

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014

Chamber Reference: FTS/HPC/LA/23/3716

Property address: Ivy Cottage, Birnam Terrace, Birnam, Dunkeld, PH8 0DR (“the Property”)

The Parties

Mr Philip Ronald Brammer, Via Vincenzo Statella 2, Siracusa, SR 96100, Italy (“the Landlord”)

Belvoir Perth, 8 Bridge Lane, Perth, PH1 5JJ (“the Letting Agent”)

Tribunal Members

Ms H Forbes (Legal Member)

Ms C Jones (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has not complied with paragraphs 89, 90, 93 and 108 of the Code of Practice for Letting Agents (“the Code”) as required by the Housing (Scotland) Act 2014 (“the Act”) and issues a Letting Agent Enforcement Order (“LAEO”).

The decision is unanimous.

Background

1. By application received in the period between 23rd October and 23rd November 2023, the Applicant applied to the Tribunal for a determination on whether the Respondent had failed to comply with paragraphs 89, 90, 93 and 108 of the Code.
2. By decision dated 12th December 2023, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) referred the application to a Tribunal for a hearing.

3. By email dated 24th January 2024, the Respondent made written representations and lodged productions.
4. A Case Management Discussion (“CMD”) took place by telephone conference on 21st February 2024. The Landlord was in attendance and supported by his wife. The Letting Agent was represented by Ms Aimi Lewis. The Landlord confirmed that he continues to insist upon an alleged breach of paragraph 90 of the Letting Agent Code of Practice (“the Code”), as well as paragraphs 89, 93 and 108. The CMD was continued to a hearing.
5. By email dated 8th May 2024, the Landlord lodged productions.
6. A hearing set down for 19th June 2024 was postponed at the request of the Landlord.

The Hearing

7. A hearing took place by telephone conference on 30th October 2024. The Landlord was in attendance. The Letting Agent was represented by Ms Lewis.
8. The Tribunal heard from both parties in respect of each alleged Code breach.

Paragraph 89

When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

The Landlord’s position

9. The Landlord said he became aware of three issues with the Property when the Tenant emailed him on 9th January 2023, stating that the dry rot problem had spread to the kitchen, a slate had broken off the roof, and the exterior rendering under the bathroom window was cracked and loose. On the same day, the Landlord emailed the Letting Agent asking them to look into matters and arrange quotes for the necessary work. The Landlord said he heard nothing from the Letting Agent.
10. On 30th January 2023, the Landlord re-sent his email of 9th January to the Letting Agent, marking this email as URGENT, and stating that he had not received a response to his earlier email.
11. The Landlord emailed the Letting Agent again on 1st February 2023, on which date he received a reply stating that contractors had been instructed to attend to provide quotes.

12. The Landlord emailed the Letting Agent on 17th March 2023 to ask for an update, and to ask them to contact two further contractors in respect of the roof. The Landlord stated the situation needed to be resolved urgently.
14. The Landlord emailed the Letting Agent on 7th April 2024 asking for an update.
15. On 20th April 2024, the Landlord informed the tenant that he had discussed matters with the Letting Agent, who informed him they had still not heard from the contractor. The tenant replied that a joiner and a builder had been in touch 'a couple of months ago'. The tenant said the joiner attended and looked at the dry rot problem in the kitchen and said a specialist firm would be required. The builder did not attend.
16. On 21st April 2024, the Landlord emailed the Letting Agent requesting an update.
17. The Landlord said he discussed matters with the Letting Agent in or around May 2023, and they said if he considered the matter urgent, he should instruct a specialist himself. An architect friend of the Landlord knew a specialist who attended the Property and said it was a serious problem. He lifted floor boards and saw the spread of the damp/dry rot. The Landlord decided to terminate the contract with the letting agent.
18. The Landlord said there had been a previous problem with the front door, which had become damp, and this was probably the start of dry rot. The door was replaced by a joiner appointed by the Letting Agent, and it was assumed the problem had been taken care of.

The Letting Agent's position

19. Ms Lewis said there were works carried out to the door in the summer of 2022, and some timbers were replaced by the joiner, IR. Some roofing work was also carried out. No specialist reports were undertaken at that time.
20. The Letting Agent received the report of the issues in January 2023. They instructed IR to go back to the Property. He confirmed he had received the job but he did not attend. The Letting Agent does not know why this was the case. The Letting Agent was aware it was a pressing issue. They asked the roofing contractor to attend, but he did not, and he did not supply a quote. The Letting Agent was chasing this up and tried to get more quotes. Ms Lewis said the contractors were chased 'again and again'. Ms Lewis said an email was sent to the Landlord on 24th March 2023 informing him that his contact at the letting agency had left, and that staff were following up quotes. Ms Lewis said the email had been replied to by the Landlord, who stated he was disappointed and would like to see more quotes. This email had not been lodged. At this stage in the hearing, the Landlord said he had no memory of receiving the email.

21. Ms Lewis said the Letting Agent was not instructed to get a timber specialist report. They felt it best to go back to the joiner who had initially attended, after which they would escalate matters with the Landlord and instruct specialist input.

Paragraph 90

Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

The Landlord's position

22. The Landlord said this was the main failure as far as he was concerned. A serious problem had not been attended to or investigated. The Landlord said he did not know much about dry rot and he was fobbed off with delaying emails. He would have expected any mention of dry rot would have set off alarm bells for the Letting Agent.

23. The Landlord said he had not been in the Property since around 2018. In terms of the contract between the parties, the Property was inspected twice yearly. He assumed a full maintenance contract involved the Letting Agent keeping an eye on it. The Landlord said he had not been informed of the risks of dry rot prior to January 2023, or he would have asked for it to be looked into.

The Letting Agent's position

24. Ms Lewis said this paragraph had not been elaborated upon in the application or answered in the Respondent's representations. The Legal Member pointed out that this matter had been discussed at the CMD when the Landlord had made it clear he was founding upon this paragraph.

25. Ms Lewis said the Letting Agents are not specialists and would not identify dry rot. They instruct quotes, but these were not forthcoming. They had instructed a joiner and a roofer to attend and investigate, after which they would decide the best way forward. Without a quote, the work could not be taken forward. Ms Lewis said she would accept the Letting Agent was not quick enough in keeping the Landlord updated.

26. Responding to questions from the Tribunal about the email from the tenant which stated that the joiner had attended 'a couple of months' before 20th April 2023, Ms Lewis said it was her understanding that the joiner did not attend.

Paragraph 93

If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible

The Landlord's position

27. The Landlord said the Letting Agent did not inform him of any delay, other than to explain that they were chasing the joiner. There was no real explanation as to why the matter had not been investigated.

The Respondent's position

28. Ms Lewis said the Landlord had chased the Letting Agent in respect of the delays and they had responded. There was no repair to carry out and the Letting Agent was waiting for the contractor. The Letting Agent tried to keep the Landlord updated. Ms Lewis said she accepted the Letting Agent could have done better, and updated the Landlord to give him some comfort.

Paragraph 108

You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

The Landlord's position

29. The Landlord said he submitted a complaint on the Letting Agent's website. It was acknowledged on the website at the time of making it, but he heard nothing further. After the Landlord informed the Letting Agent he was terminating the contract, he was called by the Letting Agent's Mr Duncan. Mr Duncan said he would carry out a full investigation. He undertook to send on documentation requested by the Landlord. This was reflected in emails lodged by the Landlord. The Landlord was never informed of the outcome of the investigation nor did he receive the documentation. After emailing Mr Duncan, he received an automatic response stating that Mr Duncan had left the Letting Agent.

30. The Landlord said he sent two letters to the Letting Agent by recorded delivery. He did not track the first letter, which was sent on or around 5th August 2023, but the second letter was signed for on 21st August 2023, as shown in the tracking report lodged by the Landlord.

The Letting Agent's position

31. Ms Lewis said that, although her surname appeared on the tracking report, she did not sign for, or receive, the letter. She confirmed the photograph in the tracking report showed the letter on a desk in the Letting Agent's office, and said the postal worker often left letters in that manner.

32. Ms Lewis said Mr Duncan left the Letting Agent due to personal circumstances and there was no handover. Had she received the letter from the Landlord, she would have dealt with it by looking at the complaints procedure and discussing the matter of compensation further. Ms Lewis said

the Letting Agent took legal advice and it was agreed it was best to leave the matter of compensation to the Tribunal.

Summing up

33. The Landlord said he accepted he would have had to pay for treatment to the Property if the repair had been attended to timeously. He expected it would have been limited to the door and kitchen, and would have cost around £3000. Instead, he had paid well over £21000, because the dry rot was left to spread, and, as well as the work detailed in the report lodged by the Landlord, there was additional cost for tiling and flooring. He said he had been told by the damp specialist that dry rot spreads about one metre per month. The rot had spread up, down and sideways, and extensive work was required. This was a very traumatic situation. The Landlord and his wife had to use their life savings to pay for the work. It was not covered by landlord's insurance.

34. Ms Lewis referred to her written representations. She refuted that compensation should be in the region of £21000, saying that would not be reasonable compensation.

Further procedure

35. Following the hearing, the Tribunal considered it required further information. The Tribunal issued a Direction to the Letting Agent dated 30th October 2024 in the following terms:

The Letting Agent is required to lodge the following within 7 working days of the date of issue of this Direction:

- (i) All correspondence to and from IR, joiner, for the period from 9th January to 24th May 2023, which relates to the issues raised by the tenant of the Property in her email to the Letting Agent of 9th January 2023, and the instruction to IR to attend at the property in respect of those issues.
- (ii) All system entries or other entries showing any telephone or in-person discussion with IR, joiner, and any attempts to contact him, for the period from 9th January to 24th May 2023, which relates to the issues raised by the tenant of the Property in her email to the Letting Agent of 9th January 2023, and the instruction to IR to attend at the property in respect of those issues.
- (iii) Contact details for IR, joiner.

36. By emails 4th and 12th November 2024, the Letting Agent lodged a response showing that a work order was issued to IR on 30th January 2023. There was no evidence of any other interaction with IR regarding this work order.

37. The Tribunal decided to issue an order to IR's firm dated 18th November 2024 in the following terms:

The Contractor is required to lodge the following within 10 working days of the date of issue of this Notice:

1. Details of any attendance at the Property for the purposes of investigating issues relating to damp and/or dry rot following the work order issued by the Letting Agent on 30th January 2023.
2. Details of any information or update given to the Letting Agent following any attendance at the Property on or after 30th January 2023, including the member of staff to whom any such information was given. If this information was passed by email to the Letting Agent, a copy of the email should be provided to the Tribunal.

38. The order was issued by recorded delivery and signed for by the contractor. No response was received.

39. The Tribunal considered whether any further procedure should be carried out and decided it was unlikely that the required information would be provided from any other person. No further order was made.

Findings in Fact and Law

40.

- (i) In September 2017, the Letting Agent was contracted to manage the Property on behalf of the Landlord under a full management contract.
- (ii) Works were carried out to the front door and ceiling timbers in or around 2022.
- (iii) On 9th January 2023, the tenant notified repairing issues to the Letting Agent and the Landlord.
- (iv) The Letting Agent did not instruct a contractor until 30th January 2023.
- (v) Having chased up the Letting Agent repeatedly, the Landlord had to arrange his own contractor in May 2023 due to the failure of the Letting Agent to progress the repair.
- (vi) Damp and dry rot was discovered within the Property.
- (vii) The Landlord terminated the contract with the Letting Agent on 24th May 2023.
- (viii) The Landlord made a formal complaint to the Letting Agent on 28th July 2023, after raising matters repeatedly.

- (ix) The Letting Agent failed to manage the repairs in line with their agreement with the Landlord by failing to progress the repairing issues as notified by the Landlord.
- (x) The Letting Agent failed to deal with repairs promptly and appropriately having regard to their nature and urgency and in line with their written procedures.
- (xi) The Letting Agent failed to inform the Landlord of delays in carrying out repair work.
- (xii) The Letting Agent failed to respond to enquiries and complaints within reasonable timescales.
- (xiii) The Letting Agent failed to deal with the Landlord's complaint in line with their complaints procedure.

Determination and Reasons for Decision

41. The Tribunal took account of all the documentation provided by parties and their written and oral submissions.

Paragraph 89

42. The Tribunal found the Letting Agent had failed to comply with this paragraph of the Code, by failing to manage the repair in line with their agreement with the Landlord. The Tribunal noted that the contract between the parties provided for a full management service, including arranging repairs. The Tribunal took into account the failure of the Letting Agent to progress the repair. There was no good reason given for the Letting Agent not instructing other contractors timeously, if, as Ms Lewis stated in evidence, IR did not attend at the Property. It would be incumbent upon a letting agent, under a full management contract, to quickly instruct another contractor to attend to a serious repairing issue if the usual contractor did not attend.

43. The Tribunal was not persuaded on the evidence of Ms Lewis that IR did not attend at the Property, given the terms of the email sent by the tenant to the Landlord on 20th April 2023, but, in the absence of any response to the Tribunal's order from IR, the Tribunal was unable to make any findings in this regard.

44. The Tribunal was not persuaded that the Letting Agent had tried repeatedly to contact the contractors, as no evidence to support this was provided, and no explanation was given as to why no documentary or other system evidence of repeated contact was provided.

Paragraph 90

45. The Tribunal found the Letting Agent had failed to comply with this paragraph of the Code, by failing to deal promptly and appropriately with repairs, having

regard to their nature and urgency and in line with their written procedures. The issues, the serious nature of which ought to have alerted the Letting Agent, were reported to them on 9th January 2023, yet contractors were not notified until 30th January 2023. No explanation was given for this delay by the Letting Agent. The Tribunal's comments relating to the failure to comply with paragraph 89 above are also relevant to this failure.

Paragraph 93

46. The Tribunal found the Letting Agent had failed to comply with this paragraph of the Code, by failing to inform the Landlord of delays in carrying out repairs.

Paragraph 108

47. The Tribunal found the Letting Agent had failed to comply with this paragraph of the Code by failing to respond to enquiries and complaints within reasonable timescales. The initial enquiries regarding repairing issues from the tenant and the Landlord were not responded to timeously. It was clear from the emails lodged by the Landlord that he constantly had to chase the Letting Agent for updates, which suggests a failure to respond to the Landlord's enquiries. The Letting Agent promised to carry out an investigation, which was not done, and the recorded delivery complaints delivered to the Letting Agent were not dealt with. Promises to provide documentation at the end of the contract between the parties were not fulfilled. There appear to have been significant issues within the Letting Agent's office in respect of communication between staff and with the Landlord and his tenant.

Further discussion and observations

48. The Tribunal was unable to find, in the absence of expert evidence, that the failures of the Letting Agent alone were responsible for the extent of the work required, and the losses of the Landlord. It is not clear whether further damage occurred to the Property unknown to the tenant and Landlord following the earlier water ingress. The Tribunal was unable to accept the Landlord's evidence regarding the precise timescale for the spread of dry rot, as this appeared to be hearsay without any expert or other evidence to substantiate the claim. The Tribunal considered, however, that the Letting Agent's failures contributed to an extent to the repairing issues within the Property, incurring some level of cost for the Landlord, and causing stress and distress to the Landlord.
49. The Tribunal accepted that the Landlord was entitled to rely on the Letting Agent to fulfil the terms of the contract between them and was not satisfied that clause 2.7 in the Terms of Business meant they were not required to progress this urgent issue. However, the Tribunal considered the Landlord could have been more proactive as soon as dry rot was mentioned, and, even if he ought not to have had to do so, he could have chased the Letting Agent up more promptly and more often, or instructed his own contractor sooner, to ensure the matter was investigated as a matter of urgency. This could have mitigated the Landlord's losses to an extent.

Letting Agent Enforcement Order (“LAEO”)

50. Having determined that the Respondent has failed to comply with the Code, the Tribunal must make a LAEO. The Tribunal is required by section 48(7) of the Act to require the Respondent to take such steps as it considers necessary to rectify the failure. Section 48(8) provides that payment of compensation may be made by the Respondent to the Applicant as the Tribunal considers appropriate for any loss suffered by the Applicant as a result of the failure to comply with the Code.

The Tribunal determined to make an LAEO as follows:

1. The Letting Agent must pay to the Applicant within 21 days of the issue of this Order the sum of £2500 towards the cost of repairing damage to the Property as a result of the Letting Agent’s failures to comply with the Code.
2. The Letting Agent must pay to the Applicant within 21 days of the issue of this Order the sum of £500 in respect of distress and inconvenience caused to the Applicant due to the failures of the Letting Agent to comply with the Code.

Right of Appeal

In terms of section 46 of the Tribunals (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.

Legal Member and Chairperson

20th December 2024