



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/23/2207

Re: Property at 22 Florence Court, Perth, PH1 5BL (“the Property”)

Parties:

Mrs Julie MacDonald and Mr Michael MacDonald, Mhor House, 28 Dundas Home Farm, South Queensferry, EH30 9SS (“the Applicants”)

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

Tribunal Members:

Andrew Upton (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the Letting Agent Code of Practice and made a Letting Agent Enforcement Order.

Findings in Fact

1. The Respondent was instructed by the Applicants to manage the Property.
2. The Respondent took over the management of the Property from Perthshire Property Services on the same terms.
3. It was not a term of the property management contract between the parties that the Respondent would undertake periodic inspections of the Property.
4. The Respondent operated an online repairs portal that allowed the Applicants to see what inspections had been carried out, when, and the findings, as well as details of all repairs.
5. The Respondent’s website is managed by its UK-wide parent entity.

6. The complaints process published on the Belvoir UK website is the complaints policy for England and Wales. There is a separate complaints policy for Scotland.
7. The Respondent provided the Applicant with a copy of the Scottish complaints policy on request.
8. The Respondent's failure to make clear that the complaints policy on the website only applied in England and Wales was likely to confuse those seeking to complain.
9. The Respondent commenced dispute resolution with Safe Deposit Scotland to seek to recover the tenancy deposit secured with that scheme for the Applicants, but did not complete those proceedings. The Respondent wrongly determined that it no longer required to do so.
10. The Respondent failed to respond to the Applicants' individual complaints within a reasonable period.
11. The Respondent attended to all repairing issues within a reasonable period of time.
12. The Respondent did not agree to manage the Applicants' insurance claim.
13. The Respondent did not provide a check-out report to the Applicants.

Findings in Fact and Law

1. The Respondent failed to comply with paragraphs 18, 20, 26, 32l, 32m, 73, 102, 108 and 112 of the Letting Agent Code of Practice.

Statement of Reasons

1. This Application called for a Hearing by teleconference call on 13 August 2024, alongside two related Applications (LA/23/4144 and LA/23/2618). The Applicants were present. The Respondent was represented by Ms Lewis.
2. This is an Application under section 48 of the Housing (Scotland) Act 2014 to enforce the Letting Agent Code of Practice. The Applicant claims to be the landlord of the property at 22 Florence Court, Perth, PH1 5BL, to have instructed the Respondent to provide the services of a letting agent in respect of the Property, and that the Respondent has failed to comply with paragraphs 17, 18, 20, 21, 23, 26, 27, 28, 29d, 29f, 30, 32a, 32d, 32l, 32m, 32n, 73, 74, 79, 86, 90, 96, 101, 102, 104, 106, 108, 109, 111, 112, 113, 120, 124 and 129 the Letting Agent Code of Practice.

3. At the outset of the Hearing, it was established that the Applicant owns the Property jointly with her husband, Michael MacDonald. The Application was amended to include Mr MacDonald as an Applicant in this Application.
4. Evidence was heard in this matter from both Applicants and from Aimi Lewis of the Respondent. Regrettably, it appeared to the Tribunal that none of the parties were well prepared for these proceedings. The Applicants, in particular, seemed oblivious to what the purpose of the Hearing was, or what was to be expected of Parties attending a Hearing.
5. Having heard from the Parties, the following matters do not appear to be in dispute:-
 - a. The Applicants are the owners of the Property.
 - b. The Applicants previously instructed Perthshire Property Services ("PPS") as their letting agent.
 - c. The Respondent took over the letting agent services in respect of the Property from PPS and on the same terms as between the Applicants and PPS.
 - d. The Respondent operated an online portal showing the outcome of property inspections undertaken at the Property, which the Applicants had access to.
6. Thereafter, evidence was heard from the witnesses under each head of complaint. It is worth noting, as a general point, that the onus was on the Applicants to prove that the Respondent had acted in the manner contended, and that such conduct amounted to a breach of the paragraphs of the Code referred to in their complaint.

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

Evidence

7. The Applicants' position under this paragraph related to two specific complaints. Firstly, the Applicants asserted that they had repeatedly requested information from the Respondent regarding what inspections had been undertaken in accordance with a general obligation to inspect the Property. Secondly, the Applicants asserted that the Respondent had undertaken to take forward the Applicants' claim on the common buildings insurance policy following water ingress from the roof and related damage to the Property. The Applicants said that, notwithstanding that undertaking, the Respondent did not take the claim forward, and its parent company subsequently asserted that it would not deal with an insurance claim on a landlord's behalf.
8. The Respondent's position on the inspection point was that they had no contractual obligation to undertake periodic inspections, nor any other duty to do so. They took over the letting from PPS, and it was not part of the standard terms and conditions that they undertake regular inspections. That was a

matter that required to be agreed between the letting agent and the landlord. Insofar as inspections were undertaken, details of those were uploaded to an online portal that the Applicants had access to. As regards the insurance complaint, the Respondent denied undertaking responsibility for progressing a claim. Ms Lewis confirmed that the Respondent likely undertook to assist gaining access to the Property for the completion of a repair, but it would be unusual, to say the least, for a letting agent to assume responsibility for progressing a common repair on behalf of a property owner. In any event, the correspondence produced to the Tribunal showed that the property factor was in direct discussions with the Applicants concerning finishes for the repair, which supported the Respondent's position that the Applicants were dealing with the insurer directly, and that the Respondent's role was to allow access.

9. In response, the Applicants conceded that they had access to the Respondent's online system and had seen some inspection reports, but did not believe that all of the reports were there. If they were, then the Respondent had failed to carry out regular inspections and they were supposed to. They said that PPS had carried out regular inspections. The Respondent's failure had, they said, resulted in the Property being in a poor condition following the end of the tenancy. As for the insurance claim, by not engaging with the insurer on the Applicants' behalf, the Respondent had caused the Applicants to lose the right to make the insurance claim.

Decision

10. Having heard from the Parties, the Tribunal was unable to find any evidence that the Respondent had failed to be honest, open, transparent and fair with the Applicants. The Respondent's position on property inspections was clear and consistent. The Applicants failed to produce a copy of the terms and conditions between them and the Respondent. Absent such evidence, the Tribunal was not satisfied that the Respondent was under a contractual obligation to carry out regular inspections of the Property. The Tribunal was satisfied that reports from the Property inspections actually undertaken were uploaded to the online system, and that the Applicants had access to them. That the Applicants feel aggrieved by the contracted service being what they consider to be a lesser service than that in fact provided by PPS does not render the Respondent's dealings in breach of paragraph 17 of the Code.
11. Similarly, the Tribunal was not satisfied that the Respondent had breached paragraph 17 in respect of the insurance issue. It is feasible that there was a breakdown in communication regarding what the Applicants thought they had instructed the Respondent to do, and what the Respondent had actually agreed to do, but such a breakdown does not render the dealing dishonest, closed, opaque or unfair.
12. Accordingly, the Tribunal finds that the Respondent was not in breach of paragraph 17.

Paragraph 18 – You must provide information in a clear and easily accessible way

Evidence

13. This complaint related to the Respondent's complaints policy. The Applicants' position was that there were two conflicting complaints policies, and they could not ascertain which the correct one was.
14. The Respondent conceded that there were two complaints policies. Firstly, there was a complaints policy available on the Belvoir UK website. The Respondent is a franchisee of Belvoir. The policy on the website was, to Ms Lewis' knowledge, prepared by the franchisor for use in England and Wales. It makes reference to legislation in England and Wales. The second policy is the Scottish policy, which was provided by Ms Lewis to the Applicants in March 2023. Ms Lewis' position was that she expressly advised the Applicants that the policy provided to them by her was the correct complaints policy.

Decision

15. Whilst the Tribunal was satisfied that any dubiety about the complaints policy was swiftly addressed by Ms Lewis, it is clear that there is scope for confusion in relation to the complaints policy. If the policy on the website is only applicable for England and Wales, then it should expressly state that. Similarly, the Scottish complaints policy should also be available online and clearly marked. The failure to take those steps is a failure to provide information in a clear and easily accessible way.
16. Accordingly, the Tribunal considers that the Respondent has breached paragraph 18 of the Code. The Tribunal will require the Respondent to arrange with its franchisor to update the website so that the English complaints policy is properly marked, and the Scottish complaints policy uploaded and also properly marked.

Paragraph 20 – You must apply your policies and procedures consistently and reasonably

Evidence

17. The Applicants' complaint falls under two heads. Firstly, the Applicants complain that the Respondent failed to undertake regular inspections of the Property.
18. The second is that the Respondent failed to complete the claim to Safe Deposit Scotland to recover the tenancy deposit after the expiry of the tenancy of the Property. The deposit had been paid to Safe Deposit Scotland. The Respondent intimated the claim. Thereafter, the Respondent refused to engage with Safe Deposit Scotland and the Applicants had to deal with it themselves.
19. The Respondent's position on inspections was as previously set out. As regards the tenancy deposit, it was admitted that they intimated the claim but

told the Applicants to set up their own account and progress it themselves. That was because the Applicants had, by that point, made clear that the Respondent was no longer instructed by the Applicants in connection with the Property, and the Respondent considered its engagement to be at an end.

Decision

20. For the reasons outlined earlier in this decision, the Tribunal was not satisfied that the Respondent was under an obligation to undertake regular inspections. That part of the complaint is refused.
21. However, the Tribunal is satisfied that the Respondent failed to apply its tenancy deposit procedure consistently and reasonably. There is no evidence to support the suggestion that the Applicants had instructed the Respondent to stop its involvement in the deposit claim. The Tribunal is satisfied that the Respondent, having been instructed to make the claim, retained instructions to take that claim to its conclusion and ought to have done so. Its failure to do so caused inconvenience to the Applicants, and likely delay in their recovering the deposit.
22. For that reason, the Tribunal finds that the Respondent was in breach of paragraph 20 of the Code. Given that the Respondent's breach represented a failure to provide a service that the Applicants had paid for, the most appropriate order is the return of a portion of the management fee charged for that service. Accordingly, the Tribunal will require the Respondent to make payment to the Applicants in a sum equal to one-half of the final month's management fee that was charged to the Applicants.

Paragraph 21 – You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way

Evidence

23. This complaint related to the insurance issue. The Applicants contended that the Respondent agreed to progress their insurance claim in respect of a common repair and then failed to do so. The Respondent's position was that it did not agree to provide such a service.

Decision

24. For the reasons outlined above, the Tribunal was not satisfied that the Respondent agreed to provide the service contended for by the Applicants. Accordingly, the Tribunal finds that the Respondent was not in breach of paragraph 21 of the Code.

Paragraph 23 – You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property

Evidence

25. This complaint again related to the insurance issue. The Applicants contended that the Respondent agreed to progress their insurance claim in respect of a common repair and then failed to do so. The Respondent's position was that it did not agree to provide such a service.

Decision

26. For the reasons outlined above, the Tribunal was not satisfied that the Respondent agreed to provide the service contended for by the Applicants. Accordingly, the Tribunal finds that the Respondent was not in breach of paragraph 23 of the Code.

Paragraph 24 – You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code's requirements

Evidence

27. This complaint appeared from the papers to be about a lack of record keeping by the Respondent following property inspections. During the Hearing, it became clear that this was, in truth, a further complaint that the Respondent had not undertaken regular inspections.

Decision

28. The Applicants did not lead any evidence to support a finding that the Respondent had failed to maintain appropriate records. For that reason, the Tribunal finds that the Respondent was not in breach of paragraph 24 of the Code.

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

Evidence

29. The Applicants' evidence was that they complained to the Respondent on 20 March 2023. As at the date of the Hearing, they had not received a response to that complaint.
30. Ms Lewis advised the Tribunal that the complaint was acknowledged on 20 March 2023. A copy of the Scottish complaints process was sent to the Applicants on 27 March 2023, and that the Applicants were told by the Respondent that it was looking into the complaint. Between then and the date of raising the Application, the Applicants wrote multiple emails raising new points of complaint; sometimes multiple emails a day. Ms Lewis said that this made the process of investigating and responding to the complaints more complicated. Then the Application was raised, and that superseded the need for response.

31. In response, the Applicants said that they had to make individual complaints for individual properties. That was stressed to them by the Respondent. Given that their complaints spanned a portfolio of three properties, including the Property, that necessitated multiple emails. On a few occasions, the Applicants accepted that they had forgotten to include some points of complaint, and then sent additional correspondence. Mrs MacDonald said that she was under considerable stress, and that this likely contributed to it.

Decision

32. Whilst, having considered the correspondence from the Applicants to the Respondent during the period March to July 2024, the Tribunal has some considerable sympathy for the Respondent's argument that its ability to respond to the complaint was complicated by the Applicants' approach to complaining, there was no good reason why the points raised by the Applicants in earlier correspondence could not have been responded to, and the later points dealt with under separate cover. The fact is that two months is not a reasonable period for response, and was not in keeping with the Respondent's own policy. Separately, the Respondent ought to have responded the complaint irrespective of whether the Application had been raised. Had it done so, it would have achieved two things. Firstly, it would have given the Applicants the opportunity to consider the response and determine whether they wished to continue with the Application, or restrict its scope. Secondly, it would have provided the Tribunal with a full exposition of the Respondent's position in respect of the claim.
33. For that reason, the Tribunal finds that the Respondent was in breach of paragraph 26 of the Code. The Tribunal will require the Respondent to revise its complaints policy to provide that:-
- a. Its timescales for response apply to individual heads of complaint from the date when that head of complaint is made; and
 - b. It shall provide a response to the complaint irrespective of whether proceedings are subsequently raised with the Tribunal.

Paragraph 27 - You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.

Evidence

34. The Applicant's complaint is that the Respondent failed to tell the tenant of the full financial impact of having to bring the flat back to an acceptable letting or saleable standard. Their issue appears to be that the Respondent, they say, failed to tell the tenant what the extent of their breach was.
35. The Respondent's position was that they intimated the claim, but then did not have an opportunity to deal with the tenant. The Applicants decided to terminate the agreement.

Decision

36. The complaint here misunderstands what the purpose of this paragraph of the Code is. Paragraph 27 aims to stop letting agents from delaying to deal with issues as they arise. The specific examples given are a failure to deal with a repairing issue when notified, or a failure to advise the landlord of a breach of the tenancy agreement if the letting agent becomes aware of one.
37. The complaint made relates to what information is alleged to have been given to the tenant after lease expiry. Firstly, there is no evidence to support a view that the Respondent delayed at lease expiry to intimate a claim. Secondly, insofar as it is contended that the Respondent failed to inform the tenant of the extent of the disrepair, it is difficult to reconcile that with the Applicants' concession that the Respondent commenced the claim with Safe Deposit Scotland. The Tribunal was not presented with any evidence to suggest that the claim initiated by the Respondent was for less than the full amount of the claim; particularly where the Applicants accept that they recovered the full deposit.
38. For those reasons, the Tribunal finds that the Respondent was not in breach of paragraph 27 of the Code.

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

Evidence

39. This complaint relates to the manner allegedly adopted by Aimi Lewis in a telephone call with Mrs MacDonald. Mrs MacDonald's evidence was that she tried to explain, calmly and constructively, Belvoir's alleged failings. She alleges that Ms Lewis stated that she "did not have to listen to this" and put the phone down on Mrs MacDonald. When asked, Mrs MacDonald accepted that the allegation really was that Ms Lewis was rude, and that Ms Lewis had not been abusive, intimidating or threatening.
40. Ms Lewis told a very different story. She said that Mrs MacDonald was difficult to deal with, and that she had made derogatory comments about members of Belvoir's staff. Ms Lewis said that she warned Mrs MacDonald that she would terminate the call if she continued to speak to her in the manner that she was. Ms Lewis denies that she was abusive, intimidating or threatening on the call.
41. In response, Mrs MacDonald denied using derogatory language. She said that she had complained about a lack of action by staff. She denied that she was warned that the call may be terminated.

Decision

42. The question for the Tribunal is whether the Respondent's communications with the Applicants were abusive, intimidating or threatening. By the

Applicant's own admission, they were not. That is sufficient to reject this complaint.

43. However, for completeness, the Tribunal preferred the evidence of Ms Lewis on this matter. Mrs MacDonald's manner towards the Tribunal was poor for much of the Hearing. On more than one occasion, her temper got the better of her and she raised her voice towards the Tribunal members. If she was prepared to deal with members of the Tribunal in that manner, it was straightforward enough for the Tribunal to believe that she had behaved towards Ms Lewis in the manner contended. By contrast, Ms Lewis gave her evidence in a measured fashion. She made appropriate concessions in her evidence as were merited in the circumstances. She was contrite when accepting clear failings on the part of the Respondent, such as in particular the complaints process issues. For those reasons, the Tribunal preferred her evidence regarding the telephone discussion.
44. For the foregoing reasons, the Tribunal determined that the Respondent did not breach paragraph 28 of the Code.

Paragraph 29d - In your dealings with potential landlord clients you must: d) if you become aware in the course of your business that a property does not meet appropriate letting standards (e.g. repairing standard, houses in multiple occupation and health and safety requirements), inform the landlord of this

Evidence

45. The Applicants' principal complaint was that the Respondent had allowed the property to fall into a poor state of repair by negligence and not performing regular inspections. They also contended that standard repairs were not undertaken; in particular allowing the bathroom to fall into disrepair following a leak which resulted in no bathroom floor covering whilst the tenant occupied the property. When asked, the Applicants accepted that it was likely that the tenant did not report all of the repairing issues.
46. The Respondent disputed that they were under obligation to undertake regular inspections. The Respondent also confirmed that there were two repairing issues involving leaks. One was a leak to the WC in October 2022, and the other was the insurance leak. Ms Lewis' understanding was that the floor covering in the bathroom was removed due to the insurance leak, and she recalled seeing correspondence from the insurers to the Applicants seeking their input on the replacement floor covering to be laid. Her evidence was that all information on repairs was available through the online portal.

Decision

47. The Tribunal was not satisfied that the Respondent had failed to make the Applicants aware of any repairing issues at the Property that put the Property below appropriate letting standards. The Applicants were aware of the leak issues. The Applicants were aware of the insurance related damage and

necessary repairs. The Applicants had access to the online repairs portal operated by the Respondents. The Respondents, for reasons set out above, were not under obligation to undertake regular inspections.

48. For the foregoing reasons, the Tribunal determined that the Respondent was not in breach of Paragraph 29d.

Paragraph 29f - In your dealings with potential landlord clients you must: if you intend to act for clients who have competing interests or your personal interests conflict, or could potentially conflict, inform the clients as soon as you become aware of it

Evidence

49. The Applicants' complaint was that there was a conflict of interest between Ms Lewis, as the business owner of the Respondent, and her brother, who is the franchisee. It became clear very early in the discussion that the Applicants had no basis to conclude that the foregoing relationship was a conflict of interest insofar as competing with their own interests. Indeed, it was apparent that they did not fully understand the concept of conflict of interest. Following discussion, the Applicants confirmed that they no longer insisted on this complaint.

Decision

50. The Tribunal determined that the Respondent did not breach paragraph 29f of the Code.

Paragraph 30 - You must agree with the landlord what services you will provide and any other specific terms of engagement. This should include the minimum service standards they can expect and the target times for taking action in response to requests from them and their tenants.

Evidence

51. This complaint founded on the alleged failure of the Respondent to carry out regular inspections per their terms of engagements. Both parties founded on their earlier evidence on that matter.

Decision

52. The Tribunal has already determined that the Respondent did not undertake to carry out regular property inspections. For that reason, the Tribunal determined that the Respondent did not breach paragraph 30 of the Code.

Paragraph 32a - Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out: a) the services you will provide to that landlord and the property they relate to. For example, tenant introduction, lettings service and full management service

Evidence

53. The Applicants' complaint related to an alleged failure by the Respondent to follow their check out procedure. In particular, the Applicants claim that the Respondent allowed the tenant to move out and take keys with them, before posting them back. Under questioning, the Applicants accepted that the Respondent's terms of business included provisions about the check out procedure. Their issue was that the procedure was not follows.
54. Ms Lewis spoke to the check out procedure that was followed. Following receipt of notice to leave from the tenant, the Respondent informed the Applicants that the tenancy would be ending. The Applicants advised that they intended to sell the Property. The Respondent then emailed the tenant to confirm the procedure for removing from the Property, including the check-out procedure. The check-out meeting was fixed for 13 June 2023. The tenant failed to attend the check-out meeting, and in fact had left the country. The tenant had mistakenly retained the keys, and posted them back to the Respondent. The Respondent had tried to comply with its policy, but the tenant failed to meet their own obligations.

Decision

55. Paragraph 32a concerns whether the statement of services to be provided is sufficiently clear and understandable that the parties know and understand what services are being provided. The Applicants accepted that they were. That is sufficient to determine that the Respondent is not in breach of paragraph 32a.
56. However, and in any event, it is difficult to understand what it is that the Applicants consider the Respondent should have done differently. The Respondent followed its procedure. The issue complained of by the Applicants relates to the tenant's behaviour, over which the Respondent had no control. The Tribunal has no hesitation in finding that the Respondent did not act improperly regarding the check-out procedure.
57. For those reasons, the Tribunal determined that the Respondent did not breach paragraph 32a of the Code.

Paragraph 32d - Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out: d) where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing repairs to the property and the purchase of replacement goods

Evidence

58. The Applicants' complaint was that the Respondent had failed to attend to basic repairs or undertake regular inspections. When asked, the Applicants confirmed that the had not given any delegated authority to the Respondent to

deal with matters. The Respondent was required to seek the Applicants' express authority before instructing any repair.

Decision

59. The Tribunal has already determined that the Respondent was not under obligation to carry out regular repairs. Given that the Applicants now concede that they did not delegate authority to the Respondent, it is clear that there has been no breach of Paragraph 32d.

Paragraph 32l - Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out: l) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond

Evidence

60. This complaint relates again to the issues surrounding the competing complaints procedures. Both parties adopted their earlier positions thereon.

Decision

61. For the reasons set out earlier in this decision, the Tribunal determined that the Respondent's complaints procedure was not clearly set out. The Respondent has breached paragraph 32l. The said breach is appropriately addressed by the requirements which have been imposed already on the Respondent to clarify the complaints processes based on jurisdiction.

Paragraph 32m - Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out: m) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure

Evidence

62. The Applicants here complain that they were not able to exhaust the complaints process because the Respondent did not respond. They also complain that the complaints process was unclear, for the reasons already considered.
63. The Respondent's position was that information about complaining to the Tribunal is clearly set out in their Scottish complaints policy.

Decision

64. Paragraph 32m concerns a need to provide information clearly. The Tribunal accepts that the information about complaining to the Tribunal was clearly set out in the Scottish complaints policy. The problem is the confusion caused by

the existence of two separate complaints policies for the different jurisdictions which were not clearly labelled. That created uncertainty. For that reason, the Tribunal determined that the Respondent breached paragraph 32m. The said breach is appropriately addressed by the requirements which have been imposed already on the Respondent to clarify the complaints processes based on jurisdiction.

Paragraph 32n - Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out: n) a declaration of any conflict or potential conflict of interest

Evidence

65. This complaint again arose out of the alleged conflict between Ms Lewis and her brother. Again, it was not clear how the business arrangement involving Ms Lewis and her brother represented a conflict, or potential conflict, of interest with the Applicants.

Decision

66. The Tribunal determined that the Respondent did not breach paragraph 32n. There was not conflict of interest, actual or potential, between the Respondent and the Applicants.

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.

Evidence

67. This complaint principally related, again, to the alleged failure of the Respondent to undertake regular inspections of the Property. There was a secondary complaint, which was that the Respondent failed to follow its check-out procedure by failing to provide the Applicants with a report on the condition of the Property following the check-out inspection.
68. Ms Lewis again founded on there being no obligation to undertake regular repairs. She claimed that the Respondent had provided a check-out report to the Applicant. No report, or evidence of it having been sent, had been produced to the Tribunal. As such, it was agreed that the Respondent would be allowed a short period following the Hearing to submit any correspondence showing, or tending to show, that the check-out report had been sent to the Applicants. The Respondent was unable to produce evidence that the check-out report had been sent to the Applicants, in accordance with their procedure.

Decision

69. For the reasons previously set out, the Tribunal was not satisfied that the Respondent was under a contractual obligation to undertake regular repairs. However, it was satisfied that it was under a contractual obligation to follow a check-out procedure, which included preparing and issuing a report on the condition of the Property following the termination of a tenancy.
70. Absent any evidence that the Respondent sent a copy of the check-out report to the Applicant, the Tribunal was not satisfied that the Respondent had provided the service that it contracted to. That being the case, the Tribunal determined that the Respondent breached paragraph 73 of the Code, and ought to reimburse a sum equal to one half of the management fee paid by the Applicant in respect of the final month of the management of the Property.

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 (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).

Evidence

71. This complaint related to an alleged failure to carry out routine inspections during the currency of the tenancy. The parties founded on their positions as set out earlier in this decision.

Decision

72. For the reasons previously set out, the Tribunal determined that the Respondent was not under an obligation to undertake regular inspections. This complaint is rejected. The Tribunal determined that the Respondent did not breach paragraph 74.

Paragraph 79 - In managing any rent arrears, you must be able to demonstrate you have taken all reasonable steps to recover any unpaid rent owed to the landlord (see also section Handling landlords' and tenants' money, and insurance arrangements).

Evidence

73. The Applicants' complaint related to the period after termination of the tenancy where the tenant had removed from the Property but had failed to return the keys. The Applicants' position was that the tenant ought to have been pursued by the Respondent for payment of rent for that period, since possession had not truly been given back.
74. The Respondent accepted that it did not pursue the tenant for payment of rent for that period. Its position was that the tenancy had come to an end, and rent was not payable. Whilst it was an option to force entry and change the locks, the fact that the tenant had undertaken to return the keys when they realised that they had retained them made the damage and additional costs associated with such work unreasonable.

Decision

75. Having heard from the parties, the Tribunal determined that there were no rent arrears to be managed in respect of the period after termination of the tenancy. The retention by the tenant of keys in the circumstances of that tenancy did not stop the tenancy from terminating, and rent therefore did not fall due. Accordingly, the Tribunal determined that the Respondent did not breach paragraph 79 of the Code.

Paragraph 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.

Evidence

76. Paragraph 86 requires letting agents to have written procedures and processes in place for dealing with repairs. However, the Applicants in their evidence accepted that written procedures and processes were in place. Their complaint was actually that they had not been followed.

Decision

77. Standing the Applicants' concession that written procedures and processes were in place, the Tribunal determined that the Respondent did not breach paragraph 86 of the Code.

Paragraph 90 - Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

Evidence

78. The Applicants complain that the Respondent failed to deal with repairs promptly and appropriately. Two specific failings were referred to. The first was that the Respondent had failed to undertake inspections to keep on top of wear and tear. The second was that the Respondent only ever sought one quotation for repair works, meaning that there was a delay whilst additional quotes were sought.
79. The Respondent founded on its stated position regarding regular inspections. As regards the allegation of delay being caused by only seeking one quotation, it accepted that it only sought one quotation. The Respondent claimed only to use reliable contractors. Miss Lewis asserted that the Respondent, through its experience, had a "good idea" of what a reasonable quote is for most ordinary repairs. It was not part of the Respondent's procedure to seek multiple quotations for ordinary repairs.

Decision

80. In all of the circumstances, the Tribunal was not persuaded that the Respondent had failed to act promptly or appropriately by seeking only one quotation for repairs at the Property. Accordingly, the Tribunal determined that the Respondent did not breach paragraph 90 of the Code.

Paragraph 96 - On request, you must disclose to landlords, in writing, whether you receive any commission, fee, rebate or other payment or benefit and any financial or other interest you receive from a contractor/third party you appoint.

Evidence

81. Paragraph 96 requires letting agents to disclose any commissions, fees, etc, received by them from contractors or third parties. However, the terms of the complaint refer to the perceived failure of the Respondent to obtain more than one quote for repairs.
82. The Respondent's position was that it did not disclose any commission, fee, rebate or other payment because it did not receive any. The Applicants accepted that evidence.

Decision

83. Standing the Applicants' acceptance that the Respondent did not receive any commission, fee, rebate or other payment or benefit, or any financial or other interest, the Tribunal determined that the Respondent did not breach paragraph 96 of the Code.

Paragraph 101 - Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit unless there is good reason not to. For example, evidence of violent behaviour.

Evidence

84. The Applicants' position was that the Property was left in a poor condition, the keys were not handed back, and they believed that the Respondent did not follow their check-out process with the tenant.
85. The Respondent's position was that they followed the check-out process, but that the tenant did not comply with their obligations. There is a distinction between the Respondent informing the tenant of their responsibilities, as required by paragraph 101, and the tenant meeting those responsibilities.

Decision

86. The Tribunal prefers the Respondent's position. The Applicants led no evidence to suggest that the Respondent failed to meet its obligations under

paragraph 101. At best, the Applicants' evidence was that the tenant failed to meet their obligations. It follows that the Tribunal was not satisfied that the Respondent had breached paragraph 101 of the Code.

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.

Evidence

87. This complaint appeared to be a complaint about the condition that the Property had been left in. However, it became clear that the complaint here was, as set out previously, the failure of the Respondent to follow its check-out process. Parties again relied on their positions regarding the undertaking of a check-out inspection, and the preparation and issuing of a check-out report, as more particularly set out above in relation to the complaint under paragraph 73 of the Code.

Decision

88. Absent any evidence that the Respondent sent a copy of the check-out report to the Applicant, the Tribunal was not satisfied that the Respondent had produced the report that it was required to by paragraph 102. That being the case, the Tribunal determined that the Respondent breached paragraph 102 of the Code, and ought to reimburse a sum equal to one half of the management fee paid by the Applicant in respect of the final month of the management of the Property.

Paragraph 104 - You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared.

Evidence

89. This complaint relates to the steps that the Respondent took to correspond with the tenant following check-out. The allegation is that the Respondent failed to give the tenant information concerning damage at the Property. No evidence was produced by the Applicant to suggest that the information given by the Respondent to the tenant was unclear. The Applicants accepted that the Respondent had commenced proceedings with the Tenancy Deposit Scheme Administrator that highlighted damage to the Property.
90. The Respondent's position was that it commenced the proceedings with the Tenancy Deposit Scheme Administrator, which identified specific items of disrepair in the Property.

Decision

91. The purpose of paragraph 104 of the Code is to protect the interests of tenants, so that they are provided with clear information about their obligation and likely liabilities. The Tribunal has not seen any evidence to suggest that the information provided by the Respondent to the tenant was unclear. It follows that the Tribunal was not satisfied that the Respondent had breached paragraph 104 of the Code.

Paragraph 106 - In the event of a dispute, the agent and tenant will be required to follow the relevant scheme's rules for disputes.

Evidence

92. The Applicants' position here was two-fold. Firstly, they contend that there ought to have been a dispute with the tenant regarding the tenancy deposit, and that the Respondent failed to confirm whether a dispute had been raised, or what its outcome was. Secondly, the Applicants considered that there ought to be some form of joint liability on the part of the Respondent with the tenant for not taking steps to ensure that the Property was properly looked after during the tenancy, including by regular inspections.
93. On the first point, the Applicants accepted during the Hearing that the Respondent had, in fact, commenced proceedings with the Tenancy Deposit Scheme, but had then ceased to act and required the Applicants to deal directly with the Scheme.
94. The Respondent's position was that it raised the Tenancy Deposit Scheme proceedings with the Scheme Administrator, but dispute then arose between it and the Applicants. The Respondent then ceased to act, having considered itself uninstructed.

Decision

95. The Tribunal is satisfied that the Respondent raised Dispute Resolution proceedings with the administrator of the Tenancy Deposit Scheme, and following the rules of that scheme until such time as it ceased to be instructed by the Applicants. It follows that the Respondent did not breach paragraph 106 of the Code, which only relates to whether or not the rules of a Tenancy Deposit Scheme have been followed.

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.

Evidence

96. Parties relied upon their earlier evidence relating to the making, and addressing, of complaints.

Decision

97. For the reasons set out earlier, the Tribunal considered that the Respondent failed to deal with the Applicants' complaints as quickly and fully as possible. Whilst the Applicants' style of complaint, being made incrementally rather than as a single, well-considered, submission made response challenging, the Respondent could have addressed the earlier points of complaint much more quickly than it did.
98. It follows that the Respondent acted in breach of paragraph 108 of the Code. The Tribunal considers that, in so doing, the Respondent failed to provide the service that it was obliged to. The Tribunal is inclined to both compensate the Applicant for the Respondent's failure to provide that service, and sanction the Respondent to discourage future breaches of this paragraph of the Code. The Tribunal will require the Respondent to make payment to the Applicant in a sum equal to one-half of the monthly management fee for the final month of its instruction by the Applicants.

Paragraph 109 - You must provide landlords and tenants with your contact details including a current telephone number.

Evidence

99. The Applicants' complaint here was that they were rarely able to get through to the Respondent when they called. However, they did not dispute that the Respondent had provided contact details, including its current telephone number.

Decision

100. Standing the Applicants' concession, the Tribunal determined that the Respondent did not breach paragraph 109 of the Code.

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

Evidence

101. This complaint was directed at the telephone conversation between Ms Lewis and Mrs Macdonald referred to earlier. Parties again relied on their earlier evidence.

Decision

102. For reasons set out earlier in this decision, the Tribunal determined that Ms Lewis had not been abusive, intimidating or threatening during the telephone call referred to by the Applicants. For that reason, the Tribunal determined that the Respondent did not breach paragraph 111 of the Code.

Paragraph 112 - You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.

Evidence

103. This complaint relates again to the confusion caused by there being two differing complaints policies. The Parties again relied upon their earlier evidence.

Decision

104. For the reasons set out earlier in this decision, the Tribunal determined that the Respondent did not have a clear written complaints procedure. There were different and competing procedures. Accordingly, the Tribunal determined that the Respondent breached paragraph 112 of the Code. However, the Respondent's breach will be remedied by its compliance with the requirement of the Letting Agent Enforcement Order to ensure that the English and Scottish complaints policies are clearly marked.

Paragraph 113 - The procedure must also set out how you will handle complaints against contractors and third parties; any recourse to the complaints procedures of a professional or membership body you belong to; whether you provide access to alternative dispute resolution services; if you are also subject to another regulatory body (for example the Scottish Legal Complaints Commission); and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.

Evidence

105. This complaint did not provide much explanation in the papers, beyond that it was "as detailed earlier". However, in evidence, it became clear that the Applicants were complaining again about the failure of the Respondent to implement its complaints procedure, and in fact accepted that the complaints procedure covered the points referred to in paragraph 113.

Decision

106. It follows that the Tribunal determined that the Respondent did not breach paragraph 113 of the Code.

Paragraph 120 - You must be able to account immediately to them for all money held on behalf of clients.

Evidence

107. This complaint suggested that the Respondent had failed to account to the Applicants for the Tenancy Deposit paid by the tenant. However, the Applicants accepted that they were aware that the deposit had been paid to a Tenancy Deposit Scheme, and that the Respondent was not holding any other funds for them.

Decision

108. The Tribunal was satisfied that the Respondent had accounted to the Applicants for the tenancy deposit by stating that the deposit had been paid to an approved scheme. There were no other sums that the Respondent was alleged to have failed to account for. Accordingly, the Tribunal determined that the Respondent did not breach paragraph 120 of the Code.

Paragraph 124 - You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).

Evidence

109. This complaint again related to the allegation that the Respondent had failed to pay the tenancy deposit to the Applicants when called upon to do so. However, the Applicants accepted that the Respondent was not holding the deposit, having paid it to an approved scheme.

Decision

110. The Tribunal determined that the Respondent did not prevent the Applicants from having access to their monies. The Respondent did not breach paragraph 124 of the Code.

Paragraph 129 - When you contact landlords, tenants or guarantors who owe you money, you or any third party acting on your behalf must not act intimidatingly or threateningly. Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position.

Evidence

111. This complaint was directed at the telephone conversation between Ms Lewis and Mrs Macdonald referred to earlier. Parties again relied on their earlier evidence.

Decision

112. For reasons set out earlier in this decision, the Tribunal determined that Ms Lewis had not acted intimidatingly or threateningly during the telephone call referred to by the Applicants. For that reason, the Tribunal determined that the Respondent did not breach paragraph 129 of the Code.

Conclusion

113. Accordingly, and in summary, the Tribunal determined that the Respondent failed to comply with paragraphs 18, 20, 26, 32I, 73, 102, 108 and 112 of the Code. The Tribunal therefore upholds the Applicants' complaints, in part.
114. Having so determined, the Tribunal must, in terms of section 48(7) of the Housing (Scotland) Act 2014 to make a letting agent enforcement order requiring the Respondent to rectify its failures. The Tribunal will require:-
- a. that the Respondent arranges with its franchisor to update the website so that the English complaints policy is properly marked, and the Scottish complaints policy uploaded and also properly marked;
 - b. that the Respondent revises its complaints policy to provide that:-
 - i. Its timescales for response apply to individual heads of complaint from the date when that head of complaint is made; and
 - ii. It shall provide a response to the complaint irrespective of whether proceedings are subsequently raised with the Tribunal;
 - c. that the Respondent makes payment to the Applicant in a sum equal to two times the final month's management fee.
115. The Tribunal's Decision is unanimous.

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.

Andrew Upton

5 December 2024

Legal Member/Chair

Date