

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/LA/24/3343

5 Springfield Terrace, West Barns, Dunbar EH42 1UL (“The Property”)

The Parties:-

Mrs Anne Peffers, 13 Stenton Road, West Barns, Dunbar EH42 1UG (“the Applicant”)

CRUZ Property Management, Ltd, Dalmation House, Spott Road, Dunbar EH42 1LE

The First-tier tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined to refuse the application.

Background

1. By application dated 23 July 2024 the Applicant applied to the tribunal for an order to find that the Respondent was in breach of its obligations in terms of the Letting Agents Code of Practice 2018 and sought reimbursement of payments made for the removal of a tenant's items from the property, cleaning and garden clearance together with reimbursement of six months' management charges. The Applicant claimed the Respondent was in breach of paragraphs 21, 27, 62, 74, 75 and 101 of the Code and submitted written representations and copy correspondence in support of her application.
2. By Notice of Acceptance dated 8 August 2024 a legal member of the tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. By email dated 8 November 2024 the Applicant advised the tribunal that Umega Property and Letting Agents had taken over the Respondent's business.
4. A CMD was held by teleconference on 15 January 2025. The Applicant attended in person. The Respondent was not represented. The tribunal explained to the Applicant that it appeared from the Umega website that they had taken over the Respondent's portfolio of properties but it was not clear that they had assumed liability for its debts. Also given the approximate date of the purchase of the portfolio the tribunal could not be certain that the

Respondent was aware of the date of the CMD. The tribunal referred the Applicant to the terms of Section 48(8)(b) of the Housing (Scotland) Act 2014 and explained that if it found that the Respondent was in breach of the Code of Conduct it could order that the Respondent pay compensation to the Applicant that the tribunal considers appropriate for any loss suffered by the Applicant as a result of the Respondent's failure to comply. The tribunal explained that this may not be the same as the costs said to have been incurred by the Applicant following the end of the tenancy of the property. The Applicant said that she understood this and that when she first complained to the Respondent she had suggested they meet one half of the cost and asked them to pay £3000.00 but as they had refused all liability she had asked for the whole amount. The tribunal established from the Applicant that the tenancy had commenced in 2020 and had ended in April 2024. The Applicant explained that it had been her and her brother's intention to sell the property after obtaining vacant possession but instead her brother had moved into the property and she had sold her share to him. The tribunal noted that the Applicant had incurred costs amounting to £5650.00 from 1st Removals, Dunbar for the removal of the tenants' furniture and belongings from the property and for the deep clean of the property. The Tribunal queried if the Applicant could provide invoices and receipts for these charges and the Applicant confirmed she could. The tribunal queried why the Respondent would be liable for the cost of the removal of the Tenants' property after the end of the tenancy particularly as it appeared from the Respondent's reply to the Applicant in their letter dated 10 May 2024 that they had provided the tenants with an end of tenancy checklist at the inspection on 1 February 2024. The Applicant queried if the Tribunal had seen written evidence of the checklist being given to the tenants. The tribunal confirmed it had only seen the letter from the Respondent submitted with the application. The tribunal queried with the Applicant why she thought the Respondent should be responsible for the cost of cleaning the property following the end of the tenancy. The Applicant submitted that had the Respondent carried out its six-monthly inspections in April and October 2023 and reported any issues to the Applicant she could have taken steps to have assisted the tenants by providing cleaners then before the property became as bad as it had. The tribunal noted that the Respondent had not communicated with the Applicant between after March 2023 as regards any issues with the property and that the Applicant considered this to be a breach of the various sections of the Code. The Applicant confirmed in response to a query from the tribunal that the tenants' deposit had been paid in full to her in respect of accrued rent arrears and other costs. The tribunal determined that it did not have sufficient information before it to make a final determination of the application and was also concerned that the Respondent may not have had proper intimation of the application due to its business being taken over by Umega Property and Letting Agents. The Tribunal therefore determined to adjourn the CMD to a further CMD and to intimate this to the directors of the Respondent in order to give them an opportunity to attend on the understanding that if they fail to attend or if the Respondent is not represented the Tribunal may make a final determination of the application at the adjourned CMD. The Tribunal also determined to issue formal Directions.

5. By email dated 17 January 2025 the Applicant submitted copy invoices to the tribunal.
6. By email dated 20 January the Applicant submitted further written representations to the tribunal
7. By email dated 12 February 2025 the Applicant submitted a further copy invoice to the tribunal.
8. By email dated 13 February 2025 the Respondent submitted written representations to the tribunal.

The Case Management Discussion

9. A second CMD was held by teleconference on 26 June 2025. The Applicant attended in person supported by her brother Mr Alastair Laing. The Respondent was represented by Mrs Margaret Thom.
10. The tribunal referred the Applicant to the written representations submitted by the Respondent and asked if that in any way satisfied her complaints. The Applicant said it did not and submitted that she only had the Respondent's word that the checklist had been given to the former tenant Ms Ferrell. The Applicant said it ought to have been sent by email. The Applicant went on to say that in 2023 the Respondent ought to have carried out an inspection of the property in April 2023 and again in October 2023 but these were not done. The Applicant noted that an electrician had obtained access to the property to carry out PAT testing in October 2023 and the Respondent could have had someone attend at that time and reported on the condition of the property. The Applicant said that had she been told about the condition of the property at that time steps could have been taken to assist the tenant by offering to put in cleaners then before the condition of the property became as bad as it did. The Applicant submitted that it was irrelevant how close she lived to the property as it was not her responsibility but that of the Respondent to manage the property. The Applicant also pointed out that the tenancy agreement made provision for one pet but there were three pets staying at the property. The applicant also said that when she attended at the property in April 2024 with Mrs Thom, she had acknowledged that the condition of the property was the worst she had ever seen.
11. The Tribunal noted that the Respondent had inspected the property in March 2023 and queried what the purpose of a further inspection in April 2023 would be likely to achieve. The Applicant explained that the March 2023 inspection was a follow up to the December 2022 inspection which was in fact a delayed October 2022 inspection and the April 2023 inspection would have been the normal six-monthly inspection. The Applicant acknowledged that at the March 2023 inspection the Respondent had reported that there had been an improvement in the condition of the property from December 2022.
12. For the Respondent, Mrs Thom explained that one of the directors of the company had attended at the property on 1 February 2024 as there was an

issue with a washing machine. She said at that time the tenant was handed the checkout checklist. Mrs Thom confirmed that the Applicant had not been sent the checkout checklist once it had been completed by an independent assessor. Mrs Thom went on to say that any time an inspection was due the tenant would have been sent an email and this would have been followed up with emails and telephone calls. With regards to the October 2023 inspection Mrs Thom explained that the tenant provided various reasons for postponing the inspection such as she or her child being ill.

13. The Applicant submitted that as no inspection had taken place in October 2023 that should have made it very important that a proper inspection took place on 1 February 2024.
14. For the Respondent Mrs Thom said that the tenant had always said that she would leave the property in a clean and tidy condition. Mrs Thom accepted that the tenant had not lived in the property in a way that she and others would wish to live but she submitted that following the death of the tenant's mother and being served with a Notice to Leave it had been apparent that the tenant had been struggling to come to terms with what was going on in her life. Mrs Thom explained that although the tenant was in breach of her tenancy agreement by having three pets there was little the Respondent could do other than raise a further application to the Housing and Property Chamber but as an order had already been granted there would be no point.
15. The Applicant repeated her earlier point that if an inspection had been carried out in October 2023 and the condition of the property identified at that time an offer of help to clean the property could have been made to the tenant to avoid it reaching the condition it was in at the end of the tenancy. By not carrying out the inspection the Respondent had not kept to its terms of business.
16. For the Respondent Mrs Thom said that they had kept in communication with the tenant and her housing officer and were trying their best to gain access and to accommodate the tenant who was struggling but who had said she was going to return to the property after she left to remove items from the garden although in fact the tenant never did return.
17. In response to a query from the tribunal the Applicant denied that the property had to be cleaned out and all items removed within one week of the tenant removing as her brother was moving into the property. The Applicant said that her brother did not move into the property for a further three weeks and that she had simply accepted the quotes provided by the Respondent after looking around to see if there might be other contractors available.
18. In response to a query from the tribunal as regards the timeline of events Mrs Thom indicated that she did not consider that the tenant had learning difficulties. Mrs Thom explained that shortly before the Notice to Leave was served on 5 April 2023 the tenant had missed a month's rent but had entered into a repayment arrangement with the Respondent. However, the tenant had been concerned that the Notice to Leave had been served because of the

missing rent payment. Mrs Thom said she had assured the tenant that the notice had been served as the owners wished to sell the property. Mrs Thom advised the tribunal that the tenant's mother had died on 27 April 2023 and that subsequently the tenant kept phoning the Respondent. Mrs Thom said that she thought that the tenant was suffering from anxiety.

19. The tribunal noted that although the Applicant had obtained an order for eviction under Ground 1 of Schedule 3 of the 2016 Act namely that the property was to be sold on the open market, it had in fact not been sold and the Applicant's brother had moved into the property and the Applicant had sold her share in the property to him.
20. The tribunal noted that the Applicant complained that the Respondent was in breach of paragraphs 21, 27, 62, 74, 75 and 101 of the Code.

Findings in Fact

21. The Respondent provided a letting agent service to the Applicant in respect of the property.
22. The Respondent ought to have carried out two inspections of the property each year.
23. The former tenant was served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act on 5 April 2023 and a subsequent application for her eviction under reference **FTS/HPC/EV/23/2258** was determined on 3 November 2024 and an order for her eviction granted to take place on 14 April 2025.
24. The Respondent carried out an inspection of the property in March 2023 and reported to the Applicant that there had been an improvement in the condition of the property since the previous inspection in December 2022.
25. Following service of the Notice to Leave and the death of the tenant's mother the Respondent noticed a difference in the tenant who frequently telephoned the Respondent.
26. Attempts by the Respondent to undertake an inspection of the property in October 2023 and further attempts were made throughout November and December 2023 and January 2024 but were unsuccessful due to the Respondent and her son being ill or unavailable. A further inspection was arranged to take place on 1 February 2024.
27. The tenant was in breach of a condition of her tenancy by keeping three pets at the property rather than one.
28. The Respondent gained partial access to the property on 1 February 2024 but were unable to carry out a full inspection of the property at that time.

29. The Respondent did not keep a written record of the condition of the property at that time and due to the Respondent no longer trading all email records have been lost.
30. The Respondent's director Mr Fairbairn provided the tenant with an end of tenancy checklist at his visit on 1 February 2024.
31. The tenant removed from the property in April 2024 and left the property in a dirty condition with a lot of her belongings remaining and the garden in a poor state.
32. The Applicant incurred costs of £5650.00 from a contractor to clear and clean the property and garden.
33. The Applicant and her brother did not market the property for sale as required under ground 1 of schedule 3 of the 2016 Act but the Applicant's brother moved into the property and the Applicant sold her share in the property to him.

Reasons for Decision

34. The tribunal is satisfied that the Applicant incurred the cost of £5650.00 to remove the former tenant's property and carry out a deep clean of the property and garden. If the tribunal is satisfied that the Respondent was in breach of any of the sections of the Code it can make a financial award to the Applicant. However as was explained to the Applicant at the CMD that need not reflect the costs incurred by the Applicant following the end of the tenancy.
35. The Applicant submitted that the Respondent was in breach of paragraphs 21 and 27 of the Code. Paragraph 21 requires the Respondent to carry out its services to landlords and tenants using reasonable care and skill and in a timely way. Paragraph 27 requires the Respondent to inform the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that it became aware of, such as a repair or breach of the tenancy agreement. The tribunal has considered the evidence before it to ascertain if the Respondent was in breach of this paragraph. It was the Applicant's position that by failing to carry out two inspections in April and October 2023 and failing to inform them of the difficulties they were having this was a breach of this paragraph. On the other hand, it was the Respondent's position that they undertook an inspection in March 2023 and attempted on several occasions to carry out a further inspection between October 2023 and February 2024. It is accepted by the Respondent that they did not inform the Applicant of the difficulties they were experiencing with the tenant. The tribunal is quite satisfied that it would have made little or no difference if a further inspection had taken place in April 2023 and it is not at all surprising that a tenant newly served with a Notice to Leave followed shortly by the death of their mother was unwilling to or unable to co-operate with the Respondent. The tribunal is also satisfied from the documentary evidence submitted with the application and the oral evidence at the hearing that the Respondent did use its best endeavours with an uncooperative tenant

who may have had some mental health issues to arrange an inspection. Even if by November 2023 the Respondent had suggested making an application to the Housing and Property Chamber for a right of access it is doubtful that would have been heard prior to the end of the tenancy. Therefore, the only remaining issue is whether the Respondent ought to have advised the Applicant of the difficulties being encountered and if so at what point. Given that the tenant was not refusing access but simply postponing for various reasons the tribunal can understand how it may have not been apparent at the time that it might be prudent to inform the Applicant whereas with the benefit of hindsight it might seem obvious. However, on balance given that the Respondent was trying to accommodate the tenant as well as act in the Applicant's best interests the tribunal is satisfied the Respondent was not in breach of paragraph 21 or 27.

36. The Applicant claimed that the Respondent was in breach of Section 62 of the Code. This requires the Respondent to ensure that any tenancy agreement prepared by them meets all relevant legal requirements and includes all relevant information. Neither party provided the Tribunal with a copy of the tenancy agreement and therefore the tribunal had no evidence before it on which to make a determination. The Applicant's submission that the Respondent failed to ensure that the tenant adhered to a condition of the tenancy agreement is not relevant to this paragraph of the Code.
37. Paragraph 74 of the Code requires that if the Respondent carries out routine visits it must record any issues identified and bring these to the tenant's and landlord's attention where appropriate. Paragraph 75 requires that breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and the agreement with the landlord. The Applicant submitted that by failing to carry out timely inspections she incurred the costs referred to above and that by not enforcing the one pet agreement the damage to the property was worse than it would have been. The tribunal can fully understand how frustrated, disappointed and angry the Applicant must have felt at discovering the condition the property was in at the end of the tenancy. However, in March 2023 prior to the Notice to Leave the report from the Respondent with accompanying photographs indicated that the condition of the property was improving. The tribunal was not provided with any evidence as to when the tenant started to breach pet policy. If it was after the Notice to Leave was served in April 2024 then there was very little the Respondent could have done that would have made any difference and indeed the tribunal was not presented with any evidence as to when either party became aware the policy had been breached. It is not uncommon for tenants once served with a Notice to Leave to become uncooperative and the tribunal is satisfied that the Respondent used its best endeavours to gain access to the property to carry out a further inspection in 2023 and early 2024. The Tribunal does not accept the Applicant's submission that had an inspection taken place and had she been informed in October or November (or presumably December or January or February) that the property was in a poor condition she would have been able to put in cleaners to assist the tenant. It was apparent to Mrs Thom that the tenant had issues and may have been suffering from anxiety. For whatever reason although access was not

being refused arranged inspections were being postponed on several occasions. The tribunal is not satisfied that attempts to instruct cleaners to access the property would have been any more successful. Although it was unfortunate that the Respondent was unable to gain access to the property in the latter part of 2023 and the early part of 2024 the tribunal does not consider the Respondent to be in breach of paragraphs 74 and 75 of the Code.

38. Paragraph 101 of the Code requires the Respondent to ensure that before the tenant leaves the property it must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations. The tribunal was satisfied from the documentary evidence submitted and the oral evidence that the Respondent had complied with this paragraph and therefore was not in breach of paragraph 101 of the Code.
39. The tribunal acknowledges that the Applicant will be disappointed with the tribunal's determination but the reality is that the Respondent was not responsible for the tenant's actions and ultimately the costs incurred by the Applicant were down to the actions of the tenant and not the Respondent.

Decision

40. After carefully considering the evidence before it and after agreeing with both parties that there were no material facts in dispute the tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing finds that the application is refused.

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.

Graham Harding Legal Member

30 June 2025