

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Chamber Reference: FTS/HPC/LA/24/0620

Property address: 8 Lubnaig Drive, Callander, FK17 8LX (“the Property”)

The Parties

Ms Maz Wyllie, 12 Beaufort Road, Inverness, IV2 3NP (“the Landlord”)

Forth Residential, Office 2, Kildean Business and Enterprise Hub, Drip Road, Stirling, FK8 1RW (“the Letting Agent”)

Tribunal Members

Ms H Forbes (Legal Member)

Mrs M Lyden (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has not complied with paragraph 21 of the Code of Practice for Letting Agents (“the Code”) as required by the Housing (Scotland) Act 2014 (“the Act”) and issues a Letting Agent Enforcement Order (“LAEO”).

The decision is unanimous.

Background

1. By application received in the period between 4th February and 6th March 2024, the Landlord applied to the Tribunal for a determination on whether the Letting Agent had failed to comply with paragraphs 21, 27, 73, 74, 75, 90 and 93 of the Code. The Landlord lodged photographs, an Agency Agreement between the parties, a witness statement, a property inspection report, a tenancy deposit scheme adjudication decision and correspondence between the parties.

2. By decision dated 20th March 2024, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) referred the application to a Tribunal for a hearing.
3. On or around 10th April 2024, the Letting Agent made written representations and lodged productions (131 pages).
4. A Case Management Discussion (“CMD”) took place by telephone conference on 11th July 2024. The Landlord was in attendance. The Letting Agent was represented by Ms Catriona Flanagan, Director. The CMD was continued to a hearing.
5. By emails dated 5th August and 3rd September 2024, the Letting Agent lodged representations.
6. A hearing set down for 21st November 2024 was postponed at the request of the Landlord.
7. By email dated 21st January 2025, the Landlord lodged further productions (10 pages).

The Hearing

8. A hearing took place by telephone conference on 27th February 2025. The Landlord was in attendance. The Letting Agent was represented by Mrs Catriona Flanagan.

The Landlord’s position

9. The Landlord said she had been dealing with the Letting Agent since 2019. It was stated on the Letting Agent’s website that a landlord would have peace of mind if the Letting Agent managed the property and that they would look after everything. That was not her experience. The Landlord was living abroad and came home in July 2022 in stressful circumstances, when two family members were ill. The Tenant left the Property on 8th July 2022. The exit report showed little damage. The Landlord found new damage that was not in the report. This was very stressful and time-consuming. The Letting Agent blamed the Tenant and took no responsibility.
10. The Landlord said she had to ensure the full extent of damages was reported to the Tenancy Deposit Scheme (“TDS”). It was her position that, if left to the Letting Agent, she would not have recovered the full deposit, because of the under-reporting of issues in the check-out report. The Landlord said she noted all the damage (LA192-197), and she thought she worked directly with the TDS. The Landlord said she was told by the TDS that she would have been awarded more than the deposit if that had been possible.
11. The Landlord said the contract between the parties provided for at least six-monthly inspections (clause 22.2 – Case File 090), but she had been told by Mrs Flanagan on the telephone that inspections would be three-monthly. It

was her position that inspections took place more regularly at the start of the tenancy, then became six-monthly. Clause 22.2 provides that the Letting Agent will identify any clearly visible repairs and maintenance and will notify the Landlord of apparent and obvious defects.

12. The Landlord referred to an email dated 24th February 2022 (CF051) where the Letting Agent stated 'the house is generally being kept in good order.' The Landlord said she found it hard to believe that over £1000 worth of damage was done to the Property between February and July 2022, which would be the case if the email and inspection report of February 2022 was to be believed.
13. The Landlord said the Letting Agent was bound by clause 6.1 of the contract between the parties to inform the Landlord promptly of any important issues that they became aware of.

Downpipe

14. The Letting Agent failed to notice that the downpipe at the front of the Property was disconnected when they carried out their inspection in February 2022. On the inspection report (CF053), a small gap in the pipe can be seen. The check out report of 9th July 2022 (LA017) clearly shows the disconnected pipe, and it is referred to within the report.
15. On her return to the Property in July 2022, the Landlord discovered heavy staining to the front wall due to the disconnection of the downpipe (CF107&108). There was no structural damage. The Landlord had to remove the staining by scrubbing, and applied fungal treatment spray.
16. The Letting Agent told the Landlord the downpipe was not obvious at a ground-level inspection, and the Tenant had not raised this as a repairing issue.
17. The Landlord pointed out that the Letting Agent has now changed their inspection procedures to include downpipes. It was her position that, if it was important enough to add this now, it should have been done before.
18. Responding to questions from the Tribunal, the Landlord said she was not aware of the Tenant's responsibilities in respect of the downpipe in terms of the tenancy agreement.

Pets

19. At the start of the second tenancy, the Landlord had given reluctant permission for one dog, and specified absolutely no cats. She later discovered there was a cat and some budgies in the Property, when a friend reported back to her at some time before February 2022. The Letting Agent had failed to notice that there were additional pets in the Property. The Landlord then asked the Letting Agent to investigate. It transpired that the Tenant had mentioned a dog and a cat in their initial email, but they had not included the

cat and birds in their application form. The Landlord felt she had no choice but to accept the situation.

Damage to living room walls

20. The Landlord said there were holes in the living room walls. The Landlord referred to photographs (CF113 & 120). The Landlord said there was a great deal more damage to the walls, including a hole that appeared to have been caused by a hammer. The Letting Agent had claimed the damage to the walls was due to fair wear and tear, and had stated in the check-out report (LA076) that there was an area of cracked and peeling paint above the sofa, with minor scuffs and marks, and nails and holes on the walls. It was the Landlord's position that the damage was not minor, and that the pictures in the check-out report missed much of the damage.

Property disposed of

21. The Letting Agent disposed of bedding and a mattress topper belonging to the Landlord. She discovered the items in the bin (CF109, 110 & 111). All the items were dry cleaned and found to be useable. These items had not been included in the inventory at the start of the tenancy, and had been left for the use of the Tenant. The Landlord accepted the items should not be reused by another tenant, but they were her belongings and she should have been consulted about them.

Décor

22. The Tenant had been given permission by the Landlord to paint a bedroom on the understanding that it would be returned to its original condition at the end of the tenancy. This had not been done. The quality of the decoration was poor. There had been no communication about this from the Letting Agent.

Paint and damage to furniture

23. The Tenant had damaged a coffee table and other furniture with paint (CF114, 117 & 119). There was a black stain on a shelf inside a wooden cabinet (CF112). These issues had not been noted by the Letting Agent at inspection or in the exit report. Paint cans were found in the bin (CF116). A bedroom carpet was damaged (CF118)

Kitchen units

24. The Landlord referred to the pictures of the kitchen units in the check-out report (LA050 onwards). The units are solid wood and had been in the Property before the Landlord moved in many years ago. On 21st January 2025, the Landlord had lodged pictures of the kitchen cabinets which showed damage that could not be seen clearly in the check-out report. The Landlord also lodged a quote from a joiner dated 25th October 2024 which stated '*I have seen this kind of damage before and it is in my expert opinion that this*

damage has been caused by a cat or cats scratching at the units. It looks like there has been an attempt to conceal the damage which has made it worse.'

25. The Landlord indicated some damage in the check-out report photographs (LA050, 051 and 052), and said the damage was not seen as clearly in the report due to the angle at which the photographs were taken, but it was clearly evident when she returned to the Property in July 2022. She had been perplexed by the damage and could not think what had caused it, until the joiner had provided his opinion. The joiner had told her it looked as if sandpaper may have been used on the units to disguise the damage. She was now certain a cat had caused the damage, which was more evident on the units on one wall of the kitchen. The Landlord said she would have expected this damage to be highlighted in the report. Responding to questions from the Tribunal as to why the kitchen cupboards were not mentioned in the TDS claim, the Landlord said she had been told the damage was due to wear and tear and had no evidence to prove otherwise at that time.
26. Responding to questions from the Tribunal, the Landlord said she stayed at the Property from July to October 2022. She did not treat the kitchen units during that time, but she sanded and oiled the worktops, and this was also done between lets. The kitchen had been in place before she moved into the Property, and the units could be around twenty years old.

Other issues

27. The Landlord had raised an issue in respect of the bins not being emptied at the end of the tenancy. She accepted this was mentioned in the check-out report. The Landlord also accepted that damage to garden tiles and lawns and damage to the electricity meter had not been notified to the Letting Agent. The Landlord confirmed she was no longer insisting on these matters.

Costs

28. The Landlord said she had estimated her cost per hour for work carried out to the Property at £60. Her claim of £300 for stress was extremely low when she looked back on the impact this situation had on her.

Cross-examination of the Landlord

29. Under cross-examination, the Landlord said the recent photos submitted of the kitchen units were taken in October 2024. The hole made with a hammer was on the right-hand side of the living room on the gable end wall. The Landlord was unable to say if this was mentioned in the claim to the TDS.

The Letting Agent's position

30. Mrs Flanagan referred to the Letting Agent's written representations. A formal complaint had been made in July 2022. The Landlord had claimed a rebate of the management fee for 6 months and a payment of £500. The Letting Agent

offered £100 as a goodwill gesture in respect of the issue relating to the downpipe.

31. There were two tenancies of the Property from 2019. Both were families, and families live differently to single occupants.
32. Mrs Flanagan said there was no offer of, or discussion about, quarterly inspections. Inspections are always six-monthly, as stated in the agency agreement and on their website. Inspections were carried out and reports issued to the Landlord. The Letting Agent gave notice in March 2022 of their intention to discontinue the agreement as this was their only property in the area. There was then agreement to continue to act for the Landlord until the Tenant left in July 2022.
33. The check-out report compiled in July 2022 was long. The photographs of the kitchen taken by the Landlord in October 2024 were very different to those in the check-out report, which were taken in July 2022. The Property was re-let in October 2022.
34. There were email discussions between the parties (LA184-191) regarding the TDS claim. The Letting Agent sought instruction from the Landlord at every stage and completed the claim as instructed by the Landlord. The Tenant agreed to the sum of £500 being retained by the Landlord, which left the sum of £450 in dispute. The Tenant felt some items had been marked at move-in. The Landlord was awarded the tenancy deposit in full. The Letting Agent supported their claim.
35. The Letting Agent met the Tenant in February 2022. There was no mention of the downpipe. There were other small issues noted. It was a dry day, so the downpipe issue was not evident. The Tenant should have brought this to the attention of the Letting Agent. Mrs Flanagan said there was historic staining behind the downpipe, referring to the photograph on the check-in report from 2019 (LA214). Responding to questions from the Tribunal, Mrs Flanagan said the Letting Agent now uses a different app with a customised checklist to ensure downpipes are included. This was introduced to make matters foolproof.
36. The Tenant disclosed they had an elderly dog at the start of the tenancy and permission was given by the Landlord. In April 2021, the Landlord told the Letting Agent that her representative had mentioned a cat and budgies in the Property. The cat and budgies had not been present during inspections, so there was no failure on the part of the Letting Agent. No damage was noted during inspections. The Tenant was asked and they said they had mentioned the cat in an email, but it was not in the application form. A request from the Letting Agent for instructions from the Landlord as to further action was not answered. The Letting Agent has now changed their practice by introducing a more specific application form.
37. The Letting Agent had noted some peeling of the living room walls in February 2022. There was no mention of a hammer hole then, and Mrs Flanagan did

not think it was there at that time. This had not been mentioned until now. It was never brought to the attention of the Letting Agent. The inspection report showed scuffs, holes and peeling on the living room walls (LA76 onwards).

38. The Tenant had been made aware of the necessity to return the bedroom to the original décor. Information is sent to a tenant in advance of check-out telling them what requires to be done. The Tenant had chosen not to be present at check-out.
39. The Landlord's bedding did not form part of the inventory. Some of the bedding was stained and marked. The Letting Agent member of staff saw that it was not on the inventory and assumed it had been left by the Tenant. The member of staff thought they were doing a favour by putting the bedding in the bin.
40. Paint marks on furniture had not been noted and do not show up in photographs, but it may be covered by the description *minor cosmetic damage*, as stated in reports.
41. Responding to questions from the Tribunal, Mrs Flanagan said the Letting Agent did not believe there was a dramatic change in the condition of the Property from February to July 2022. An inspection report is not as thorough as a check-out report. The Tenant's belongings are there during an inspection report, and this may mean issues are not as obvious as at check-out. There were dilapidations at check-in. The Property was not freshly painted in 2019. There was some damage to furniture. There are some changes evident in the photographs from check-in to check-out but no indication of misuse of the Property. The Landlord did not claim any damage to the kitchen units at the time of making the TDS claim.
42. Responding to questions from the Tribunal, Mrs Flanagan said there had been a few repairs notified during the tenancy, including a shower screen.

Cross-examination of Mrs Flanagan

43. Under cross-examination, Mrs Flanagan reiterated that there was no mention of the hammer hole in the wall previously. Paint on furniture was included under general comments on minor cosmetic damage in the check-out report. The age of furniture must be looked at, as well as pre-existing condition. Mrs Flanagan said all mattress protectors are replaced between tenancies. If there is a cleaner, they will usually remove them. In response to a comment from the Landlord that she did not recall this happening between lets, Mrs Flanagan said she would have to check this, but the procedure had not changed. Mrs Flanagan said the position regarding the dog was reflected in the tenancy agreement. Regarding the downpipe, Mrs Flanagan said the Tenant was the best person to report such issues and must notify issues in terms of the tenancy agreement.

44. Referred to LA214, a picture of the Property in 2019, the Landlord said the discolouration was due to a shadow from a change in the aspect of the wall, and not staining. Mrs Flanagan said she thought it was staining.
45. Asked why she had not provided copies of inspection reports, Mrs Flanagan said she did not remember any phone calls in this regard. Mrs Flanagan said she had asked the Landlord for instructions in the past and had received no response.

Summing up

The Landlord

46. The Landlord said she had no reason or time to fabricate issues or complicate matters. It was the Letting Agent's responsibility to manage the Property. If they can do that with six-monthly inspections, that is fine, but if they cannot, they need to inspect more often. The Property was not fully managed. The Landlord should not have had to collate information for the TDS claim, and completely rehash the claim. The Landlord referred to two witness statements on the file, which were not insignificant. The witnesses were not available to give evidence at the hearing.
47. Responding to questions from the Tribunal as to why the kitchen unit photographs were taken in 2024, the Landlord said she had been perplexed when she saw the damage. She was told it was wear and tear. It was not until the joiner mentioned it recently that she knew it was caused by a cat. There has not been a cat in the Property since 2022. The damage is bizarre. The Landlord said she has no reason to lie about this. The Landlord's current letting agent noted the damage but had no knowledge of the cause. The Landlord was unsure if photos from the inventory compiled in October 2022 would be available. The Landlord said she may have chosen not to put the kitchen units into the TDS claim as she had no evidence it had been caused by a cat. The Landlord also said it was a stressful time for her, and this may have affected her decision not to mention the kitchen units in the TDS claim.
48. Responding to questions from the Tribunal as to why she had not taken action against the Tenant, the Landlord said it was her understanding these issues should be picked up at inspection. She was under the impression the Property was being maintained and managed. She was paying the Letting Agent to manage the Property. The Landlord said she is not saying she would not consider pursuing the Tenant, but she did not believe she should have had to given that she was paying the Letting Agent for management. The Landlord said the Property had been maintained and painted by her before it was let out in 2019.

The Letting Agent

49. Mrs Flanagan apologised to the Landlord for any upset. Mrs Flanagan said she had looked into everything, and her position was that the Letting Agent could not accept liability for any failures of the Tenant. The Letting Agent

carried out their duties. The TDS decision mentioned pursuing the Tenant. The Letting Agent had taken on board that the downpipe had been missed and they had changed their processes. They had received limited information from the Landlord.

Findings in Fact and Law

14.

- (i) On 16th August 2019, the Letting Agent was contracted to manage the Property on behalf of the Landlord. The post-letting duties of the Letting Agent in terms of the Agency Agreement were property inspections, rent collection, managing tenant/neighbour complaints, reporting to the Landlord and check-out inspection for departing Tenant.
- (ii) In terms of the Agency Agreement, the Letting Agent undertook to visit the Property no less than twice yearly, conducting a walk-through to identify clearly visible repairs and maintenance and to find out from the tenant any repairs that have come to their attention.
- (iii) In terms of the Agency Agreement, the Letting Agent declares that the inspection is not a survey or check of the inventory and/or statement of condition.
- (iv) In terms of the Agency Agreement, the Letting Agent undertakes to notify the Landlord of apparent and obvious defects, but does not accept responsibility for reporting hidden or latent defects, unless failure to do so is due to the Agent's professional negligence or express breach of contract.
- (v) In terms of the Agency Agreement, the Letting Agent undertakes to check the statement of condition and the inventory at vacation and discuss the results with the Landlord.
- (vi) In terms of the Agency Agreement, the Letting Agent declares they will not be responsible for any loss or damage that the Landlord suffers through the act, fault or negligence of any third party other than through the professional negligence or express breach of contract of the Agent.
- (vii) In terms of the Agency Agreement, the Letting Agent undertook to inform the Landlord promptly of any important issues or obligations on the use of the Property that they became aware of.
- (viii) In terms of the Agency Agreement, the Letting Agent can act for the Landlord if the TDS refer the matter to dispute resolution.
- (ix) There was a tenancy from 20th August 2019 to 19th February 2020.
- (x) A second tenancy commenced on 28th February 2020.

- (xi) The Tenant paid a tenancy deposit of £950 which was lodged with an approved TDS.
- (xii) The Landlord agreed that the second Tenant could have one dog in the Property.
- (xiii) The Tenant did not properly disclose when making their application that they had a cat and caged birds, which were kept in the Property.
- (xiv) The Landlord was made aware of the situation with unauthorised pets in the Property by a representative who attended at the Property prior to 15th April 2021.
- (xv) The Landlord stated in an email to the Letting Agent on 15th April 2021 that nothing could be done about the pet situation at that time.
- (xvi) The Letting Agent subsequently changed their procedures in respect of applications by tenants with pets.
- (xvii) A periodic inspection was carried out by the Letting Agent in February 2022.
- (xviii) The Letting Agent failed to notice a downpipe at the front of the Property was disconnected. This was an apparent and obvious defect.
- (xix) In March 2022, the Letting Agent gave notice of their intention to end the management of the Property. Thereafter, the Letting Agent agreed to continue with the Agency Agreement until the tenancy ended.
- (xx) The tenancy ended on 8th July 2022.
- (xxi) A check-out inspection was carried out by the Letting Agent on 9th July 2022. A report was provided to the Landlord.
- (xxii) In the check-out report, the Letting Agent recorded the disconnected downpipe.
- (xxiii) In the check-out report, the Letting Agent detailed various issues within the Property.
- (xxiv) The Letting Agent changed their procedures to ensure downpipes are checked during inspections.
- (xxv) The Landlord and Tenant did not agree on the distribution of the tenancy deposit. Adjudication was carried out by the approved TDS, and the Landlord was awarded the full deposit.
- (xxvi) The Landlord was required to carry out cleaning and had to apply anti-fungal solution to the front of the Property as a result of the leaking downpipe.

Determination and Reasons for Decision

Paragraph 21

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

15. The Tribunal found the Letting Agent had failed to comply with this paragraph of the Code by failing to use reasonable care and skill at the time of the inspection in February 2022, when they failed to observe an apparent and obvious defect, i.e. the disconnected downpipe. It was an obvious repairing issue that ought to have been noticed and recorded at the inspection. The Tribunal was not convinced that earlier photographs showed historic staining on the front wall of the Property.
16. The Tribunal did not find the Letting Agent had failed to comply with this paragraph in respect of the following matters:
- (i) Check-out report – The check-out report was lengthy and detailed. There were a large number of photographs of peeling paint, scuffs, nails and holes on the living room walls. The TDS report states that the adjudicator found deterioration beyond wear and tear, and the Landlord was compensated accordingly. There was an insufficiency of evidence in respect of the hole referred to by the Landlord, with no photographs and no mention of this in the TDS information. The Tribunal considered that, although there were no photographs specifically showing paint on furniture, this was covered by the general description in the check-out report of minor cosmetic damage.
 - (ii) Pets – Although it was stated in an email that the Letting Agent accepted some responsibility for the situation in respect of the additional pets, the Tribunal was not persuaded that the Letting Agent had failed in the carrying out of their services in this regard. The Tenant had not disclosed on the application form that they had additional pets, and the Letting Agent had not observed these pets at inspection. Furthermore, the Landlord had stated in an email that nothing could be done about this situation, which indicated her acceptance of the situation. It would have been open to the Landlord to have taken action against the Tenant at that time for breach of the terms of the tenancy. The Tribunal had difficulty in comprehending why the Landlord had not raised the issue of the damage to the kitchen cabinets at the end of the tenancy, in the TDS claim or in the application to the Tribunal. The Tribunal noted that the Landlord claimed this was because she had only recently been told that the damage was the result of a cat in the Property. The Tribunal was

unable to make any findings that the cat had been responsible for the damage, in part due to the delay of two years in taking the photographs, which differed considerably from those in the check-out report. The Tribunal gave limited weight to the evidence of the joiner's quote, with no oral witness evidence or opportunity for cross-examination of the witness.

- (iii) Bedroom décor – The check-out report states that the bedroom décor was not returned to the previous condition, as per agreement. It was not clear what the Landlord expected the Letting Agent to do about this after the Tenant had left. The responsibility for returning the bedroom décor to how it was at the start of the tenancy was with the Tenant and not the Letting Agent. The Letting Agent brought the matter to the attention of the Landlord in the check-out report.
- (iv) Disposal of property – The Tribunal considered the actions of the Letting Agent in disposing of the property to have been understandable, given that the items were not on the inventory and were, at least to some extent, stained or mouldy. It was understandable that the Letting Agent presumed they belonged to the Tenant and had been abandoned. In any event, the mistake was averted by the Landlord discovering the items and removing them from the bin.
- (v) Tenancy Deposit Scheme – The Tribunal considered the process of making a claim to the scheme had been properly carried out in terms of the Agency Agreement. The Landlord had an opportunity for input to the claim, and this resulted in a positive outcome for the Landlord in reclaiming the total deposit.
- (vi) Inspection report February 2022 – With the exception of the downpipe, the Tribunal did not find that the Letting Agent had failed in recording issues at this time. The Tenant's belongings would have been in the Property at the time of the inspection in February 2022, including, presumably, pictures and furnishings, which may have masked some of the issues picked up in the check-out report and by the Landlord after the tenancy ended.

Paragraph 27

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

17. The Tribunal did not find there had been a failure to comply with this paragraph of the Code. It did not appear to be the case that the Letting Agent became aware of any repairs, breaches or other important issues that were not passed on to the Landlord. The Landlord seemed to be complaining of a lack of awareness, rather than complaining that the Letting Agent had failed to pass any such matters on.

Paragraph 73

If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

18. The Tribunal did not find there had been a failure to comply with this paragraph of the Code. There was a lack of specification by the Landlord as to how this paragraph applied to the facts of the application.

Paragraph 74

If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate.

19. The Tribunal did not find there had been a failure to comply with this paragraph of the Code. It did not appear to be the case that the Letting Agent identified or recorded issues that were not passed to the Landlord. The Landlord seemed to be complaining of a lack of identification and recording of issues.

Paragraph 90

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

20. The Tribunal did not find there had been a failure to comply with this paragraph of the Code. There was no complaint by the Landlord that repairs notified to the Letting Agent had not been dealt with promptly and appropriately.

Paragraph 93

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

21. The Tribunal did not find there had been a failure to comply with this paragraph of the Code. There was no delay in carrying out repair and maintenance work. The Landlord's complaint was that repairs and maintenance were not noticed by the Letting Agent.

Observations

22. The Tribunal accepted that this was a stressful situation for the Landlord and that the condition of the Property was different to how she had left it. However, the Landlord was able to retain the full deposit, with allowance made for wear and tear. The Tribunal could not find reference by the TDS to making a larger award if that were possible. The Tribunal considered that any damage to the Property was primarily the responsibility of the Tenant, and, if the Landlord

believed the cost of such damage to be more than the tenancy deposit, she had, and continues to have, the opportunity of taking action against the Tenant.

23. The Tribunal made no findings in regard to the frequency of inspections, as there was insufficient evidence before the Tribunal of this matter. It was not clear why earlier inspection reports were not lodged by either party.
24. The Tribunal could find only one witness statement within the case file (CF105). While some cognisance was taken of this statement, it is difficult to give it any significant degree of weight in the absence of oral evidence and the opportunity for cross-examination.
25. In considering the sum to be paid to the Landlord, the Tribunal took into account that the Landlord has already received the sum of £950 tenancy deposit, which goes some way to compensating her for any losses. The Tribunal was not persuaded that it should refund six months of agency fees, given its findings that the Letting Agent had only failed in respect of the downpipe. The Tribunal was satisfied that all other duties had been carried out as contracted between the parties. The Tribunal decided the Letting Agent should refund one month of agency fees.

Letting Agent Enforcement Order (“LAEO”)

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

The Tribunal determined to make an LAEO as follows:

1. The Letting Agent must pay to the Landlord within 21 days of the issue of this Order the sum of £102 for one month’s letting agent fees for the Property as a result of the Letting Agent’s failure to comply with the Code.
2. The Letting Agent must pay to the Landlord within 21 days of the issue of this Order the sum of £300 in respect of distress and inconvenience caused to the Landlord due to the failure of the Letting Agent to comply with the Code.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must

seek permission to appeal within 30 days of the date the decision was sent to them.

Helen Forbes
Legal Member and Chairperson

5th March 2025