

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Statement of Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 48 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/23/3998**

**Re: Property at 58 Mearns Drive, Stonehaven, AB39 2ES (“the Property”)**

**Parties:**

**Mr Andrew Gray, 9 Dunnottar Avenue, Stonehaven, Aberdeenshire, AB39 2JD (“the Applicant”)**

**Aberdein Considine, 5-9 Bon Accord Crescent, Aberdeen, AB11 6DN (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member) and Angus Anderson (Ordinary Member)**

**The Tribunal comprised:-**

Mrs Ruth O’Hare - Legal Member  
Mr Angus Anderson - Ordinary Member

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) unanimously determined that the Respondent was in breach of the Letting Agent Code of Practice and accordingly made a Letting Agent Enforcement Order under section 48(7) of the Housing (Scotland) Act 2014 (‘the 2014 Act’).

**Background**

1 By application to the Tribunal dated 10 November 2023 the Applicant sought an order against the Respondent due to an alleged failure to comply with the Letting Agent Code of Practice. In particular the Applicant stated that the Respondent had failed to comply with Paragraphs 16, 17, 18, 19, 20, 21, 23, 26, 68, 69, 70, 71, 80, 81, 85, 86, 88, 89, 90, 91, 93, 94, 101, 102, 103, 104, 108, 110, 111, 130, 131, 132, 135 and 136 of the Code. The Applicant further requested that a Direction be issued requiring the

Respondent provide a full and unredacted copy of the maintenance system “Fixflo” comments, property inspection reports covering the full tenancy period and a copy of the full rot survey by Aberdeen Property Preservation Ltd which had been issued in May 2022.

- 2 By Notice of Acceptance of Application dated 1<sup>st</sup> December 2023 the Legal Member with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 8 March 2024 to take place by tele-conference. Notification of the application, together with the date and time of the Case Management Discussion and instructions for joining the teleconference, was served upon the Respondent by Sheriff Officers.
- 3 On 8 January 2024 the Tribunal received an email from Adrian Sangster on behalf of the Respondent. Mr Sangster advised that he had recently returned from leave and the Tribunal’s correspondence had remained unopened in his absence. Mr Sangster requested an extension to lodge a written response to the application. The Tribunal subsequently agreed to extend the period for submitting a response to 9 February 2024.
- 4 On 17 January 2024 the Applicant emailed the Tribunal requesting an update on the Direction request. The Applicant further requested that the Tribunal look into the upcoming sale of the property as the Applicant that the information contained within the property questionnaire was inaccurate. The Tribunal responded to the Applicant by email on 25 January 2024 advising that it would consider the request for a Direction at the Case Management Discussion. The Tribunal further explained that it had no jurisdiction to consider matters relating to the sale of the property as part of the present application. The Applicant was therefore encouraged to seek independent legal advice.
- 5 On 14 February 2024 the Tribunal received written representations from the Respondent.

### **The Case Management Discussion**

- 6 The Case Management Discussion took place on 8 March 2024 by teleconference. The Applicant was in attendance and accompanied by his wife Sonja Gray and his sister Jill Gray as a supporter. The Respondent was represented by Elaine Elder who was accompanied by three colleagues Nicola Argo, Andrew Reid and Dennis Hall.
- 7 The Tribunal explained the purpose of the Case Management Discussion and proceeded to take parties through the various breaches of the Code alleged by the Applicant. As a preliminary matter the Tribunal clarified that the reference to rent in the application was not an alleged breach of the

Code, but had been included by the Applicant for information purposes. For the avoidance of doubt the following is a summary of what was discussed and not a verbatim account of the submissions from the parties.

#### Check-in/check out processes

- 8 The Tribunal explained that it was not able, as part of the present application, to make any determination regarding deductions made from the deposit. It was solely focused on alleged breaches of the Letting Agent Code of Practice. The Applicant confirmed his view that the Respondents had not complied with the sections of the code in relation to the check-in/check-out process (sections 68 to 71, 101 to 104) as well as the overarching standards of practice (sections 16 to 21, 23 and 26). Ms Elder on behalf of the Respondent stated that they had complied with their duties under the code in this regard.

#### Keys

- 9 The Applicant explained that keys had been held by neighbours without his knowledge in breach of sections 80 and 81 of the Code. He appreciated that the Respondent had not been aware of this, as the landlord had made the arrangements. However he still wished to rely on this as a breach of the Code. He would like to know what reasonable steps were taken by the Respondent to ensure keys were held by responsible third parties. Ms Elder confirmed that the Respondent had not been aware that the keys were with the neighbour. As part of their terms of business the landlord had signed confirmation as to the location of any keys for the property. The Respondent did not become aware until after the tenancy had ended that a set of keys had been held by a neighbour. The Respondent was therefore not in breach of the Code.

#### Garden fence maintenance

- 10 The Applicant advised that there had been significant delays in attending to the garden fence which required repair. The evidence he had submitted supported this. This was in breach of the repairs provisions under sections 85 to 94 of the Code as well as the overarching standards of practice (sections 16 to 21 and 23). Ms Elder stated the Respondent's position was that they had complied with their duties in relation to this issue and had provided documentary evidence to support this.

#### Kitchen ceiling leak

- 11 Again, the Applicant stated that the delays in addressing the kitchen ceiling leak amounted to a breach of sections 85 to 94 of the Code. Ms Elder stated the Respondent's position was that they had complied with their

duties in relation to this issue and had provided documentary evidence to support this.

#### Extractor fan cover

- 12 The Applicant confirmed that the maintenance request for the extractor fan cover took over a year to resolve. He considered this a breach of sections 85 to 94 of the Code. Ms Elder stated the Respondent's position was that they had complied with the Code in addressing this repair, and any delays were due to a difficulty in sourcing replacement parts which was not unreasonable.

#### Kitchen soil pipe

- 13 The Applicant explained again that there had been delays in addressing the kitchen soil pipe which was in breach of sections 85 to 94 of the Code. He also stated that the Respondent was in breach of section 111 of the Code as an employee had made intimidating and threatening comments during a phone call regarding the issue. Ms Elder stated that the Respondent denied any breach of the Code in relation to the kitchen soil pipe. She pointed out that the Respondent had taken all steps to deal with the matter and The Applicant had not raised any further concerns until the application to the Tribunal. He had been compensated by the Landlord.

#### Log burner

- 14 The Applicant explained that a maintenance request had been closed without their knowledge regarding the log burner, which couldn't be used. The Respondent had not addressed the issue in accordance with its duties under sections 85 to 94 and section 108 of the Code. Ms Elder stated that the repair had been dealt with in accordance with the Respondent's duties under the Code.

#### Summerhouse roof

- 15 The Tribunal noted the Applicant again stated that the Respondent had been in breach of sections 85 to 93 of the Code in terms of how they had dealt with the summerhouse roof. The Tribunal did however query the relevance of reference by the Applicant to the insurance provisions under sections 130 to 132 and 135 to 136 of the Code, which appeared to relate to a letting agent's own professional indemnity insurance and their duties in relation to the selling of any insurance products. The Applicant advised that he felt the Respondent was at fault in respect of this matter. He had requested their professional insurance information but had not been provided with this. Ms Elder stated that at no time had the Respondent's

insurance details been requested. The Respondent disputed that there had been any breach of the Code in respect of this issue.

- 16 The Tribunal then identified there to be issues in dispute as outlined above which would require a hearing to be fixed. The Tribunal proceeded to discuss the arrangements for the hearing. The Applicant stated, in terms of the hearing format, that it would be potentially difficult for him to coordinate an in person hearing and he would therefore preference the hearing to be held by teleconference or video conference. Ms Elder advised that, due to the nature of the application, the Respondent would prefer an in person hearing.
- 17 The Tribunal discussed the evidence that would be led by parties. The Applicant confirmed that he would speak to his former neighbours to see if any could attend the hearing to give evidence. Ms Elder confirmed that there would be one or two witnesses from the property management team who would attend, but this would be confirmed once the hearing date was known. She advised that there would be some further documentation lodged in advance of the hearing, in particular an email from the Information Commissioners Office following a subject access request from The Applicant.
- 18 The Tribunal then noted the Applicant had made a request for a Direction in relation to unredacted documents. The Applicant stated that he believed the Tribunal required to see unredacted copies of the property inspection reports, Fixflo system report and dry rot report in order to make a proper determination on the issues. In particular, the Tribunal would require to see what communications had taken place to determine why delays had taken place and why repairs hadn't been carried out. Ms Elder advised that the only redacted information related to communications between the landlord, contractors and the Respondent. She considered this to be legally privileged. She confirmed that the Applicant would have had full access to the Fixflo system however conceded that this access would not include communications between the landlord, contractors and the Respondent.
- 19 Having considered the submissions from the parties the Tribunal subsequently determined to issue a Direction requiring the Respondent provide un-redacted versions of the documents. The Tribunal considered that any communications between the landlord, contractors and the Respondent would be of relevance to its determination of the application, as it would highlight any barriers to compliance on the Respondent's part, as well as the reasons for any delays. The Tribunal did not accept that this information was legally privileged. The Direction also requested the Respondent provide details of their repairs procedures, and set out the timescales for lodging documents and a list of witnesses in advance of the hearing.

20 Following the Case Management Discussion the Respondent provided documentation in compliance with the Direction which was received by the Tribunal on 16 July 2024. The Applicant also submitted additional documents by email dated 19 August 2024.

### **The Hearing**

21 The hearing took place on 30 August 2024 by video-conference. The Applicant was present and accompanied by his wife Mrs Sonja Gray. The Respondent was again represented by Ms Elaine Elder. She was accompanied by Dennis Hall, Andrew Reid, Nichola Argo and Katy McIntosh, all employees of the Respondent.

22 The Tribunal proceeded to hear evidence from the parties on the various elements of the application. Both were given the opportunity to put questions to the other by way of cross-examination. For the avoidance of doubt the following is a summary of the evidence and does not constitute a verbatim account of the hearing.

### Check-in/check out processes

23 The Applicant explained that the check in inventory had been performed by Method Inventories on 8<sup>th</sup> August 2019. The Applicant and his family had taken up occupation of the property on 9<sup>th</sup> August 2019. The lease stated that the inventory report would be sent to the Applicant within two working days of the inventory having been carried out. However the inventory report was received late from Method Inventories on 12 August 2019. It was therefore not contemporary nor reliable given the delay. The Applicant had provided comments on the inventory to the Respondent on 19<sup>th</sup> August 2024. The intention was clearly for Method Inventories to review said comments and provide a final inventory report to be agreed and signed. However the inventory report was never signed by either party. The inventory report had to be based on the evidence available during the check in inspection however the report did not include the Applicant's comments and was therefore not accurate. Method Inventories had made up the inventory report without the evidence to back it up. The Applicant had received no acknowledgement of his comments and didn't believe it was his responsibility to chase this up.

24 Over four years later on 21<sup>st</sup> August 2023 the Respondent had acknowledged receipt of the Applicant's comments on the inventory and advised that Method Inventories would take these into account when carrying out the end of tenancy checks. However on 28<sup>th</sup> August 2023 the Respondent had confirmed via email that Method Inventories would not refer to the comments when compiling the check out report. The Applicant also pointed out that neither he nor his wife had been given the opportunity to attend the check-out inspection. The Code stated that tenants should be

given the chance to attend unless there was good reason not to. The Applicant explained that his wife had made numerous attempts to attend the check-out inspection but received no response. The Respondent had then emailed the Applicant on 11 September 2023 to confirm that neither the tenant nor the landlord were permitted to be present during the check-out inspection. The Applicant and his wife disputed the deductions that had been made from the deposit.

- 25 Ms Elder explained that there had been discussions back and forward about the check-out inventory report. The landlord had sought to make deductions for cleaning costs and light bulbs and the Respondent had followed their instructions in this regard. The Respondent accepted that the Applicant had provided comments on the check-in inventory at the start of the tenancy. The comments had been passed to Method Inventories. The Applicant had commented that he was delighted with the property and appreciated the clean state it had been left in. There were a couple of maintenance issues but there had been repaired.
- 26 Ms Argo advised that the tenancy agreement stated that the tenant would be provided with the inventory report within two days of the inventory having been carried out. However it also stated that tenants should contact Method Inventories directly if the report is not received within that timescale. Ms Argo confirmed that the Applicant's comments had been passed to Method Inventories on 19 August 2019. However it appeared that no acknowledgement had been sent to the Applicant, as would be the Respondent's standard practice. The comments were retained on the tenancy file for reference at the end of the tenancy.
- 27 Mr Hall explained that the comments from the Applicant did appear to have been taken into account at the end of the tenancy however these were primarily noted under the "fair wear and tear" section. They did not relate to any of the deductions that had been made by the landlord which the Applicant disputed.

### Keys

- 28 The Applicant explained that a set of keys for the property had been held by neighbours without his knowledge. The neighbours had since passed away. The Applicant explained that it was unacceptable for a family with four young children to not know who was in charge of the keys for the property. The neighbours had advised that the landlord provided them with keys before moving to Australia. The Applicant did not know anything about the neighbour's background. The Applicant did however concede that the Respondent was not aware that the keys were being held by a neighbour.

29 Ms Elder noted that the Applicant appeared to accept that the Respondent was not aware that a set of keys had been given to the neighbours. The landlord had not disclosed this to the Respondent.

### Garden fence maintenance

30 The Applicant explained that the issues with the garden fence had gone on for two years and three months. The Applicant had reviewed the evidence submitted by the Respondent in this regard which was extensive. He noted that contractors had attended to inspect the fence on a number of occasions. It had started out with a small fix before the whole fence was replaced. The Applicant referred to the photographs he had submitted which showed nails hanging out of pieces of wood. The Applicant explained that it had been incredibly difficult throughout this period as no contractor did anything to secure the fence, and there were dangerous pieces of wood in the garden. It was an absolute nightmare.

31 The Applicant referred again to the photographs he had submitted. He confirmed that there was a brick wall containing a flower bed which would prevent the fence from falling into the garden. However it could be seen from the photos that sections of the fence had ended up in the garden. The Applicant also referred to email correspondence between himself and the Respondent which showed that the Respondent had failed to take prompt action to repair the fence. The Applicant did however accept from reviewing the Respondent's evidence that they did take some steps to deal with the issues. It would be for the Tribunal to determine whether the Respondent had taken appropriate action to address the matter.

32 In response to cross examination from Ms Elder the Applicant stated that he could cross reference the dates of the photographs with the property inspection reports provided by the Applicant. He confirmed that there were two sections of fence that had been affected, an issue with the side fence and an issue with the rear fence. The latter had persisted for a significant period of time. Ms Elder asked if the fences were communal. The Applicant explained that he believed the fence was owned by the landlord and he understood it was their responsibility in terms of repairs and maintenance. Ms Elder disputed this on the basis that it was the Respondent's understanding that the fence boundary was shared with another property and was therefore a communal fence.

33 Mr Hall then gave evidence on behalf of the Respondent. He confirmed that there had been issues with fencing, dating back to 2020. Initially it was noted that there was a slight wobble to the fence which had been passed to the landlord. There was a stone wall between the garden and the fence. On 15<sup>th</sup> January 2020 contractors were invited to provide quotes. The Respondent received two quote to repair the fence and the work had been



carried out. Mr Hall referred to an invoice dated 13<sup>th</sup> February 2020 confirming this.

- 34 Mr Hall advised that a further issue had then been raised by the Applicant in February 2020 regarding the fence panels. This was not having an impact on the Applicant's household however it was suggested by the Applicant that the landlord may wish to have them checked. The fence had then suffered significant storm damage to both the rear and side fence. Mr Hall had attended the property on 14<sup>th</sup> February 2022 and had visited the adjoining properties to speak to the occupants and find out what was happening in terms of repairs. He had then passed this information to the landlord with a recommendation. On 13<sup>th</sup> June 2022 the fences were repaired and replaced. Mr Hall explained that many properties in the area had been similarly affected by the storm and there were difficulties in sourcing contractors to complete the works. Some did not respond. Mr Hall had ended up contacting five contractors in total. Mr Hall also pointed out that the situation had arisen during the pandemic which also presented difficulties in terms of getting work done.
- 35 Mr Hall expressed his belief that the Respondent had acted upon the reports from the Applicant quickly. The significant damage to the fence occurred on 9 February 2022 and repairs were fully completed by 13<sup>th</sup> June 2022. Mr Hall confirmed that there were four fences surrounding the property.

#### Kitchen ceiling leak

- 36 The Applicant advised that a maintenance request for the ceiling leak had been submitted to the Respondent in May 2020 but was not completed until October 2020. The Applicant had been left with holes above the breakfast bar in the kitchen with debris occasionally falling, particularly when doors and windows were opened or closed. Numerous emails had been sent to the Respondent in this regard. The Applicant referred to photographs evidencing the damage which had been taken on 16 May 2020. The Applicant explained that having to live with the holes above the breakfast bar had been exhausting.
- 37 Ms Elder confirmed that the leak had been reported by the Applicant on 5 May 2020, at the start of the pandemic. Scottish Gas had attended the property immediately to repair the leak. Another contractor had then followed this up and had completed the work required by 14 May 2020. There were decorative works outstanding which were carried out once the lockdown restrictions were relaxed. Ms Elder confirmed that the leak was fixed under the landlord's insurance. The remainder of the remedial works would have required quotations from contractors.

38 Mr Hall advised that one of his colleagues had contacted the Applicant's wife on 21 August 2020 as the Respondent was unable to carry out property inspections at the time. The purpose of the phone call was to identify any issues with the property. There had been no comments from the Applicant's wife regarding the kitchen ceiling. Mr Hall confirmed that it would be his preference to get the works done as soon as possible however they had a finite number of contractors. The work was also backing up at the time due to the pandemic.

39 The Applicant was given an opportunity to comment on Mr Hall's evidence regarding the telephone call. He advised that he had emailed the Respondent on 5 August 2020 regarding the kitchen ceiling and his wife therefore saw no reason to mention it during the telephone call with the Respondent. The Applicant felt the pandemic was used as a smokescreen when people were not doing what they should be doing.

#### Extractor fan cover

40 The Applicant explained that the request for a repair to the kitchen extractor fan had been sent to the Respondent on 5 October 2020 and was not completed until 20<sup>th</sup> September 2021. The Applicant had to use tape to prevent the cover for the fan, which was loose, from causing a serious head injury or knocking a pan off the stove. It posed a high risk to all occupants in the property. The Applicant referred to a photograph of the extractor fan that had been submitted with the application. It was a simple repair that took just shy of one year to fix. In response to cross examination from Ms Elder the Applicant conceded that no injuries had occurred however it was in a high risk area with a heavy piece of metal secured by tape. If it fell it could cause serious damage. The risks were obvious. It was another example of the Respondent not addressing repairs in a timely fashion.

41 Mr Hall gave evidence on behalf of the Respondent. He confirmed that the issue had been reported to the Respondent on 5 October 2020. He had then sought instructions from the landlord. Mr Hall explained that the extractor fan was not a standard fan. A contractor had attended but struggled to source the replacement parts. Said parts were then ordered in December 2020. Despite numerous requests from the Respondent they were unable to secure a delivery date. The parts were on order but were coming from Italy. The Respondent was then advised that the part would potentially be delivered in April 2021. The landlord had therefore instructed Mr Hall to source an alternative contractor which he had done. Said contractor had successfully sourced the parts and the work was completed on 28 July 2021. Mr Hall referred to an inspection report in May 2021 which showed a small piece of tape which had been secured to the fan to prevent the fascia from falling. Mr Hall pointed out that if the Applicant had such serious concerns there would have been more of an effort to secure the fascia, not just a small piece of tape. Mr Hall accepted that it was not an

ideal situation and the landlord would have had the repair completed at an earlier stage but there were challenges in sourcing the necessary parts.

### Kitchen soil pipe

- 42 The Applicant explained that the leak from the kitchen soil pipe had been submitted to the Respondent in May 2022 and was not resolved until August 2022. It had been an extremely challenging time. The Applicant's eight year old son had a cough for an extended period of time which only disappeared once the contamination from the leak was removed. At first the proposed works were only to remove the visible and contaminated damp patches within the kitchen area without removing and treating the contamination directly. The Applicant had struggled to deal with Lewis Forrester, an employee of the Respondent. He would bypass procedures and refused to take accountability. During a telephone call, when the Applicant had requested details of the chemicals being used to treat the contamination, Mr Forrester had stated "it's not like anyone in the house has cancer". Mr Forrester subsequently apologised.
- 43 The Applicant advised that there was confusion regarding the works, in terms of whether the landlord's insurance would cover them, which delayed progress. The Applicant was then advised that only the visible damp patches would be cut out. He contacted the Environmental Health team at the local authority at that point, having concerns about the link between the contamination and his son's cough. The Respondent had eventually agreed to perform the works correctly however had refused to provide information regarding what chemicals would be used to treat the contamination. It took a lot of time and effort on the Applicant's part to finally receive this information. The landlord had subsequently offered a £500 reduction in the following months rent however the Applicant felt this was insufficient. He was also fearful of his family being made homeless if the landlord decided to pursue a "no fault" eviction. The Respondent had failed in their duty of care to his family.
- 44 The Applicant explained that the issue with the kitchen sewage pipe was prolonged as a result of the Respondent's professional negligence. The Applicant referred to the photographs and videos that he had submitted that evidenced the problem and showed the amount of sewage under the kitchen floor. The Applicant advised that there had been raw sewage residue and everything had to be professionally cleaned. There was extensive damage in the kitchen and the sub-soil was exposed for approximately five days. The Applicant felt as if he was project managing the works for the Respondent. It was an absolute nightmare. The Applicant further advised that he had been told that he couldn't have a copy of the rot survey report by Aberdeen Property Preservation. It was ridiculous. The Applicant was entitled to know what chemicals were being used when he

had four children in the home. His rights as a parent seemed to have been removed and everything with the Respondent was a fight.

- 45 In response to cross-examination from Ms Elder the Applicant advised that he had not submitted any medical evidence to support his son's condition at the time of the leak. His reference to a "no fault" eviction was in relation to the challenges in finding properties to let in the area. He had to be practical and did not want to place his family at risk of eviction because of the ongoing faults. It was only towards the end of the tenancy when the issues with the sewage pipe and log burner occurred that he stopped caring about being evicted. Ms Elder pointed out that there were numerous protections in place for tenants, and the landlord required a lawful reason to evict. Ms Elder further pointed out that the information regarding the chemicals was received by the Respondent on 13<sup>th</sup> June 2022 and passed to the Applicant that same day. The Applicant stated that he would not have known when the information was received by the Respondent. It was not communicated to him that the Respondent did not have the information within their possession. It had still been sent at the last minute and the Applicant had to request the information on numerous occasions.
- 46 Mr Hall then gave evidence on behalf of the Respondent. He confirmed that the Respondent's maintenance team had received a report from the Applicant on 23<sup>rd</sup> May 2022 to say that the dishwasher had moved, which was a cause of concern. He had then arranged for the landlord's Scottish Gas contractor to attend the property on 25<sup>th</sup> May 2022. The Applicant had then made a further report that day, stating that the contractor had said that floorboards needed to be lifted and cupboards removed. Mr Hall had attended the property later that day and took photographs to provide to the maintenance team. The leak from the soil pipe was fixed on 26<sup>th</sup> May 2022. There were then communications between the Respondent and the landlord with a view to obtaining quotes for the remainder of the damage. The landlord wanted to consult with their insurers. The Respondent then arranged quotes for remedial repairs and arranged for the affected area to be disinfected and cleaned. After the cleaning was carried out the Respondent arranged for joinery works and redecoration. It took some time to schedule all the contractors necessary to complete the works but Mr Hall believed it was finished by the 13<sup>th</sup> June 2022. He referred the Tribunal to the excerpts from the Fixflo maintenance system which would confirm the timeline. With regard to Mr Forrester's comments to the Applicant, Mr Hall confirmed that he no longer works with the Respondent and was therefore unable to speak to this.
- 47 Ms Elder reiterated that the information regarding the chemicals had been provided to the Applicant as soon as this was received by the Respondent. With regard to the rot survey report, she advised that as the report was carried out by the landlord the Respondent was unable to share it without the landlord's permission.

## Log burner

- 48 The Applicant explained that the flue leak pertaining to the log burner had been reported to the Respondent on 28 November 2022. However it was never completed due to the Respondent accepting the landlord's refusal to carry out repairs. That was the final straw and led to the Applicant and his family moving out of the property.
- 49 The Applicant advised that the only contractor to visit the property had attended on 8 March 2023 to provide a non-intrusive quotation. The Applicant received no feedback as to the safety of the log burner. It could not therefore be used. The Applicant had repeatedly communicated to the Respondent the danger posed by the log burner, which could leak carbon monoxide and cause serious harm. The Applicant referred to the photographs he had submitted which showed rust and sealant missing from the pipe. He also referred to emails from the Respondent which confirmed that the maintenance request has been closed. The Respondent had apologised for the lack of communication following the maintenance request.
- 50 In response from cross-examination from Ms Elder the Applicant advised that he did not know who was primarily responsible for the safety of the log burner. His dealings were with the Respondent as opposed to the landlord. The Applicant never knew what was happening in real time. All he knew is that they were not going to light the log burner with the rust, the leak and the missing sealant. That would be suicidal. There was no information from the Applicant regarding the continued use of the log burner. The maintenance request was closed by the Respondent without any communication with the Applicant. The Applicant confirmed that there was a carbon monoxide detector in the room with the log burner which was regularly tested, however that was a mitigation device as opposed to a prevention device.
- 51 Ms Elder asked the Applicant whether the issue with the log burner occurred during a time of unprecedented rain. The Applicant confirmed that there was bad weather at the time but he couldn't recall exactly. Ms Elder asked if there had been ongoing water ingress since the issue was reported. The Applicant advised that the room was not used every single day and it was therefore impossible for him to know. The Applicant could not say unequivocally that there had been further leaks from the flue. The Applicant confirmed that the contractor that attended to inspect the log burner was AG Fenton. His wife had been present at the time. She understood that the contractor was going by what he could see in the room. He did not carry out a thorough inspection. The Applicant believed that the landlord did not want to carry out any repairs to the log burner.

- 52 Mr Hall gave evidence on behalf of the Respondent. He advised that a report of water entering through the flue pertaining to the log burner had been made by the Applicant on 28 November 2022. This was passed to the landlord. However on 27<sup>th</sup> February 2023 a member of the maintenance team was advised that there had been no further issues with water ingress. Mr Hall advised that at the time of the report there had been torrential rain. Mr Hall attended the property and spoke with the occupants who were concerned about the log burner. The landlord confirmed that a contractor could attend to inspect the log burner. Mr Hall had tried to arrange for the Respondent's regular contractor to attend however they were busy. He therefore arranged for a second contractor, AG Fenton, to visit the property. AG Fenton had fed back to the landlord that there was nothing obvious causing the problems with the log burner. The worst case scenario was that the flashing on the roof needed to be replaced or the chimney had failed. However there were no issues with the log burner itself.
- 53 Mr Hall stated that in April 2023 the landlord had advised the Respondent that it appeared the leak was due to the torrential rain and that the maintenance request should be closed unless any further issues of water ingress were reported. Mr Hall had requested further information from AG Fenton and had been told that there was no mention of smoke coming back into the house, the chimney system was clear. There was therefore no need to carry out a smoke test or any other tests. The Applicant was advised of this. The Respondent understood that the Applicant was not using the log burner therefore a further work order was raised and Mr Hall arranged for a contractor to attend the property again. Shortly after the Applicant informed the Respondent that they were ending the tenancy. A roofing contractor attended the property to check the roof tiles and carried out a small repair to a slipped tile, which may or may not have been the cause of the leak.
- 54 Mr Hall advised that he had visited the property on numerous occasions and had told the Applicant and his wife to contact him with any concerns and he would endeavour to ensure these were resolved. He was surprised that matters had reached the Tribunal. When concerns were reported the Respondent would respond quickly.

#### Summerhouse roof

- 55 The Applicant advised that the summerhouse had been used as long term storage by his family. The availability of storage in the house was minimal, with one cupboard locked with the landlord's belongings. The Applicant and his family had to use wardrobes to store items. The summerhouse was subsequently damaged by a storm. The Applicant's belongings were damaged due to gross negligence by the Respondent as they had failed to carry out the repairs in a timely manner which resulted in further damage to

the Applicant's items due to ongoing water ingress. The Applicant had asked the Respondent for insurance details but these had not been provided.

- 56 In terms of cross-examination Ms Elder asked the Applicant when he had requested the insurance documents as the Respondent had no record of this. The Applicant advised that it must have been over the phone but he couldn't quite remember. The Applicant further advised that he was aware when taking on the tenancy that the Landlord had left items in the property and he had not specifically requested that these be removed. He had simply commented on the matter.
- 57 Mr Hall gave evidence on behalf of the Respondent. He advised that the summerhouse had been reported as damaged following heavy storms in February 2022. He believed it was then repaired in March of that year. Mr Hall remembered the Applicant and his wife expressing frustration about the landlord's items being stored in the property but it was a passing comment. It would have been acted upon if they had specifically requested removal of the items.
- 58 Both parties were given the opportunity to make closing submissions prior to the conclusion of the hearing. The Tribunal thereafter confirmed that it would issue its decision in writing in due course following consideration of the evidence.

### **Relevant Legislation**

59 The relevant legislation is section 48 of the Housing (Scotland) Act 2014:-

**“48 Applications to First-tier Tribunal to enforce code of practice**

*(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.*

*(2) A relevant letting agent is—*

*(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,*

*(b) in relation to an application by a landlord, a letting agent appointed by the landlord,*

*(c) in relation to an application by the Scottish Ministers, any letting agent.*

*(3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.*

*(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.*

*(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.*

*(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.*

*(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.*

*(8) A letting agent enforcement order—*

*(a) must specify the period within which each step must be taken,*

*(b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.*

*(9) References in this section to—*

*(a) a tenant include—*

*(i) a person who has entered into an agreement to let a house, and*

*(ii) a former tenant,*

*(b) a landlord include a former landlord.”*

60 The sections of the Letting Agent Code of Practice that the Applicant states have been breached are:-

### **Section 2 – Overarching standards of practice**

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

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

*18. You must provide information in a clear and easily accessible way.*

*19. You must not provide information that is deliberately or negligently misleading or false.*

*20. You must apply your policies and procedures consistently and reasonably.*

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

*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.*



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

#### **Section 4 – Lettings**

68. If you are responsible for managing the check-in process, you must produce an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example marks on walls, carpets other fixtures) unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct.

69. If the tenant is not present for the making of the inventory, you should ask them to check it and to raise, in writing, any changes or additions within a specific reasonable timescale. Once agreed, the inventory should be signed and returned.

70. You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant does not, you must inform them, in writing, that you will nevertheless regard it as correct.

71. You must provide the tenant with a signed copy of the inventory for their records.

#### **Section 5 – Management and maintenance**

80. If you hold keys to the properties you let, you must ensure they are kept secure and maintain detailed records of their use by staff and authorised third parties – for instance, by keeping keys separate from property information and holding a record of the date the keys were used, who they were issued to and when they were returned.

81. You must take reasonable steps to ensure keys are only given to suitably authorised people.

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

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.*

*88. You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies.*

*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.*

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

*91. You must inform the tenant of the action you intend to take on the repair and its likely timescale.*

*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.*

*94. You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.*

## **Section 6 – Ending the tenancy**

*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.*

*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.*

103. *If the tenant wishes to be present during the check-out visit, you must give them reasonable notice of the arrangements unless there is good reason not to be present (see also paragraph 101).*

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.*

### **Section 7 – Communications and resolving complaints**

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.*

110. *You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.*

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

### **Section 8 – Handling landlords' and tenants' money, and insurance arrangements**

130. *You must have, and maintain, adequate professional indemnity insurance that is appropriate for your agency's level of income and type of work unless you can demonstrate equivalent or greater protection through another body or membership organisation.*

131. *Cover must be on a full civil liability basis and if feasible, this insurance should be fully retroactive.*

132. *You must give further details (such as the name of your provider, your policy number and a summary of your policy) to them on request.*

135. *If applicable, you must have a procedure in place for making insurance claims on a landlord's behalf and for liaising with the insurer to check that claims are dealt with promptly and correctly. If landlords are responsible for submitting claims on their own behalf, you must supply all information they reasonably need to do so.*

136. *You must keep the insurance claimant informed of the progress of their claim or give them enough information to allow them to pursue the matter themselves.*

## Findings in Fact

- 61 The Respondent entered into a letting and property management agreement with Adam Cheesman and Roisin Ferry in respect of the property dated 4 June 2019. In terms of said agreement the Respondent agreed to carry out repairs to the property in accordance with the Respondent's written repairs procedure, and to deal with all enquiries, questions, complaints or other communications from the Applicant relating to the tenancy and the property.
- 62 The Respondent's Repairs and Maintenance Policy dated 30 April 2023 sets out the timescales for carrying out repairs. Emergency repairs will be dealt with as soon as practically possible and normally within one day of notification. Urgent repairs will be dealt with within five working days of notification, where possible. Non urgent repairs will be dealt with as soon as is reasonably practicable and in any event within 28 days.
- 63 The Policy further states that there may be circumstances outwith the Respondent's control which could result in delays to the stated timescales, such as having to wait for parts, awaiting consent from the landlord, or awaiting consent from other owners where repairs are communal.
- 64 In terms of said Policy, the Respondent requires to obtain consent from the landlord where the cost of remedial works exceeds £300.
- 65 The Applicant entered into a tenancy agreement with Adam Cheesman and Roisin Ferry in respect of the property which commenced on 9 August 2019.
- 66 On 8 August 2019 Method Inventories carried out a check-in inventory of the property. An inventory report was subsequently prepared by Method Inventories.
- 67 Appendix B of the said tenancy agreement states that "*the inventory report will be emailed out to you within two working days of the inventory being carried out*" and "*it is the responsibility of the tenant to notify Method Inventories Tel:01224 595457 within 7 days of the lease start date if they have not received a copy of the inventory*".
- 68 The inventory report was sent to the Applicant on 12 August 2019.
- 69 The Applicant's wife responded with comments on the inventory report on 18<sup>th</sup> August 2019.

- 70 The Respondent emailed the comments to Method Inventories on 19<sup>th</sup> August 2019.
- 71 The Respondent did not acknowledge the Applicant's wife's comments to the Applicant or his wife.
- 72 The Respondent did not take any further steps to obtain a signed copy of the inventory report.
- 73 The tenancy between the Applicant and Adam Cheesman and Roisin Ferry terminated on 16<sup>th</sup> August 2023.
- 74 A check out inventory was carried out by Method Inventories at the end of the tenancy. An inventory report was subsequently prepared by Method Inventories and a copy sent to the Applicant.
- 75 The Respondent did not permit the Applicant or any member of his household to be present during the check-out inventory. The Respondent does not as a matter of course allow any landlord or tenant to be present during the check-in or check-out process to ensure the independence of the process.
- 76 The Respondent emailed the Applicant on 24 August 2023 to advise that the landlords wished to make deductions from the tenancy deposit in respect of cleaning costs and replacement light bulbs, with reference to the check-out inventory report by Method Inventories. The Applicant disputed said deductions.
- 77 The Applicant's tenancy deposit was held by SafeDeposits Scotland who have an adjudication procedure for disputes.
- 78 Prior to the Applicant taking up occupation of the property the landlords gave a set of keys for the property to a neighbour.
- 79 The Respondent was not aware that the landlord's neighbour held keys for the property.
- 80 On 24 February 2020 the Applicants reported an issue with the side fence via the Fixflo maintenance portal. The Applicants stated in their report "*Due to high winds experienced in the last few days approximately 6 wooden fence panels have become very loose. It has no affect on us but the owners may want to have it check before it progressively gets worse*".
- 81 The Respondent issued a works order for the side fence on 24 February 2020.

- 82 The Applicant discussed the side fence issue with the Respondent by telephone on or around 10 March 2020.
- 83 The side fence boundary is shared with a neighbouring property.
- 84 The side fence panels were replaced by the occupant of the neighbouring property on or around 17 March 2020.
- 85 On or around 19 August 2020 the Applicants reported that the rear fence was loose. The Respondents requested a quote from a contractor that same day. A quote was provided by the contractor on 26<sup>th</sup> August 2020 and the Respondent passed this to the landlords for consideration on that same date. The landlords instructed the Respondent to obtain a second quote and advised that they would need to speak with neighbours to clarify the ownership of the fence.
- 86 On 29 September 2020 the Respondent sent a second quote for the replacement fencing to the landlords for consideration.
- 87 On 13 October 2020 the Respondent requested another quote from a contractor by way of works order for replacement fencing. The Applicant and his wife were provided with an update via email. The Respondent sought an update from the contractor on 5 November 2020 and 22 December 2020.
- 88 The Respondent carried out inspections of the property on 4 November 2020, 6 May 2021 and 14 September 2021. On each occasion the Respondent noted that the rear fence panels were loose.
- 89 On 24 December 2020 the Respondent issued a works order to replace a section of the fencing. The Respondent requested updates from the contractor on 5 February 2021, 19 March 2021, 27 April 2021, 6 May 2021 and 10 May 2021 and 13 September 2021.
- 90 On or around 29 November 2021 the rear fence and front fence panels were damaged during a storm.
- 91 The Applicant reported said damage via the Fixflo maintenance system on 29 November 2021. The Respondent requested a quote via works order to replace the fencing from Westhill Fencing and Decking that same day. The Respondent sought a further quote from Bacren Fencing on 18 January 2022.
- 92 Between November 2021 and May 2022 the Respondent corresponded with both contractors and the occupants of neighbouring properties to arrange for the fence panels to be repaired. On 14<sup>th</sup> February 2022 the Respondent visited neighbouring occupants to discuss shared costs for the

repairs. The Respondent provided occasional updates to the Applicant via the Fixflo maintenance portal and sought updates from contractors at regular intervals.

- 93 The rear fence and front fence panels were repaired on 25 May 2022. The delay in completion of the works was a result of difficulties in sourcing contractors and a request from the landlords to obtain a second quote.
- 94 On 4 May 2020 the Applicant reported a water leak to the kitchen ceiling. The Respondent arranged for a contractor from Scottish Gas to attend immediately and the leak was fully repaired by 14 May 2020. On 15 May 2020 the Respondent requested a quote by way of works order for replacement plasterboard and painting for the kitchen ceiling following the leak. The quote was sent to the landlords by the Respondent on 22 May 2020. The landlords instructed the Respondent to proceed on 24 May 2020.
- 95 On 25 May 2020 the Respondent instructed the contractor to proceed with the works. The Respondent sought an update from the contractor on 10 August 2020, 1 October 2020, 12 October 2020 and 5 November 2020. The Respondent provided the Applicant with an update on 28 September 2020 following a complaint from the Applicant about delays in progress.
- 96 On 5 October 2020 the Applicant reported that the kitchen extractor fan cover grip was broken via the Fixflo maintenance system. The Respondent contacted the landlords on 6 October 2020 and received instructions to proceed with a repair.
- 97 The Respondent issued a works order for the extractor fan cover on 6 October 2020.
- 98 The Respondent requested updates on the status of the works order from the contractor on 5 November 2020, 22 December 2020, 3 February 2021, 26 February 2021, 24 March 2021, 8 April 2021, 27 April 2021 and 6 May 2021. The contractor responded to advise that he was awaiting parts.
- 99 On 19 July 2021 the Applicant reported the broken kitchen extractor fan grip again via the Fixflo maintenance system. The Respondent sought an update from the contractor on 20 July 2021 who advised that he had not yet sourced the part.
- 100 On or around 28 July 2021 the Respondent instructed a second contractor to carry out the repair.
- 101 The kitchen extractor fan grip was replaced on 20 September 2021.

- 102 On 23 May 2022 the Applicant reported a leak behind the kitchen units via the Fixflo maintenance portal. The Respondent instructed a contractor that same day to visit the property and provided an update to the Applicant. The contractor attended the property on 25 May 2022.
- 103 On 25 May 2022 the Applicant spoke with the Respondent via telephone to advise that the water damage was a result of a leak from the soil pipe and further works would be required urgently. The Respondent instructed contractors to return to the property on 25 May 2022 and 26 May 2022.
- 104 The hole in the soil pipe causing the leak was repaired on 26 May 2022.
- 105 The Respondent spoke with the landlords by telephone on 26 May 2022. The landlords confirmed that they were checking the position regarding insurance cover in relation to the remedial works. The Respondent provided an update to the Applicant.
- 106 On 27 May 2022 the Respondent sent quotes for remedial works to the landlords for approval by their insurers. The Respondent spoke with the tenant again by telephone that same day.
- 107 On 30 May 2022 the Respondent sent an email to the landlords requesting instructions on the remedial works. The landlords responded that same day to advise that they were awaiting a response from the insurers.
- 108 On 30 May 2022 the Respondent instructed a contractor to carry out a rot survey. The Respondent provided an update to the Applicant. Following a recommendation from the surveyor, on 31 May 2022 the Respondent instructed a contractor to carry out cleaning of affected areas.
- 109 On 1 June 2022 the Respondent instructed a contractor to proceed with remedial treatment works recommended by the rot survey report following instructions from the landlords to proceed. The Respondent requested that the works be commenced as soon as possible. The contractor advised that the works were scheduled for 21 June 2022.
- 110 On 13 June 2022 the Respondent discussed the remedial works required to the kitchen with the Applicant during a property inspection. The Respondent subsequently emailed the Applicant that same day with information on the chemicals that would be used to treat the affected areas following receipt of this from the contractor.
- 111 On 14 June 2022 the Respondent instructed a contractor, by way of works order, to carry out remedial joinery work to the kitchen. There were delays in progressing the works due to the contractor falling ill. The Respondent received a quote for the works on 20 July 2022 and sent the quote to the landlords that same day seeking instructions. The landlords instructed the



Respondent to obtain a second quote. The Respondent sent a second quote to the landlords on 21 July 2022. The second quote was accepted by the landlords and the Respondent instructed the contractor to proceed with remedial joinery and decorative works to the kitchen on 22 July 2022. The works were completed in August 2022.

- 112 On 28 November 2022 the Applicant reported water entering through the flue of the log burner via the Fixflo maintenance system. The work order was not progressed.
- 113 On 28 February 2023 the Respondent carried out an inspection of the property. It was noted that the Applicant and his household were not using the log burner following the water leak due to safety concerns.
- 114 On 1 March 2023 the Respondent instructed a contractor to inspect the log burner. Said contractor attended the property on 8 March 2023. The contractor provided comments to the Respondent on 30 March 2023. Said comments were passed by the Respondent to the landlords that same day.
- 115 The Respondent sought instructions from the landlords on 6 April 2023 and 20 April 2023. The Applicant was provided with an update on 20 April 2023. The Respondent received instructions from the landlords on 28 April 2023 not to proceed with further works unless anything additional was reported. The Applicants were not advised of the outcome of the matter until 6 June 2023.
- 116 There is no evidence of further water ingress through the flue of the log burner following the leak on 28 November 2022.
- 117 The Respondent carried out a property inspection on 27 June 2023. The Applicant and his wife reiterated their concerns regarding the log burner.
- 118 The Respondent was subsequently instructed by the landlords to instruct a second contractor to inspect the log burner. The Applicant and the Respondent agreed that the inspection would take place in October/November 2023. The inspection was cancelled following the termination of the tenancy.
- 119 On 30 January 2022 the Applicant reported via the Fixflo maintenance portal that a repair was required to the summerhouse roof. The Respondent instructed a contractor to carry out the repair on 31 January 2022 and the Applicant was provided with an update that same day. The Respondent sought updates from the contractor on 18 February 2022 and 23 March 2022. There were delays caused by the quote for the works exceeding the Respondent's authorisation limit. On 29 March 2022 the Applicant advised the Respondent that the repair had been completed.

## Reasons for Decision

- 120 The Tribunal carefully considered the evidence from both parties in its determination of the matter, both in terms of their documentary evidence and verbal evidence at the Hearing. It was noted that many of the substantive facts in the case were agreed, as was reflected in the duplication of documents lodged by the parties. The primary consideration for the Tribunal was therefore whether the Respondent's conduct during the tenancy amounted to a breach of the aforementioned paragraphs of the Letting Agent Code of Practice.
- 121 It is important to highlight from the outset the nature of the relationship between a tenant and a landlord, in comparison to the relationship between a tenant and a letting agent, the latter of whom is managing the tenancy on the landlord's behalf. The contractual relationship under the tenancy agreement is solely between the tenant and the landlord. It is the landlord who is subject to the duties imposed by the Repairing Standard, and therefore the landlord who would be subject to any claim that the property is deficient in that regard. This would include a claim for rent abatement, which was suggested by the Applicant at the hearing as an appropriate remedy in the circumstances of this application. However whilst the Applicant may have paid rent to the Respondent, this was in the context of the Respondent acting as the landlord's agent for the tenancy. The Tribunal considered that the majority of the issues highlighted by the Applicant fell within the responsibility of the landlord, and not the letting agent in this case.
- 122 The Tribunal considered the various items listed in the application as breaches of the Code.
- 123 With regard to the check-in and check-out inventory process, the Tribunal recognised the importance of the inventory as a key document for both parties, providing an evidential basis for the condition of the property at the start of the tenancy. In this case, whilst it was accepted by both parties that the inventory had not been signed, the Applicant had been given the opportunity to provide comment which he had done. Paragraph 68 states that the landlord and the tenant must both sign the inventory to confirm its contents, however there will inevitably be scenarios where agreement on an inventory cannot be reached. Accordingly the absence of a signed inventory would not necessarily result in a breach of the Code in the view of the Tribunal. In this case the Applicant had been provided with a copy of the inventory and had been given the opportunity to comment. The Tribunal therefore found no breach of paragraphs 68, 69 or 71 of the Code.
- 124 However, in this case the Respondent had failed to acknowledge the Applicant's comments on the check-in inventory report, and had failed to

make any further attempts thereafter to obtain a signed version. Whilst the Respondent's procedure appeared to delegate aspects of the process to a third party, ultimately the responsibility lies with the Respondent for compliance with the Code. The Tribunal therefore found the Respondent to be in breach of paragraph 70 in that they had failed to take reasonable steps to remind the Applicant to sign and return the inventory.

- 125 With regard to the check-out process the Applicant stated that the tenants had requested to be present during the final inspection but were advised by the Respondent that neither the tenant, nor the landlord, was entitled to attend the check-out process to maintain the independence of the third party inventory clerk. The Respondent relied upon this as a good reason. However the Tribunal found this difficult to accept. The check-out process was carried out by an independent third party, presumably for the purpose of preserving impartiality. Therefore the Tribunal could see no reason why a party could not be present if they so wished. Sections 101 and 103 of The Code anticipate that it is quite normal to allow the tenant to be present. The Tribunal therefore found the Respondents in breach of section 103 of the Code.
- 126 With regard to paragraphs 101, 102 and 104 the Tribunal concluded that the Respondents had complied with their duties under these sections. The Applicant had been provided with information regarding the check-out process and a copy of the check-out inventory report, had been advised of what deductions were being sought from the deposit, and would have had the opportunity to challenge these through the deposit scheme's adjudication process. The Tribunal considered that the actions taken by the Applicant in this regard were sufficient to comply with their duties under these paragraphs of the Code.
- 127 The Tribunal found no breach of the overarching standards of practice under paragraphs 16 to 21, 23 and 26 of the Code with regard to the check-in and check-out process. The Respondent had otherwise conducted themselves appropriately throughout the process and in line with the legislative requirements. The Tribunal also found no breach of paragraph 110, which requires a letting agent to make tenants aware of the Code and provide a copy upon request. There was no evidence before the Tribunal to suggest that the Respondent had failed to do this.
- 128 With regard to the keys, the Applicant had conceded that the letting agent was unaware that a set of keys was given to neighbour by the landlord prior to the commencement of the tenancy. The letting agent was entitled to rely on the information provided by the landlord regarding the keys. The Tribunal therefore found there to be no breach of paragraphs 80 and 81.
- 129 With regard to the garden fence, the Tribunal concluded, based on the evidence from the Fixflo system that had been produced by the

Respondents, that this was not a one off repair to one section of the fence, but instead involved ongoing issues with various sections of the fence over a prolonged period of time. The Tribunal was satisfied that the Respondent had responded promptly when issues were reported. They had properly sought instructions from the landlord, which they were required to do, and in some cases had been asked to seek additional quotes before proceeding with the work. If the landlord had then failed to give agreement for works to proceed, or if repairs were delayed as a result, any recourse by the tenant would be to the landlord and not the Respondent as letting agent. The Tribunal also accepted that delays had arisen due to supply chain issues during and following the coronavirus pandemic, and in certain instances the Respondent had required to consult with neighbouring owners. The evidence from the Fixflo system supported this. The actions taken by the Respondent were generally in line with the written procedures in place, which recognised the potential for unavoidable delays in completion times. The Tribunal therefore determined that the actions taken by the Respondent were sufficient to amount to compliance with paragraphs 88 to 91 of the Code.

- 130 However with regard to paragraph 93 of the Code, the records produced by the Respondent from the Fixflo system did not provide any evidence that the Applicant was kept up to date with action being taken regarding the fence repairs, which may have led to the misconception that nothing was being progressed. Whilst the Tribunal accepted there might have been informal discussions between the parties, there was no evidence of updates to the Applicant at reasonable intervals. This would have naturally led to frustration on the Applicant's part if they felt that nothing was happening. The Tribunal considered that the Respondents could have done more to ensure they were keeping the Applicant informed of any delays, and the reasons for these. The Tribunal therefore concluded that the Respondents had breached paragraph 93 of the Code.
- 131 The Applicant had also cited paragraphs 85, 86 and 94 of the Code in the application, stating that Respondent was in breach of these sections because of the issues with the garden fence. The Respondent clearly had a system in place to manage repairs via their Fixflo system and they had produced a copy of their written repairs procedure. There was no evidence to suggest there had been defects with the repairs that would require them to pursue the contractor or supplier in order to remedy. The Tribunal therefore found no breach of these paragraphs of the Code.
- 132 The Tribunal found no breach of the overarching standards of practice under paragraphs 16 to 21, 23 and 26 of the Code with regard to the garden fence. The Respondent had otherwise conducted themselves appropriately in accordance with their repairs procedures. The Tribunal found no evidence that they had attempted to mislead the Applicant regarding the repairs or treat him unfairly in any way.

- 133 With regard to the leak from the kitchen ceiling, the Tribunal was satisfied based on the Fixflo records that the Respondent had dealt with this repair as promptly as possible. Scottish Gas had carried out the initial repair, with further remedial works completed within ten days. The Tribunal accepted that there had then been subsequent delays in carrying out the re-decorative works, however the delays were a result of issues with the contractor, which were out with the Respondent's control. The Respondent had regularly sought updates from the contractor on progress with the works.
- 134 The Tribunal did not agree with the Applicant regarding his characterization of the outstanding repair. Whilst the Tribunal accepted that it could have caused some inconvenience to the occupants whilst the re-decorative works remained unfinished, the Tribunal did not consider this unreasonable. However, the Tribunal did accept based on the Fixflo system that the Applicant had not been provided with regular updates regarding the outstanding works and on one occasion had to prompt the Respondent for information. The Tribunal was therefore satisfied that the Respondent had complied with paragraphs 85, 86, 88 to 91 and 94 of the Code, however found the Respondent in breach of paragraph 93.
- 135 With regard to the kitchen extractor fan, the Tribunal was satisfied based on the Fixflo records that the Respondent had dealt with this repair as promptly as possible. Whilst there had been delays, the Tribunal considered that these were a result of problems with the supplier, as opposed to any negligence on the part of the Respondent. The Tribunal accepted that it had taken around 11 months for the job to be completed, but noted that the Respondent had regularly chased progress with the work and the delays had been out of their control.
- 136 However the Tribunal did conclude, again in the absence of any evidence to the contrary in the Fixflo system, that the Respondent had not taken sufficient steps to ensure the Applicant was provided with regular information about the delays and the reasons for them. The Tribunal therefore concluded that the Respondent was in breach of paragraph 93 of the Code, but had otherwise complied with its duties regarding the repair under paragraphs 85, 86, 88, 89, 90, 91 and 94 of the Code.
- 137 With regard to the kitchen soil pipe leak, the Tribunal accepted that this would have been an unpleasant situation for the Applicant and his family. However, the Respondent had immediately arranged for contractors to attend to the leak. The Respondent had then engaged promptly with the landlord to facilitate the remaining repairs. The Tribunal accepted that any delay had been caused by the landlord's actions in providing instructions or checking the position with their insurance, and the availability of contractors. The remedial works, including the replacement of kitchen units

was a sizable job, requiring inspections and visits from various contractors. The initial leak was reported at the end of May 2022 and all remedial repairs were completed by August of that year. The Tribunal did not consider this to be an unreasonable timescales given the circumstances. The Applicant had also objected to the lack of information regarding the chemical treatment however the evidence from the Fixflo confirmed that this information was sent to the Applicant by the Respondent as soon as it was received from the contractor. The Respondent had been in dialogue with the Applicant regarding the repair. The Tribunal therefore concluded that the Respondent had complied with its duties under paragraphs 85, 86, 88 to 91, 93 and 94 of the Code.

138 The Applicant had also sought to rely upon paragraph 111 in relation to a telephone conversation between himself and Lewis Forrester, a former employee of the Respondent, regarding the kitchen soil pipe. The Tribunal had no evidence before it to support the Applicant's account of the call and therefore was unable to make a finding that the Respondent was in breach of paragraph 111. However, had the Tribunal found that the comments outlined by the Applicant had been made by Mr Forrester, the Tribunal would have concluded that these did not meet the test of abusive, threatening or intimidating. They could certainly be considered insensitive in the context of the conversation between the parties but the Tribunal would not have considered them a breach of paragraph 111.

139 With regard to the log burner, the Tribunal accepted that the Applicant had reported the repair to the Respondent in November 2022. Due to an apparent oversight on the Respondent's part the report was not progressed until they were reminded of this by the Applicant during an inspection in February 2023. Thereafter the Tribunal was satisfied that the repair was dealt with promptly by the Respondent, with a contractor attending the property less than two weeks later to inspect the log burner. Whilst the Applicant did not agree with the outcome of the repair, the Respondent was acting on the landlord's instructions as they were required to do. The Applicant had also agreed to a contractor returning to the property in late 2023, but moved out prior to that. The Tribunal therefore found that the Respondent had complied with paragraphs 85, 86, 88, 89, 91 and 94, but in respect of the initial delay the Tribunal concluded the Respondent was in breach of paragraphs 90 and 93 of the Code. The Applicant had also cited paragraph 108 of the Code in relation to the alleged repairs due to the delays however the Tribunal considered that any communications regarding repairs were captured by paragraph 90, and therefore found no breach of that paragraph.

140 With regard to the summerhouse roof, the Tribunal took into account the fact that the Applicant had been storing personal items within the summerhouse, due to a lack of storage in the house. However the storage arrangements were not the responsibility of the Respondent. The

Respondent had an obligation to let the property in line with the landlord's instructions which they had done. The Tribunal was satisfied that the Respondent had fulfilled the responsibilities incumbent upon them by acting promptly in response to the repair. They had instructed a contractor to carry out the work the day after receiving the Applicant's report. The repair was complete less than two months later, which the Tribunal considered a reasonable timescale having regard to the nature of the issue, being a repair to a garden structure. The Tribunal therefore concluded that the Respondent had complied with paragraphs 85, 86, 88 to 91, 93 and 94 of the Code.

141 The Applicant also relied upon paragraphs 130 to 132, 135 and 136 of the Code in the application in relation to the summerhouse. There was no evidence to suggest that the Respondent did not have adequate professional indemnity insurance in place, nor that the Applicant had explicitly requested this. There was also no evidence to suggest that the Respondent was responsible for submitting insurance claims on the landlord's behalf. The Tribunal therefore found no breach of these paragraphs of the Code.

142 Where the Tribunal has found a letting agent to be in breach of the Letting Agent Code of Practice, it must make a letting agent enforcement order. The Tribunal considered the Respondent had generally complied with its duties under the Code, with the exception of the issues highlighted above. Accordingly the Tribunal determined that a compensatory payment would be appropriate in the sum of £250. It should be noted that this payment is not equivalent to a rent abatement, which would be a claim solely against the landlord and a separate matter to the Tribunal's consideration of the Respondent's compliance with the Letting Agent Code of Practice.

143 The Tribunal therefore concluded that the Respondent was in breach of paragraphs 70, 90, 93 and 103 of the Code of Practice and made a letting agent enforcement order.

144 The decision of the Tribunal was unanimous.

**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.**

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Ruth O'Hare  
Legal Member

19 November 2024