



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014 (Act) and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No.328)) (Rules)

Chamber Ref: FTS/HPC/LA/23/1418

Parties

**Miss Lynsey Stafford, Mr David Marshall (Applicants)
Parkview Property (Scotland) Ltd (Respondent)**

**Ayr Housing Aid (Applicants' Representatives)
Lindsays, Solicitors (Respondent's Representatives)**

Re: Property at 12 Iris Court, Ayr, KA7 3XQ ("the Property")

Tribunal Members:

Alan Strain (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent has complied with the Code of Practice for Letting Agents (Code) as required by the Act and refuses the application.

This was an application under Rule 95 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 48 of the Act to enforce the Letting Agent Code of Practice (**Code**).

The Tribunal had regard to the following documents:

1. Application and attachments received 5 May 2023;
2. CMD Notes and Directions dated 18 October 2023 and 15 January 2024;
3. Respondent's Written Representations dated 10 May 2024 and 27 September 2023;
4. Applicant's Written Representations dated 1 May 2024 and 12 October 2023;
5. Joint Bundle agreed by the Parties for the purpose of the Hearing; and
6. 2nd List of Documents for Respondent.

Hearing

The Hearing took place in person over 2 days. The first day was on 22 May 2024 in the Glasgow Tribunal Centre and the second was in Russell House, Ayr on 20 November 2024.

The Applicants participated and were represented Mr Gerry Tierney of Ayr Housing Aid on the first day and by Mr Anderson of Ayr Housing Aid on the second. The Respondent participated and was represented by Mr Adam Gardiner, Solicitor on both days of the Hearing.

The Tribunal set out the procedure to be followed at the outset and identified the documents and productions that would be referred to.

The Tribunal clarified that the paragraphs of the Code that the Applicants asserted breaches of were paragraphs 16, 17, 26, 28, 73, 75, 86, 89, 90, 93, 95 and 111.

Preliminary Issues

Mr Gardiner raised the issue of compliance with paragraph 16 of the Code. In his submission the Respondent had complied with all legislative requirements and the submission made by the Applicants was not relevant. At its highest it alleged a failure to comply with legislative requirement by Ms Molloy before the Respondent commenced trading as Letting Agents in respect of the Property.

The Applicants asserted that the Respondent had breached section 58 (1) and (2) (a)(i) of the **Housing (Scotland) Act 2014** in that the sole director of the Respondent, Janice Molloy herself breached sections 34 (1) and (2)(c)(i) and (ii) and section 44 (1) of the Act by carrying out letting agent work while not a registered Letting Agent.

The Tribunal reserved the issue of relevancy until the conclusion of the Hearing.

At the commencement of the second day of the Hearing Mr Anderson sought to amend the application to include a claim for compensation against the Respondent for the stress and inconvenience suffered by them, in particular, for the loss of use of the bathroom.

This was not opposed by the Respondent so the Tribunal allowed the amendment sought.

Evidence

The Tribunal then heard evidence from the following witnesses:

For the Applicants

1. Lynsey Stafford;
2. David Marshall;

3. William Stafford.

For the Respondent

1. Janice Molloy;
2. Ian Forrest;
3. Euan Blaikie.

The Applicants both spoke to the sequence of events and their complaints set out in the Application and submissions and the impact the conduct complained of had on them and their young family.

Mr William Stafford, Miss Stafford's father, gave evidence as to his observations of the condition of the Property and, in particular, the bathroom.

Ms Molloy spoke to the sequence of events and responded to the allegations made by the Applicants. She denied the allegations and gave evidence regarding the establishment of the Respondent and her dealings with the Applicants throughout the tenancy and Mr Forrest and Mr Blaikie.

Mr Ian Forrest spoke to his involvement undertaking repairs within the Property and his observations of the condition of the Property. He is a sole trader, engineer to trade and has his own business, Forrest Maintenance. He undertakes repairs on behalf of Landlords to their let properties.

Mr Euan Blaikie, the Landlord of the Property gave evidence regarding his dealings with Ms Molloy, the letting arrangements with the Applicants and his dealings with them and Mr Forrest.

All witnesses were questioned by the Tribunal members and the Parties Representatives.

Both Representatives made submissions at the conclusion of the Hearing.

For the Applicants

Mr Anderson submitted that the breach of paragraph 16 had been made out by the actions of Ms Molloy before the Respondent was a registered Letting Agent.

He submitted that the remaining breaches had been made out on the evidence and drew particular attention to the delays in the repairs to the bathroom. During this time the bathroom was unusable and this occasioned considerable inconvenience, stress and anxiety to the Applicants and their young family.

For the Respondent

Mr Gardner addressed each of the alleged breaches of the paragraphs of the Code in turn (paragraphs 16, 17, 26, 28, 73, 75, 86, 89, 92, 93, 95 and 111).

In his submission there had been no breach of the Code.

Consideration of the Evidence

The main issues in dispute between the Parties were:

1. The actions of Ms Molloy in the period where she left Murphy Scoular (who were the original Letting Agents) before the Respondent commenced as a registered Letting Agent and after the Respondent commenced as Letting Agent for the Property. Ms Molloy performed duties as a Letting Agent without the appropriate insurances and registration in place from when she left Murphy Scoular until the registration of the Respondent as a Letting Agent.
2. Delays in performing repairs to the bathroom/kitchen in the Property which meant the Applicants could not use the bathroom and washing facilities;
3. The instruction of unqualified Tradesmen (Ian Forrest);
4. Lack of communications regarding repairs, failure to update and delay in having repairs actioned;
5. Lack of honesty and transparency in Ms Molloy's dealings with the Applicants.

Having heard the Parties' oral and written evidence the Tribunal made the following findings in fact:

1. The Applicants entered into a PRTA with the Landlord (Euan Blaikie) commencing 15 May 2020;
2. Murphy Scoular were Letting agents for the Property from 15 May 2020 until the end of July 2020;
3. Ms Molloy was asked by the Landlord to handle the rental monies received from the Applicants following the termination of the Landlord's relationship with Murphy Scoular until such time as the Respondent was registered. Ms Molloy did so utilising Ian Forrest (her partner) bank account. Rent was paid by the Applicants to Mr Forrest's account and then transmitted to the Landlord.
4. The Respondent obtained registration as a Letting Agent on 27 October 2020;
5. The Respondent were the Letting Agents for the Landlord under the terms of the new lease entered into by the Parties commencing 1 November 2020;
6. Ms Molloy is the sole Director and shareholder of the Respondent;
7. The Respondent had appropriate Professional Indemnity and Client Money Protection Insurance in place from 28 August 2020;
8. On 13 April 2022 the Applicants emailed the Respondent to advise of rotting floor in the bathroom adjacent to the bath;
9. The Landlord instructed his plumber to investigate on 14 April 2022;
10. The Plumber inspected the bathroom on 20 April 2022 and informed the Applicants that the floor under the bath was safe and supporting joists had not been affected;
11. The Applicants were not satisfied with this and informed Ms Molloy. Ms Molloy instructed Mr Forrest to inspect and Mr Forrest agreed with the Plumber.
12. Mr Forrest is a qualified engineer and runs his own property maintenance business for Landlords. The Respondent was satisfied that he was appropriately qualified to undertake the works for which he was instructed by them;

13. By email of 22 July 2022 Ms Molloy confirmed to the Applicants that the Landlord did not intend to have the bathroom repaired as the underfloor had been confirmed safe;
14. By email of 2 November 2022 the Applicants reported a number of repairs required including cold water tap not working, condensation in a bedroom, drafts and the patio door;
15. Ms Molloy responded by email of 3 November 2022 informing the Applicants that she had reported the matter to the Landlord;
16. Mr Forrest repaired the tap on 10 November 2022 and the Landlord instructed repairs to the windows;
17. Ms Molloy contacted a company (RMC) once she had obtained the Landlord's consent, to investigate and repair the remaining issues on 16 November 2022;
18. RMC undertook the repairs in or around November 2022;
19. The Applicants fell into rental arrears in or around January 2023. The Parties entered correspondence regarding the arrears by email over January to March 2023 which was produced and referred to. In the course of the email exchange the Respondent makes reference to the prospect of eviction proceedings;
20. By email of 16 January 2023 the Applicants raised further repair issues with the Respondent due to water damage to the kitchen floor and kitchen back door; a further email was sent by the Applicants on 20 January 2023;
21. The Respondent replied by email of 18 January 2023;
22. By email of 25 January 2023 the Applicants wrote to the Respondent detailing outstanding repairs;
23. The Respondent replied by email of 26 January 2023 to the effect that the email had been passed to the Landlord to address the outstanding repairs;
24. By emails of 1 and 7 February 2023 the Respondent informed the Applicants that RMC had been instructed to attend the Property and conduct any necessary repairs to the windows and doors and gave a detailed response to the other repairs raised by the Applicants;
25. On 12 February 2023 the Applicants reported, by email, a water leak which had damaged the bathroom and kitchen ceiling. The Respondent reported this immediately to the Landlord and informed the Applicants by email of the same date that she was arranging for tradesman to attend the following day to inspect.
26. A tradesman (John Blair) attended the Property on 13 February 2023 to assess the damage;
27. The Respondent contacted the Landlord's Insurers on numerous occasions from 17 February 2023 until 11 April 2023 regarding progress of the repairs (detailed in an email of 5 May 2023 from Axa to the Respondent);
28. On 20 February 2023 the Parties participated in a video call with the Landlord's Insurers at the Property to show the damage;
29. The Landlord had arranged for Mr Ian Forrest to undertake the repairs. The Applicants objected to him on the basis he was not properly qualified. The Landlord instructed alternate contractors;
30. The Respondent informed the Applicants by email of 20 April 2023 that the Landlord had instructed repairs to go ahead regardless of insurance claim being settled;
31. Repairs commenced on 28 April 2023 and were completed by 26 May 2023;

32. The Applicants had restricted use of their bathroom during the period 12 February 2023 until 26 May 2023
33. The Respondent's practice was to report repairs/maintenance/defects to the landlord and await instruction on dealing with the matters that arose;
34. The Applicants issued formal complaints to the Respondent by letters of 12, 17 and 25 April 2023;
35. The Parties were unable to resolve the complaints between them.

Having considered the evidence and made the above findings the Tribunal decided:

(a) Paragraph 16 of the Code

16. You must conduct your business in a way that complies with all relevant legislation.

The Applicants' complaint was that the Respondent failed to conduct themselves in compliance with the relevant legislation. The complaint particularly relates to the actions of Ms Molloy during the period after she left Murphy Scoular and prior to commencing with the Respondent.

The Applicants asserted that the Respondent had breached section 58 (1) and (2) (a)(i) of the **Housing (Scotland) Act 2014** in that the sole director of the Respondent, Janice Molloy herself breached sections 34 (1) and (2)(c)(i) and (ii) and section 44 (1) of the Act by carrying out letting agent work while not a registered Letting Agent and without appropriate insurances in place.

The Tribunal had reserved the issue of relevancy following objection by Mr Gardiner.

The Tribunal considered the evidence and found that:

- (i) Ms Molloy is not a Party to this application;
- (ii) Any actions by her during the period in question were on her own part and not on behalf of the Respondent.

The Tribunal did not consider that Paragraph 16 had been breached by the Respondent in all the circumstances of this case.

(b) Paragraph 17 of the Code

17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).

The Applicants' complaint was that the Respondent failed to conduct themselves in compliance with the Code in their dealings with them. This specifically relates to the actions of Ms Molloy subsequent to leaving Murphy Scoular and prior to acting on behalf of the Respondent. It also relates to her responses to and dealings with the Applicants during the course of the tenancy.

The Tribunal considered the evidence and found that:

- (i) The actions of Ms Molloy prior to the Respondent being Letting Agent were not relevant;
- (ii) Any dealings between the Respondent and the Applicants was on an honest, open, transparent and fair basis.

The Tribunal did not consider that Paragraphs 17 had been breached by the Respondent in all the circumstances of this case.

(c) Paragraph 26 of the Code

26. You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.

The Tribunal considered and found that the Respondent's dealings with the Applicants did not breach paragraph 26. The Respondent replied to any enquiries and complaint within a reasonable timescale.

(d) Paragraph 28 of the Code

28. You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.

The Tribunal considered and found that there was no evidence to support the assertion that the Respondent's dealings with the Applicants breached paragraph 28. The Respondent communicated with the Applicants in a professional and courteous manner.

(e) Paragraphs 73 and 75 of the Code

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.

75. Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.

There was no evidence that the Respondent failed to provide their services other than in accordance with relevant legal obligations, the relevant tenancy agreement and sections of the Code. Accordingly, the Tribunal found that paragraph 73 had not been breached.

The Tribunal did not consider that a breach of paragraph 75 was established. It was not at all clear what the basis of this assertion was. In so far as it related to

the Applicants failure to pay rent and the correspondence regarding service of a Notice to Leave the Tribunal found that the Respondent dealt with such matters promptly and appropriately.

(f) Paragraph 86 of the Code

86. You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required, if you provide this service directly on the landlord's behalf. Your procedure should include target timescales for carrying out routine and emergency repairs.

The Tribunal considered the communications between the Parties carefully. It was evident that the Respondent had an established procedure which the Applicants were well aware of regarding the reporting of repairs and maintenance issues.

The Tribunal found that the Respondent dealt with such issues promptly and kept the Applicants fully apprised regarding progress.

The Tribunal consider no breach to have been established in the circumstances.

(g) Paragraph 89, 92 and 93 of the Code

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.

92. Where access is needed for repairs you must give the tenant reasonable notice of when access is required unless other arrangements have been agreed. Section 184 of the Housing (Scotland) Act 2006 is also relevant here and paragraph 6 of the schedule of the Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017 is relevant in respect of a private residential tenancy.

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 Tribunal finds that all of these paragraphs have been complied with in the circumstances.

The Respondent clearly managed the repairs in line with the agreement with the Landlord and, in any event, this paragraph of the Code relates to the duties of the Respondent to the Landlord (not the Applicants).

The Respondent adequately communicated with the Applicants and kept them informed with regard to progress over the repairs and access requirements.

Any delay in completing the repairs was not in any part due to the actions of the Respondent.

(h) Paragraph 95 of the Code

95. If you use a contractor or a third party, you must take reasonable steps to ensure they hold appropriate professional qualifications and the necessary public and professional liability insurance. You should hold copies of all relevant documents.

This complaint specifically relates to the instruction of Ian Forrest. The Tribunal considered and found that the Respondent had taken reasonable steps to ensure Mr Forrest was appropriately qualified to undertake the works for which he was instructed.

(i) Paragraph 111 of the Code

111. You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.

The Tribunal considered and found that all communication with the Applicants was professional and appropriate.

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.

Alan Strain

Legal Member

20 November 2024

Date