

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 46 and 48 of the Housing (Scotland) Act 2014 and Paragraphs 17, 28 and 111 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Regulations”)

Chamber Ref: FTS/HPC/LA/24/2656

Property: River View, Inchbae Lodge, Garvie IV23 2PG (“the Property”)

Parties

Douglas Stewart, River View, Inchbae Lodge, Garvie IV23 2PG (“the Applicant”)

and

Thomas Kissock, The Old Post Office, Cullicudden IV7 8LL (“the Respondent”)

Tribunal Members: George Clark (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application.

Background and Summary of Written Representations

1. By application, dated 11 June 2024, the Applicant sought an Order in respect of the Respondent’s failure to comply with the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code”). The Applicant’s complaint was that the Respondent had failed to

comply with Paragraphs 17, 28 and 111 of the Code. He also contended that the Respondent was not licensed to deal with residential lettings.

2. The Applicant stated in the application and in further representations dated 14 March 2025 and 20 May 2025 that in December 2023, he met the Respondent, who was introduced as the agent for his landlady, who had given him the responsibility of looking after the necessary obligations of the leases for the residential and commercial premises of which the Applicant had taken possession. The Respondent produced a business card, which stated that he was an agent representing Nested. This made the Applicant believe that he was authorised to deal with lettings as well as estate agency. The Respondent had carried out the vetting process, although that was only done after the leases were signed. He had, therefore, carried out letting agency work. Since January 2024, the Applicant had been having issues with his landlady and the Respondent was aware of that. The Applicant had, on 28 March 2024, sent the Respondent a text giving him information to pass on his landlady that he was going to seek legal advice and would pursue legal proceedings. He asked the Respondent to give advance notice if he intended to attend the premises, as the Applicant was still the residential occupier. On the following day, the Respondent attended the premises without informing him. He was accompanied by a locksmith and a few security staff. An incident followed in which the Applicant and his son were injured. Police Scotland attended. The Respondent had broken the Code of Conduct by being abusive and intimidating.
3. On 7 April 2024, the Respondent returned to the premises with others. They broke through the residential premises to gain access to the commercial premises, from which they evicted the Applicant and his family, thereby depriving the Applicant of his only source of income. On 13 April 2024, the Respondent returned again to the premises, with another person who was said to be security staff. He removed the door handles from the only entrance to the Property, so entrapped the Applicant and his family. They were freed after Police Scotland intervention.
4. The Applicant was seeking compensation from Nested for the reckless behaviour of the Respondent who had taken on letting work in their name, despite not being a registered letting agent. He was also seeking compensation from the Respondent for his breaches of the Code of Conduct which had caused immense hardship and emotional stress to the Applicant and his family, depriving them of the right to live in their home in security, peace and dignity.
5. On 2 September 2024, the Applicant again stated that the Respondent had broken down the door of the Property to gain entrance to the commercial premises and itemised the damages he was claiming. They totalled £211,500.

6. The Applicant provided a copy of a Private Residential Tenancy Agreement. between the Applicant and Mrs Rita Bishop, signed by both on 22 December 2023 and commencing on 26 December 2023.
7. On 13 March 2025, the Respondent provided written submissions to the Tribunal. He said that in November 2023, he was asked by Mrs Bishop, the owner of Inchbae Lodge Hotel, to market a short-term lease for the hotel. Mrs Bishop subsequently found a tenant for the commercial lease through her own efforts. This was the Applicant. The Respondent then withdrew from marketing the commercial property. In December 2023, Mrs Bishop asked the Respondent to witness the signature of the commercial lease, as she had no-one else that she could ask. Due to failure by the Respondent to pay any rent for the commercial premises. Mrs Bishop then undertook the process of evicting him from the hotel premises. She asked the Respondent to attend the eviction as he was familiar with the layout of the property and could show locksmiths the doors which required lock changes. An altercation occurred during the eviction and one of the security guards was injured, as was the Respondent's son, who lost his footing. A few days later, the Applicant broke back into the hotel and resumed offering accommodation, meals and alcohol. Mrs Bishop then asked the Respondent to attend a second eviction, which took place on 7 April 2024. Police Scotland attended but did not intervene. Mrs Bishop then arranged for a watchman to stay in the property for several days so that the hotel would be secure and could not be re-occupied by the Applicant. The watchman was not known to the Respondent and was not instructed by him. The Respondent was asked to return his only key to the watchman on 13 April 2024. He spoke to the watchman whilst he was repairing the outside door to the property that had allegedly been damaged by the Applicant. He did not give any instructions to the watchman and had no control over his actions.
8. The Respondent added that ever since he had assisted Mrs Bishop with the eviction of the Applicant from the commercial premises at Inchbae Lodge Hotel in April 2024, the Applicant had pursued an unrelenting campaign of harassment, both professionally and personally, against him. He had emailed the managing director of Nested on a number of occasions asking her to sack the Respondent from his agreement with them. He had made false statements to Police Scotland, a complaint to the Property Redress Scheme was rejected as being of no substance and a Simple Procedure case against Mrs Bishop for the same set of circumstances had also failed. The Respondent regarded the Applicant as a vexatious litigant.
9. The Applicant formally complained to the Respondent's platform suppliers, Nested Ltd, who confirmed that the Respondent had never offered a residential lettings service. The Respondent stated that has never acted as a letting agent for the Property, so is not subject to the Code of Conduct.

10. The Respondent provided the Tribunal with a statement from the owner of the Property, Mrs Rita Bishop, dated 11 March 2025. She confirmed that the Applicant had replied to an advert she had placed on Gumtree, advertising the lease of her commercial property, Inchbae Lodge, and the residential properties River View and Owl View, Inchbae. The Applicant requested a viewing of the commercial property, after which he asked for information on the flats. On 1 December, she advised the Applicant that her agent had a viewing of Owl View that coming weekend. She had told him of the Applicant's interest, and it was agreed the viewing would go ahead unless she let her letting agent, Peter Jamieson of Highland Estate Agents, know otherwise. Mr Jamieson currently provides full management services in the letting of Mountain View, which she also owns. Later, on the evening of 1 December 2023, the Applicant messaged her to state that he would take on the whole building (not Mountain View as that was already let and managed by Highland Estate Agents). He was to forward a proposal to her. On 3 December 2023, Mrs Bishop advised the Applicant by text that her lettings manager had a viewing of Owl View. The Applicant then came back to confirm he would take the whole building., with the residential flat, River View, on a residential lease and the remainder under a commercial lease. She reminded the Applicant that she needed to finalise it, as she had a couple coming to view the commercial premises via her estate agent, the Respondent, Mr Kissock. She had, therefore, explained to the Applicant, in writing, that she had a lettings manager and also an estate agent, two different people. At no time now or in the past' had she used the Respondent as a lettings manager and she was at a loss to understand how the Applicant fails to understand this, despite having received it in writing and having been told on numerous occasions.
11. On 20 May 2025, the Tribunal received an email from Nested Ltd. They confirmed that the Respondent operates independently and has a sales partnership with them but has never acted under their brand or authority for residential lettings. They had followed their complaints procedure and had communicated with the Applicant to say that they do not have grounds to terminate their partnership with the Respondent but, despite this, the Applicant continues to email then repeatedly.

Case Management Discussion

12. A Case Management Discussion was held by means of a telephone conference call on the morning of 21 May 2025. The Applicant was present and was accompanied by his wife, Mrs Fiona Shanti Stewart. The Respondent was also present.
13. The Tribunal advised the Parties that, having considered the written representations, it was clear that the Tribunal would have to determine in the first instance, whether it considered that the Respondent carries out letting agency work. If that question was answered in the negative, he was not subject to the Code of Conduct and the application would have to be

dismissed. If, however, the Tribunal held that the Respondent was a letting agent within the definition of the Code of Conduct, the Tribunal would then have to determine whether the various matters complained of by the Applicant referred to the residential or the commercial property. If they did not relate to the residential property, the application must be refused.

14. The Applicant told the Tribunal that the Property forms one of two first floor flats. There is a common entrance door leading to a shared entrance hallway, off which on one side is a door to the hotel bar and on the other side a door to the hotel kitchen. There is no direct access to the commercial premises from within the Property itself. He confirmed to the Tribunal that the residential tenancy had been negotiated directly with the landlady, Mrs Bishop, the keys had then been handed over and the Respondent was not involved when the lease was signed. He was, however, there at the time, and he witnessed the signing of the commercial lease. He had been involved in the vetting process. The owner left everything regarding both the residential and commercial lease to the Respondent, as her email of 13 December 2023 confirmed. The Applicant advised that the rent was payable directly to the landlady. The incident which resulted in injury to his son had not happened within the Property but in the fenced area outside, and the door which had been broken through on 7 April 2024 was not within the residential Property. It was one of the doors leading off the ground floor entrance hall. The commercial property has its front door leading from the car park.
15. The view of the Applicant was that he and his wife were led to believe that the Respondent was the sole agent for both the residential and commercial leases and he referred again to the landlady's email of 13 December 2023. The Respondent had delivered paperwork relating to rent arrears for both properties.
16. The Respondent told the Tribunal that he was never involved in the residential property as a letting agent. He had a key for the main door of the commercial property (the hotel) which the owner asked him to hand over to a watchman, as she was allowing a group of workers from Bulgaria to live in the hotel for a short period and wanted them to have the key. He had never met the watchman before and did not instruct him or question what he was doing to the communal door.

Reasons for the Decision

17. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

18. The Tribunal considered carefully all the evidence before it, namely the written representations of both Parties and the evidence presented by the Parties at the Case Management Discussion.

19. The crucial matter for the Tribunal to consider was whether the Respondent falls within the definition of “letting agency work” in the Code of Conduct.

20. Paragraph 5 of the Code of Conduct states that the Code applies to every person who carries out letting agency work in Scotland, which is defined in Section 61(1) of the Housing (Scotland) act 2014 as:

“things done by a person in the course of that person’s business in response to relevant instructions which are-

- (a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy agreement by virtue of which an unconnected person may use the landlord’s house as a dwelling, or
- (b) for the purposes of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a)”

21. In the present case, the Respondent was not involved in the advertising of the Property for rent or in the selection of the tenant. That was done by the owner herself, advertising on Gumtree and negotiating directly with the Applicant. The Respondent did not prepare the tenancy agreement and is not named in it as the landlord’s agent. There was no evidence before the Tribunal to suggest he was involved in the management of the Property. The rent was to be paid directly to the owner and the Respondent’s only involvement in any issue regarding repairs appeared to have been to pass on, at the request of the Applicant, a message to the owner. She had provided a statement in which she stated categorically that the Respondent was her estate agent, not her letting agent, and that the Applicant was well aware of that.

22. The only evidence that might support the Applicant’s view was an email from the owner to him on 13 December 2023. She was pressing for the two leases to be signed before Christmas, as she was moving down south. The email stated “ Because you wish to move into the lodge from 1st February and won’t be paying any funds into my account until the end of January 2024 I will have to move all the paperwork and transaction and keys to my agent from Nested Thomas Kissock, to deal with it on my behalf” and ended “I have copied our agent, Thomas Kissock from Nested, into this email so he is aware. He will be in charge of the residential and commercial leases now”. The Tribunal noted, however, that there was another email from her, of the same date, which was identical in terms to the first one, apart from the fact that it stated “Because you wish to move into the lodge from 1st February and won’t be paying any funds into my account until the end of January 2024 I will have to move all the

paperwork and transaction and keys to my agent to deal with it on my behalf” and ended “I have copied our agent into this email so he is aware”, so there was no mention of the Respondent by name, or of his being in charge of the residential and commercial leases now. The Tribunal could not reconcile these two emails, but noted, firstly, that, whilst the emails were indeed copied to the Respondent, it was clear that the owner was referring to the commercial premises, as she stated an entry date of 1 February and no payment being made until the end of January, but the residential tenancy was to begin on 26 December 2023 and, secondly, that the owner continued to deal directly with the Applicant after that date in preparing the residential tenancy agreement and meeting with the Applicant on 22 December 2023 to have it signed and to hand over the keys to the Property. The view of the Tribunal was that the reference to an agent was to Mr Kisson as the estate agent in the commercial lease.

23. Having considered all the evidence, the decision of the Tribunal was that the Respondent was not at any time engaged in letting agency work as defined in Section 61(1) of the Housing (Scotland) Act 2014. Accordingly, he was not bound to comply with the Code of Conduct, the Tribunal has no jurisdiction, and the application must, therefore, be dismissed.

24. The Tribunal observed that, even if it had decided that the Respondent was engaged in letting agency work, all of the matters complained about by the Applicant clearly related to the process of his eviction from the commercial premises, and were not referable to his and his family's occupation of the Property, so the Tribunal would have refused the application.

25. The Decision of the Tribunal was unanimous.

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.

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.

George Clark
Legal Member

21 May 2025