

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Sections 48(1) of the Housing (Scotland) Act 2014 and Paragraphs 37, 73, 74, 90 and 108 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016**

**Chamber Reference: FTS/HPC/LA/23/1828**

**The Parties:**

**Mrs Alison Reynolds, Asveien 20, Inndyr, Gildeskal, 8140, Norway (“the Applicant”) and**

**Martin & Co, 93 St Clair Street, Kirkcaldy KY1 2BS (“the Respondents”)**

**The Property: 26 Loughborough Road, Kirkcaldy KY1 3DA (“the property”)**

**Tribunal Members: George Clark (Legal Member/Chair) and Robert Buchan (Ordinary Member)**

**Decision**

The Tribunal determined that the Respondent has failed to comply with Paragraphs 73, 74 and 108 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 and made a Letting Agent Enforcement Order requiring the Respondent to pay to the Applicant by way of compensation the sum of £500.

**Background**

1. By application dated 31 May 2023, the Applicant sought a Letting Agent Enforcement Order against the Respondents under Section 48(1) of the Housing (Scotland) Act 2014 and Paragraphs 37, 73, 74, 90 and 108 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code”).
2. The relevant portion of Paragraph 37 of the Code states that when either party ends the agreement, the letting agent must give the landlord written confirmation they are no longer acting for them. It must set out the date the agreement ends, any fees or charges owed by the landlord and any funds owed to them. The Applicant’s contention is that the Respondents had not provided the necessary information. The Respondents had asked her to

provide a date of termination, and the section on Termination Rights in their agreement suggested that on providing a date she would become liable to pay termination fees because her tenant wished to remain in the property.

3. Paragraph 73 of the Code provides “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”. The homeowner’s complaint was that, under the terms of their agreement, the Respondents should have informed her of an inspection visit and report on 21 November 2021, which flagged problems that needed to be dealt with. This was a failure to comply with Paragraph 73
4. Paragraph 74 of the Code states “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”. The events summarised in the immediately preceding paragraph of this Decision also constituted a failure to comply with Paragraph 74.
5. Paragraph 90 of the Code provides “Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures”. The Applicant stated that the Respondents’ failure to advise her of the findings of the inspection and the contents of the report meant that the property had been left in a neglected state for nearly six months.
6. Paragraph 108 of the Code says “You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond”. The Applicant stated that her complaint of 3 May 2022 remained unresolved five months later. The Respondents’ complaints procedure says she should receive a response within 15 working days and that, if the complaint remained unresolved, a final response should come from the Proprietor of the business, but this never occurred.
7. In her complaint to the Respondents on 3 May 2022, the Applicant stated that her tenant had reported water leakage during a property inspection on 24 November 2011. As owner, she ought to have been, but was not, informed of the inspection and the contents of the report. No action was taken to remedy the problem, suggesting that the inspection report was not checked, nor were its recommendations acted upon.
8. On 13 May 2023, the Respondents advised the Applicant that there was no mention of water ingress anywhere in records of previous visits or phone calls from the tenant. They stated that they appeared to fall between two stools where the tenant was in conversation with the Applicant and the Respondents had no knowledge of what had been said or not said. Had they been informed of water ingress, they would most certainly have reacted quicker to send out a contractor. The Respondents were the management agency, but they could

not manage where they were not informed. Previous inspections had noted water staining which was historic damage. The November 2021 inspection had been carried out by a different firm who quite rightly recorded what they saw but probably did not realise that some of the staining was not down to recent leakage.

9. The Applicant responded on 18 May 2022, saying that, because she was not informed of the inspection or given a copy of the report, it was only when her tenant contacted her on 6 April 2022 and complained about water coming through the wood surround of the kitchen doorway that she became aware of problems with the property. She contacted the Respondents straight away and had been in regular correspondence with them since then. The problem had been investigated and repairs had commenced. During this time, a friend of the Applicant visited the property on her behalf, and it was when the friend spoke with the tenant that he informed her of the November 2021 inspection and that the damage had been reported then. The Applicant then contacted the Respondents, who sent her a copy of the inspection report. The Applicant added that there was no sign of water ingress in the property inventory report of 31 May 2019 or at the tenant's check-in when his tenancy began on 11 September 2020. This meant that the property damage documented in the inspection report of 24 November 2021 must have occurred in the intervening period. The kitchen damage had now been traced to storm damage in November 2021, when the flat roof of the kitchen detached from the main building. After that, water entered the building every time it rained. In not informing the Applicant of the contents of the November 2021 report, repairs could not be carried out straight away, so the damage would have worsened and resulted in more extensive and expensive repairs than would otherwise have been necessary.
10. On 6 June 2022, the Respondents advised the Applicant that the November 2021 inspection had not clearly defined water damage. The report was in a poor format and had not been sent on as the Respondents intended to have it redone in a more detailed, presentable, form. To the knowledge of the Respondents, the tenant had never reported the water damage to their office. They drew attention again to what they described as the "hybrid" management of the property and their view that a direct line of communication would be preferred either to the Applicant, if she chose to self-manage, or to the Respondents, if she wished them to continue their full management service.
11. On 26 July 2022, the Applicant raised specific complaints. The November 2021 inspection report had highlighted four problems. She conceded that it did not specifically state that the kitchen ceiling and wall were water damaged but contended that it was unlikely to be anything else, as the kitchen is an extension with a flat roof and there is nothing above it. No marks had been noted in the inspection report of 31 May 2019, so it was new damage since then. Their size, shape and position indicated a leak and this had been confirmed by the roofer who carried out repairs in May 2022. Had the damage been reported sooner, the necessary repairs would have been less extensive. There had also been further deterioration in the bathroom and front bedroom, where cracked paper had been reported in the November

2021 report. The Applicant reiterated that there had been no extraordinary communications between her and the tenant and added, if he had not contacted her, she would still be unaware of the kitchen roof leak.

12. The Respondents replied to the Applicant on 9 September 2022, after she sent a reminder to them on 30 August 2022. They stated that the inspection on 21 November 2021 had not raised any new issues, that mould around the windows was due to lack of ventilation and that the cracks in the ceiling were historic. They told the Applicant that they wished to step back and leave the management of the property in her hands. When she so constantly involved herself in the day-to-day management of the property and dealt directly with the tenant, as she was perfectly entitled to do, they felt that it was more efficient for the tenant to have no doubt as to whom he should be reporting issues. On 13 October 2022, the Applicant stated that the Respondents had not complied with the Code's requirements on cessation. On 17 October 2022, the Respondents stated that they were happy to work with the Applicant to whichever date she chose, but that ending their contract on the 10<sup>th</sup> of the month would ensure clarity and tie in with rental payment dates. They stated, and repeated on 26 October 2022, that there would be no fee liability for either party in the termination of their services.
13. The Applicant contended that she had suffered financial loss as a result of the Respondents' failure to comply with the Code. The property had deteriorated during the six months' period of delay between the failure to provide a copy of the November 2021 inspection report, resulting in more extensive and costly repairs than would otherwise have been needed. The delay also precluded a claim for financial assistance from her insurer. Repairs to the kitchen roof had cost £4,181.93, repairs to the kitchen and bedroom were £4,197.60 and works still to be done were repairs to the bathroom decoration, estimated at £557 plus VAT and to window areas, verbally estimated to cost £1,000. In addition, the Applicant wished to claim £1,500 for travel, accommodation and sundry costs to date.
14. The Applicant also stated that she had suffered psychologically and emotionally due to the Respondents' failure to offer to assist her in remedying the issues or to make any effort to apologise. She had had to arrange all the repairs herself and, being overseas, this was more challenging. She had found the whole situation extremely upsetting and stressful. It was the more distressing because the Respondents had cared for the property for 15 years and she had developed a fondness for them, but felt she could no longer trust them, so ended the contract in November 2022.

### **Case Management Discussion**

15. A Case Management Discussion was held by means of a telephone conference call on the morning of 15 September 2023. The Applicant participated and the Respondent was represented by Mrs Myra Blaik, Lettings Manager.

16. The Applicant told the Tribunal that she could speak to the tenant to see whether he would give evidence at a Hearing, and she was advised that, if he would not, a statement from him could be lodged but it would have limited evidential value. The Tribunal indicated that correspondence with the Applicant's insurer should be lodged, as this could be relevant in the quantification of any loss. The Applicant had stated that the damage to the flat roof was thought to have occurred during high winds. She said she would contact the roofing contractors and ask them to provide a short report, as they had not commented on whether the damage to the roof had been recent or otherwise.
17. Mrs Blaik, for the Respondents, said that she would endeavour to obtain and lodge colour copies of the photographs taken at the inspection on 21 November 2021 and would contact the property manager who dealt with the Applicant's property, who had since left the company, to ascertain whether she would give evidence. The Tribunal issued appropriate Directions to the Parties.
18. The Tribunal told the Parties that the issues to be determined were whether the Respondents had failed to comply with Paragraphs 37, 73, 74, 90 and 108 of the Code and, if they had failed to comply with Paragraphs 73, 74 and 90, had this failure resulted in the financial losses specified in the application?
19. In response to the Directions issued after the Case Management Discussion, the Applicant provided the Tribunal with copies of email exchanges with her insurers, who said on 25 May 2022 that the timeline and documents did not provide confirmation that the damage had happened as a result of a one-off incident and that the roofing contractor would have to provide an explanation as to how the damage had occurred in a storm. On 6 May 2022, they had indicated that the damage all appeared to be gradual as opposed to being the result of a one-off insured event.
20. The Applicant also provided a copy of an email from her tenant. He said that he could not remember when he first noticed the stains on the ceiling and on the wall above the kitchen door, but it was about the time that the November 2021 inspection was due to be carried out. At the inspection, he pointed out the stain and asked that photographs be taken of it. The inspector said he did not work for the Respondents, but he would inform them. The Respondents did not subsequently contact him. The tenant said the wall did not feel wet to touch at that time, but on 6 April 2022, he saw water on the kitchen floor beside the door and realised it was coming through the wooden door surround. It was raining heavily, and he decided to contact the Applicant directly because the Respondents had not got in touch with him previously regarding this matter.
21. The Applicant also advised the Tribunal that she had contacted the roofing contractor, who was unable to say how long the defect had existed before it was repaired, nor was he able to provide a cause for the damage, due to the

delay in getting the roof examined, but he thought it likely due to the stormy weather and heavy rain over the previous autumn.

22. On 27 October 2023, the Respondents provided the Tribunal with copies of a substantial number of email exchanges, as proof of the Applicant's interaction with him. They included emails regarding his request for the installation of a shower in February 2022, and emails from the Applicant to the Respondents reporting on discussions with the tenant regarding rent arrears and a number of issues regarding the property, including reminding him of the need to ventilate the property to avoid condensation.

### **Hearing**

23. A Hearing took place by means of a telephone conference call on the morning of 7 November 2024. The Applicant was present, and the Respondents were again represented by Mrs Blaik.
24. The Applicant told the Tribunal that the tenant had got in touch with her and complained about water ingress. She instructed a roofer then contacted the Respondents. Repair works were carried out and she asked a friend to check the property on her behalf and the friend reported back that the tenant had told her what he had said at the inspection in November 2021. The Applicant went back to the Respondents, who then sent her a copy of the inspection report. The tenant had called her directly because he had had no response from the Respondents after the November inspection. The contractor thought wind had got under the roof and lifted it. The water was running down above the kitchen doorway and this had caused rot. It was impossible after six months to provide the evidence that the insurers required in order to accept a claim.
25. Mrs Blaik said that she was surprised that the report had not been sent to the Applicant, but accepted that there was no evidence that it had been. It was a very unfortunate oversight. She pointed out, however, that the inspection report from June 2022 mentioned condensation on the kitchen walls and in the bathroom. She also told the Tribunal that the tenant was not communicating with them regarding any issues at the property, possibly because he did not know whether to report to them or directly to the Applicant. The relationship with the Applicant had become increasingly unsatisfactory and they felt they were no longer managing the property as a result of the extent of contact the Applicant was having directly with the tenant. They did not want to charge for a service they felt they were not providing, so decided to end the contract.
26. The Applicant stated that the Respondents told her they wanted to step back but gave her no information about the date on which the contract would end. They then told her that she should be the one to terminate it. Her interpretation of the contract was that, by doing so, she would incur fees. Mrs Blaik interjected to direct the Tribunal to her email of 17 October 2022 in which she clearly stated that no fees would be charged for the transfer to

another agent. The Applicant repeated that she was never given a date and in the end she had to decide on the date.

27. The Tribunal asked Mrs Blaik if she could explain why the inspection report of 2019 had not picked up any particular issues and how, therefore, they could be said to be long-standing. She replied that the reports were done by two different people. The individual who had been preparing them since 2008 knew all the historic cracks in what is a very old building. She was extremely good at her job and, if she had noticed anything, she would have reported it. The person who inspected the property in November 2029 had not been there before. The Respondents had not been made aware of the damage and, had they known about it from the report, they would have acted. Her view was that it takes years, not months, for joists to rot and that it was concealed water damage.

### **Reasons for Decision**

28. The Tribunal considered carefully all the evidence, written and oral, that had been presented by the Parties. Its conclusion was that the Respondents were at fault in not sending the report of 21 November 2021 to the Applicant. That would have been the case even if it had not disclosed anything untoward. In their Terms of Business, they state that they arrange to visit the property and report in writing within six weeks of the tenancy starting and then not less than once every six months thereafter whilst the tenancy remains in force. They had, therefore, failed to comply with Paragraph 73 of the Code, as they had failed to provide their services in line with the obligation in Paragraph 74, where letting agents who carry out routine visits/inspections, must record any issues identified and bring these to the landlord's attention where appropriate. The Tribunal could not make a finding that the Respondents were aware of the issue which the tenant said he had reported at the inspection as there was no evidence as to whether or not this information had been passed on to the Respondents, who were not the employers of the person who carried out the inspection, but, irrespective, the report itself should have been sent to the Applicant. **The Tribunal, therefore, upheld the complaints under Paragraphs 73 and 74 of the Code.**

29. Paragraph 90 of the Code of Conduct states "Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures." **The Tribunal did not uphold the complaint under Paragraph 90 of the Code**, as there was no repair work that they were instructed to deal with. The Respondents were at fault in not sending the inspection report to the Applicant, but, when it became apparent that there was a problem of water penetration, the Applicant instructed the work directly.

30. The Tribunal accepted that there had been a blurring of lines of communication, with direct contact between Applicant and the tenant on matters which the Respondents might reasonably assume would be for the tenant to raise with them. He had not, for example, reported the water ingress to them, but had gone directly to the Applicant. Accordingly, the Respondents

were justified in taking the decision to bring the contract to an end, which they could do on giving one month's notice. The Tribunal noted that no end date was specified in their email of 9 September 2022 and there was no mention of fees or charges due to or owed by the Applicant. They did, however, in an email of 17 October 2022, recommend that the contract should end on the 10<sup>th</sup> of a month, as the rent would be due on the 11<sup>th</sup>. They made it clear that they would work with any date suggested by the Applicant. The view of the Tribunal was that they were trying to time the transition to suit the Applicant, and her suggestion that they were wanting her to give them a termination date so that they could charge further fees was entirely without foundation. In their email of 17 October 2022, they stated in terms that "No fees will be due for this transfer". Accordingly, **the Tribunal did not uphold the complaint under Paragraph 37 of the Code.**

31. In relation to Paragraph 108 of the Code, the Tribunal noted that the Applicant had made her complaint regarding the failure to send her the November 2021 inspection report on 3 May 2022 and that the Respondents replied on 13 May. She sent a further email on 18 May, which expanded on her original complaint. This was answered on 3 June. In both instances, the Respondents replied within the 15 working day period which is specified in their Complaints Procedure. The Applicant wrote again on 26 July, with, essentially, the same complaint. This was not answered until 9 September, outwith the 15-day period. On 14 September, the Applicant made a further complaint, namely that the Respondents had not complied with the Code in relation to intimating that they wished to end the contract. The Respondents did not answer until 7 October 2022, again missing the 15-day response time.
32. The Respondents' complaints procedure specifies that if a party feels that the matter remains unresolved, they need to address it to the Proprietor at the Respondents' local office, who will conduct an investigation and respond with a final viewpoint. The Applicant's original letter of complaint of 3 May 2022 was addressed to the Proprietor and she wrote to her on at least on six occasions after that, on 26 and 31 July, 30 August, 14 September, 6 October and 2 November. All responses came from the Lettings Manager. It must have been clear to the Respondents that the Applicant did not regard the matter as resolved, but it does not appear that the Proprietor became involved at any point. There is no evidence that she conducted an investigation and, if she did, she failed to respond with a final viewpoint, as required by the Complaints Procedure. Accordingly, **the Tribunal upheld the complaint under Paragraph 108 of the Code.**
33. Having decided that the Respondent had failed to comply with Paragraphs 73, 74 and 108 of the Code of Conduct, the Tribunal considered whether to require the Respondents to pay compensation to the Applicant. The Tribunal noted the view of the Applicant that the problem with the flat roof had occurred during stormy weather in the autumn of 2021, but the roofing contractors could not definitively state this was the case, and the insurers were not satisfied that it had been caused by storm damage. The view of the Tribunal was that, as the inspection report of 2019 made no mention of it, the likelihood was that it was not long-standing and that some incident had happened. If the



21 November inspection report had been sent to the Applicant at the time, she would have had the opportunity to take remedial action, but the Tribunal could not speculate on whether and, if so, to what extent, the situation had worsened in the period between 12 November 2021 and 6 April 2022, when the tenant reported water ingress to the Applicant. This was also the case in relation to works to the kitchen, bathroom and windows. Nor could the Tribunal speculate on whether or not the roofing contractors would have recommended a lesser repair had they inspected the roof in late November 2021 or whether the insurers would have accepted a claim at that time and contributed to the cost of the repair works. There was no evidence that any travel, accommodation and other incidental expense incurred by the Applicant were directly attributable to the Respondents' failure to timeously send her the inspection report. Accordingly, the Tribunal was unable to hold that the Applicant had suffered actual loss.

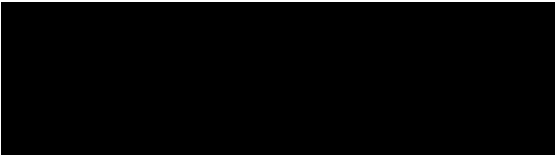
34. The Tribunal decided that, whilst it could not make a finding of actual loss, the Applicant had been denied the opportunity to have the roof repaired at an earlier stage and should be entitled to compensation for that loss of opportunity and the stress and inconvenience that had resulted from the failure of the Respondents to comply with their Complaints Procedure. Having considered all the facts and circumstances, the Tribunal decided that an award of £500 would be fair, reasonable and proportionate.

35. The Tribunal also considered whether or not there should be a requirement for further action to be taken by the Respondents to prevent such failures from happening again. The view of the Tribunal was, however, that they had come across as open and honest and the Tribunal felt that lessons will have been learned from the Hearing. Accordingly, the Tribunal decided that further action is not necessary.

36. The Tribunal's Decision was unanimous.

### **Right of Appeal**

**A party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**



Legal Member/Chair  
9 December 2024.