lot of small dehumidifiers to take the damp out of the room. Mrs Brangan went on to say that the hall and bathroom seemed fine. She also said that there was a different smell in the living room. Mrs Brangan spoke of seeing the moths on the wall and that she did not want to lie in the bedroom. She also spoke of being shocked that the Applicant's winter coat was mouldy in the wardrobe despite it being the summer. Mrs Brangan said the Applicant had been told to air the property and had kept the wardrobe door open. She said she was aware that her daughter had not wanted to move out of the property as she had been delighted with the location and had been happy with it but had been disappointed and upset when the letting agent had dismissed her concerns. Mrs Brangan said the Applicant's health had been affected she had a throat infection.

Final Submissions

46. The Applicant referred the Tribunal to the text messages from herself and Ms Walker dated 12 and 13 September 2023 regarding the ongoing issue with the gas hob (pages 42 and 43). For the Respondent Ms Walker said that if the plumber had said there was a fault with the hob, then as the landlord was a reasonable man, he would have authorised a repair. Ms Walker also said that as an agent she had to work with her landlords. Ms Walker went on to say that the issue with the blinds had been resolved within a month.

47. Ms Walker explained that the communal areas outside the property were factored. She said that the Applicant had asked if the hedge outside the property could be cut and it had been explained that this was communal and dealt with by the factor.
48. In response to a query from the Tribunal as to the significance of the photograph on page 168, the Applicant explained it showed the condition of the window when opened after the blind had been removed. The Applicant explained that the photograph on page 152 showed the condition of the carpet and submitted this was caused by the moth infestation. Ms Walker submitted there could be other reasons for the damage to the carpet.
49. Ms Walker confirmed that she did now accept that the Applicant had advised her of her intention to move into temporary accommodation.
50. Ms Walker said that there was no black mould in the property and that there could be different reasons for the Applicant's clothes being mouldy. The Applicant said that she had never previously had mould on her clothes in other properties she had stayed in. She said she had used the tumble drier to dry her clothes or a clothes horse in the kitchen with the kitchen door closed and the window open.
51. Ms Walker submitted that the Applicant had been desperately unhappy in the property and that she had not wanted to cause her any more upset and had given her a reference when she left.
52. The Applicant said that Ms Hutcheon had been of the opinion that she was demented. Ms Hutcheon said that the Applicant continuously sent emails to the extent that she was spending from 9.00 to 5.00 five days a week dealing with the Applicant.
53. The Applicant concluded by saying that she had not found it tolerable to live in the property with the moth infestation being the last straw following delays in dealing with the other issues.

The Tribunal make the following findings in fact:

54. The Respondent acted as letting agent on behalf of the Landlord.
55. The Respondent instructed Thomas Yule, Independent Inventory Specialist in the preparation of an Ingo Inventory prior to the commencement of the tenancy.
56. The Respondent arranged for the property to be professionally cleaned by Aberdeen Angels on 5 June 2023.
57. The Applicant's tenancy commenced on 6 June 2023 and ended on 6 October 2023.

58. The Applicant reported a fault with one of the rings on the gas hob failing to ignite properly on 26 June 2023.
59. The fault was not accepted as a fault by the Respondent although a repair was carried out on 15 September 2023 after which the gas ring worked better.
60. The Ingo inventory states at entry number 110 that the mattress is stained.
61. The Ingo Inventory states at entry number 132 that the mattress is badly stain marked.
62. The Respondent replaced one mattress at the property but refused to replace the second mattress.
63. The Applicant purchased a replacement mattress and removed it at the end of the tenancy.
64. At the commencement of the tenancy the window blinds installed in the property prevented the windows opening properly.
65. The blinds were removed on 8 August 2023.
66. The property was not cleaned prior to the commencement of the tenancy to a standard that the Applicant considered acceptable.
67. The Applicant reported an infestation of moths in the property to the Respondent on 18 August 2023.
68. The Respondent arranged for a pest control contractor to exterminate the moths on 15 September 2023.
69. From 8 June 2023 the Applicant raised issues with the Respondent regarding damp and mould on bathroom walls, carpets and blinds.
70. From 25 June 2023 the Applicant complained of an unpleasant smell in the property that grew worse over time.
71. Clothes belonging to the Applicant stored in a wardrobe in the property were damaged with mould.
72. The Applicant incurred a dry-cleaning charge of £15.70 for cleaning a coat damaged by mould.
73. The contractor, Ally McKay Preservation instructed by the Respondent to inspect the property on 29 September 2023 found there to be a condensation issue and noted the property needed to be cleaned and that the carpets were damp and smelling and recommended the use of a

dehumidifier. The surveyor also noted the perma vents were closed and had advised the Applicant regarding heating requirements.

74. The Respondent made reference in a number of communications to the Applicant that she could leave the property by giving 28 days' notice.
75. There were delays on the part of the Respondent in dealing with the Applicant's complaints.
76. The Applicant moved out of the property into temporary accommodation between 19 September 2023 and 4 October 2023.
77. The Respondent waived the notice period the Applicant was required to give to terminate the tenancy.
78. The Applicant received the return of her full deposit at the end of the tenancy.

Reasons for Decision

79. The Tribunal was not satisfied that the Respondent was in breach of paragraph 17 of the Code. Although there were undoubtedly issues with the property that were raised by the Applicant shortly after the commencement of the tenancy and indeed during the tenancy it did appear that the Respondent attempted to be open, honest and transparent with the Applicant in its dealings with her even if in its responses it did not always properly address the Applicant's concerns. These failures are addressed below.
80. The Tribunal was satisfied from the Applicant's evidence that the cleaning of the property prior to the Applicant taking entry was not to a standard that the Applicant had a right to expect. The Tribunal found the Applicant to be a credible witness and had no reason to doubt that she had felt the need to spend an extensive amount of time cleaning the property upon taking entry. Furthermore, the Tribunal could see the condition of the window from the photograph provided by the Applicant and was also surprised by Ms Walker's evidence as regards the condition that the kitchen wall was left in by the cleaners. In this regard the Tribunal was satisfied that the Respondent was in breach of paragraph 19 of the Code as when indicating to the Applicant that the property would be professionally cleaned prior to the commencement of the tenancy it was reasonable for the Applicant to assume that this would mean cleaned to an acceptable standard.
81. Although the Applicant did not complain that the Respondent was in breach of paragraph 26 of the Code it was apparent throughout the hearing that one of the main issues was that the Applicant was concerned that the Respondent had failed to deal with her enquiries and complaints within a reasonable period of time particularly with regards to the issue with the gas hob. In the Upper Tribunal decision in *Brown v Park Property Management*

Ltd [UTS/AP/24/0015] the Upper Tribunal decided that in order to arrive at a true interpretation of the legislation a clause must not be determined in isolation but considered in the context of the whole document. The Upper Tribunal found that the First-tier Tribunal ought to have considered all of the overarching Standards of Practice when reaching its decision. In the present case the Tribunal was satisfied from the Applicant's evidence and the video evidence and even from the description provided by Ms Walker that although the gas ring on the hob was capable of being lit it could not be said it was in proper working order and the Respondent ought to have dealt with the Applicant's complaint much quicker than it did. For that reason, the Tribunal was satisfied that the Respondent was in breach of paragraph 26 of the Code.

82. The Tribunal was not satisfied that the Respondent was in breach of paragraph 28 of the Code. Although the tone of some of the communications from the Respondents to the Applicant tended to be dismissive of the Applicant's legitimate concerns the communications did not amount to what could be described as abusive, intimidating or threatening.
83. The Tribunal was not satisfied that the Respondent was in breach of paragraph 38 of the Code. The Applicant failed to provide the Tribunal with any of the Respondent's advertising or marketing materials and did not lead any evidence to support this part of her complaint. That is not to say that the Tribunal does not sympathise with the Applicant as regards the condition of the mattresses on taking entry to the property and this is addressed below.
84. The Tribunal was not satisfied that the Respondent was in breach of paragraph 53 of the Code. From the documents submitted and the oral evidence the Tribunal was satisfied that the Applicant had given permission to Ms Hutcheon to let herself in in the Applicant's absence. There may subsequently have been some misunderstanding but the Tribunal is in no doubt that Ms Hutcheon believed she had the Applicant's permission to enter the property to remove the blinds. The Applicant did not provide any other evidence to support a breach of paragraph 53.
85. The Tribunal was not satisfied that the Respondent was in breach of paragraph 69 of the Code. The Applicant was provided with an inventory to sign. The Applicant did not accept the inventory and raised certain queries with it. Thereafter these issues were not resolved and therefore there was no agreed inventory for both parties to sign.
86. The Tribunal was not satisfied that the Respondent was in breach of paragraph 82 Of the Code. The Applicant agreed to contractors entering the property in her absence to carry out repairs or to carry out an inspection. The Tribunal as indicated above was satisfied that the Respondent had understood that the Applicant had given permission for access on one occasion when she was not present at the property.

87. The Tribunal was not satisfied that the Respondent was in breach of paragraph 83. For the reasons given above the Tribunal was satisfied that the Applicant had given the Respondent permission to access the property in her absence on the occasions detailed by the Applicant in her written submissions and oral evidence. There were occasions when the Applicant refused either the Respondent or others authorised by the Respondent access in her absence and these visits did not proceed. The occasion on 6 July 2023 when Ms Hutcheon entered the property when the Applicant was not there followed on from an email where the Applicant had said Ms Hutcheon could let herself in.
88. The Applicant raised issues with the windows not opening properly on 2 July and it took until 8 August for the blinds to be removed allowing the windows to open fully and no replacement curtains were provided throughout the duration of the tenancy. The Tribunal considered that this was an unacceptable delay on the part of the Respondent. The Tribunal had some difficulty in accepting Ms Walker's evidence firstly that it was acceptable to provide the Applicant with stained mattresses at the commencement of the tenancy and secondly when these were complained about by the Applicant only to agree to replace one mattress. Although the Tribunal acknowledged that the Respondent had to take instructions from its client, the landlord, it was not appropriate to refuse to replace the second stained mattress or at least agree to a suitable cover, leaving the Applicant to incur the cost of replacing the mattress herself. The faulty gas ring on the hob was pointed out by the Applicant to the Respondent on 26 June 2023. The Tribunal found the Applicant's evidence with regards to the hob to be credible and did not doubt that a plumber instructed by the Respondent had advised the Applicant that new parts were required. The Tribunal did not consider that the Respondent's evidence as regards the gas ring igniting properly to be correct and it did appear to the Tribunal that eventually on 15 September 2023 when instructed to deal with another matter a plumber instructed by the Respondent carried out a repair to the gas ring that resulted in it working better. The Applicant complained of a smell in the property on 25 June 2023 and continued to raise this issue in July and August 2023 but was told by the Respondent that there was no smell but on 29 September 2023 when the surveyor from Ally McKay Preservation inspected the property he confirmed the carpets were smelling. The Tribunal also accepted Mrs Brangan's evidence in this regard who spoke of the smell in the property when she visited the property at the end of August 2023. The Tribunal noted that the Applicant had been aware of damage to the carpets in the property and advised the Respondent on 8 Jun 2023 and around this time noticed marks on the walls of the property that she later concluded were the remains of squashed moths. The appearance of moths became apparent on 18 August 2023 and was reported to the Respondent who after various communications with the Respondent as to how the moths might have arrived in the property instructed Presly Pest control to exterminate the moths on 14 September 2023. The Tribunal considered it likely that the moth infestation had been present in the property prior to the commencement of the tenancy due to the marks on the walls and the condition of the carpets. In any event although not a long delay the

Respondent ought to have responded to the Applicant's complaint quicker than it did given the urgency of the situation. Although there was no rising damp found at the property it was apparent that there had been an issue with condensation and mould and the Applicant's concerns given that her clothes were being affected and ultimately it appeared to be affecting her health the Tribunal did accept that the Respondent ought to have addressed the Applicant's concerns sooner than they did. For the foregoing reasons the Tribunal was satisfied that the Respondent was in breach of paragraph 90 of the Code.

89. From the beginning of the tenancy the Applicant raised concerns about a number of matters to the extent that she sent numerous emails to the Respondent during the course of a day. The Tribunal was not told how many texts and emails were sent over the duration of the tenancy although at one point Ms Hutcheon suggested in order to answer the queries she had to work from 9.00 to 5.00 five days a week. Although the Applicant agreed she sent numerous texts and emails the Tribunal was not convinced that Ms Hutcheon spent her whole working week addressing the Applicant's concerns and it certainly does not appear to be the case from the correspondence submitted to the Tribunal. However, it did seem from the evidence that the Respondent formed a view that the Applicant was not happy in the property and that being the case one way to resolve matters would be for the Applicant to leave and find another property. Although the Respondent did not try to force the Applicant out of the property, the Tribunal concluded that for whatever reason the Respondent concluded that it would be best if the Applicant moved and therefore on many occasions between July and September 2023 in texts and emails the Respondent pointed out that if she was not happy with the property, she could give 28 days' notice. There is a fine line to be drawn between advising a tenant of the legal process for ending a tenancy and trying to persuade a tenant to leave. In this regard, given the number of times that the Respondent raised the prospect of the Applicant leaving the property amounting to somewhere in the region of 13 times this goes beyond simply providing advice and is a breach of paragraph 100 of the Code. In reaching this decision however the Tribunal acknowledges that the Respondent may not have been acting maliciously but genuinely thought that it would be unable to meet the applicant's expectations of the property and that therefore it would be better for both parties if the tenancy were to end.

90. The Tribunal accepted that the issues raised by the Applicant could have been handled better and quicker and that the failures of the Respondent referred to above impacted on the Respondent's wellbeing and may have had some impact upon her health. Ms Walker did accept that Ms Hutcheon had acted inappropriately towards the Applicant on one occasion during the inspection on 8 August 2023 and the Applicant did accept that she had sworn under her breath. In the circumstances taking everything into account the Tribunal determined that although Ms Hutcheon's behaviour on 8 August was unacceptable in general the Respondent's communications with the applicant were not abusive, intimidating or threatening and did not constitute a breach of paragraph 111 of the Code.

91. The Tribunal noted that the Applicant felt that she could no longer live in the property but had been unable to persuade the Respondent that the property was uninhabitable. There had undoubtedly been an infestation of moths and that had been treated by 14 September 2023 and the pest controller had advised that it was safe for the Applicant to remain in the property. There was an unpleasant smell in the property apparently emanating from the carpets that were due to be replaced. Ms Walker said that if a tenant moved into temporary accommodation the tenant was expected to pay for that themselves but that payment of rent would be suspended. When the Applicant left the property, the Respondent agreed to waive the notice period and the Applicant's deposit was repaid in full. The Applicant removed the mattress she had purchased when she moved out of the property. The Applicant incurred the cost of dry cleaning her winter coat. The Applicant submitted that she had been unable to fully use the property due to the stained mattress and the moth infestation and had been affected by stress and ultimately had to move into a hotel and also sleep at a friend's house and was seeking compensation.

As the relationship between the Applicant and the Respondent has ended, in making a Letting Agent Enforcement Order the primary decision for the Tribunal to consider in this application is an appropriate level of financial award to make to the Applicant by the Respondent in respect of the breaches of the Code. In reaching its decision the Tribunal has taken account of the fact that the Applicant has retained the mattress she bought and that she did not provide any substantive evidence as regards the loss of any items of clothing or other items. The Tribunal has taken account of the fact that the Applicant found it necessary to move out of the property between 19 September and 4 October 2023 and continued to pay rent for that period amounting to about £369.00. The Applicant also incurred dry cleaning costs of 15.70 and has suffered stress and inconvenience in addition. The Applicant did not persuade the Tribunal that friends or relatives had been unable to visit because of the condition of the property as no substantive evidence was led to that effect. Taking everything into account the Tribunal considers that a financial award of £750.00 is appropriate.

92. The Tribunal's decision was unanimous.

Decision

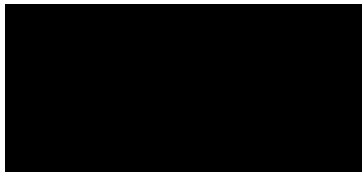
93. The Tribunal having carefully considered the evidence presented to it at the hearing and the written submissions of the parties finds that the Respondents are in breach of paragraphs 19, 26, 90 and 100 of the Letting Agents Code of Practice and therefore will make a Letting Agent Enforcement Order (LAEO) obliging the Respondent :-

1. To make payment to the Applicant the sum of £750.00 within 30 days of the date of service of the LAEO.
2. To make a written apology to the Applicant acknowledging the worry and distress caused by its breaches of the Code and that also within 30 days of the date of service of the LAEO

Appeals

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.

Graham Harding Legal Member and Chair



16 October 2024 Date