

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**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(1) of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/24/3287**

**Parties:**

**Nicole Plumb, Savera Shah, 1/ 2 40 West End Park Street, Glasgow ("the Applicant")**

**Robb Residential, The Beacon, 176 St Vincent Street, Glasgow (" the Respondent")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Liz Dickson (Ordinary Member)**

### **DECISION**

**The Tribunal determined that the Respondent has failed to comply with paragraphs 91 and 108 of the Letting Agent Code of Practice ("the Code"). The Respondent has not failed to comply with paragraphs 17, 90 and 112 of the Code.**

**The decision is unanimous.**

### **Background**

- 1. The Applicants lodged an application in terms of Rule 95 of the Tribunal Procedure Rules 2017 and Section 48(1) of the 2014 Act. The application states that the Respondent has failed to comply with Overarching Standard of Practice ("OSP") 17, and paragraphs 90, 91, 108 and 112 of the Letting Agent Code of Practice. A letter to the letting agent notifying them of the complaints and email correspondence were lodged with the application.**
- 2. A Legal Member of the Tribunal with delegated powers of the President referred the application to the Tribunal. The parties were notified that a case management discussion ("CMD") would take place on 21 May 2025 by telephone conference call. Prior to the CMD, both parties lodged submissions.**

3. The CMD took place on 21 May 2025. The Applicants participated. The Respondent was represented by Mr Carter.

## **The CMD**

4. Mr Carter told the Tribunal that the Respondent's contract with the landlord did not permit them to arrange repairs without discussing them first with the landlord. They notified the landlord who decided whether to arrange the repair or instruct the Respondent. He said that they always notified the landlord when repairs issues were reported or otherwise come to their attention and chased her up, if this was required. However, they were not authorised to arrange repairs without prior agreement. Over the last year this has changed, and they are now authorised to arrange urgent repairs. However, that was not the case during the Applicants' tenancy. Mr Carter said that contact with the landlord is usually by phone, as calls are generally answered, and therefore it's better than waiting for a response to an email.
5. The Applicants told the Tribunal that they lived in the property from 9 May 2023 to 29 May 2024. The landlord put up a curtain to address the leakage from the bath. This was not effective. The leak was coming from the side of the bath. Later, the landlord carried out a repair, although the tenants were blamed for the issues. It was said that hair was clogging up the plug hole. The landlord said that the curtain should remain in place, so they left it there, although it was inconvenient. Later they were told it could be removed and there were no further leaks after the second repair.
6. In relation to the leak from the WC, the Applicants said that they emailed the Respondent on 31 October 2023 when they noted a water stain on the ceiling and mould. They thought that it had been leaking for a while but had only just noticed. Water was dripping onto the floor and toilet. The Respondent told them that they had contacted Castle Residential, the letting agent for the flat above the property. They were told that a plumber had attended and then told that it had been fixed. However, a further leak occurred in February 2024, and it seemed to be exactly the same issue as before. They were unable to use the WC from October 2023 until the end of the tenancy. When asked why this was the case, they referred to the photographs they had lodged and said that the floor was damaged and there was water staining. They were concerned about the mould and that the room was not safe to use. They also suspected that there might be mould under the floor and in the walls which was not visible. Mr Carter said that his recollection was that there was only cosmetic damage and he can't recall being told that the floor had been damaged. He said that the landlord was notified following an inspection in November 2023 that there had been a leak. Once the leak had been fixed, time was needed to allow the area to dry out. The landlord was told that there was some mould which should be treated and painted. It would appear that she did not arrange this. However, the WC appeared to be in use when the property was inspected in November 2023. This was denied by the Applicants.

7. In response to a question from the Tribunal, the Applicants said that they had been told that a professional would check the floor after the leak. They had concerns that there was moisture underneath the flooring and that further mould would develop. They confirmed that there had been 4 tenants in total and that they had lived in the property for a year. Ms Plumb said that they had been told that a de-humidifier would be provided but it never appeared. They even provided a date and time when they would be free for it to be delivered. But they didn't show up. Ms Shah also said that the Respondent failed to respond to enquiries in November 2023, although they had stressed the urgency. They were told that the delays were due to Matthew McHugh leaving the company and there was no access to his emails. However, Rachel McQueen had been copied into the emails. The Applicants said that it was easy for the Respondent to blame the landlord but there was no disclosure in relation to them sharing information with the landlord.
8. Mr Carter said that staffing issues should not impact on their service delivery, but they did. They had 400 properties and he had only started 2 weeks before Matthew left. There was a delay in dealing with emails, but they eventually dealt with everything. It is accepted that the tenants needed the mould to be sorted and that a dehumidifier should have been delivered.

## **Findings in Fact**

9. The tenancy started on 9 May 2023.
10. A check in inspection was carried out by the Respondent on 9 May 2023. This contained photographs of all rooms and was signed by three of the tenants, including the second Applicant.
11. The Applicants reported mould in the main bathroom on 11 May 2023.
12. The Respondent inspected the property on 18 May 2023. The only issue noted in the bathroom was a rusty shower pole.
13. The Respondent was of the view that the staining in the bathroom at the start of the tenancy was discoloration due to condensation which did not require remedial work.
14. The Applicants reported a leak from a crack in the bath on 19 September 2023. The Respondent notified the landlord as their contract with the landlord did not permit them to arrange repairs without approval.
15. The Landlord attended on two occasions to fix the leak. After the second visit the leak did not recur.
16. The Applicants reported a leak into the WC from an upper flat on 31 October 2023.

17. On 1 November 2023 the Respondent acknowledged the report and asked the Applicants to speak to the occupants of the upper flat.
18. The Applicants spoke to the occupants of the upper flat who said that they would contact their letting agent. The Applicants notified the Respondent.
19. On 3 November 2023, the Respondent sent an email to the Applicants stating that they had telephoned the other letting agent. In a later email on the same date, they confirmed that they had spoken with the other agent who had arranged for a contractor to attend to fix the leak on 2 November 2023. The email stated that the WC would be cleaned and painted when the leak had stopped.
20. The leak was repaired by a plumber instructed by the letting agent for the upper flat on or about 2 November 2023.
21. The Applicants sent emails requesting an update on 7 and 9 November 2023, but no response was received.
22. The Applicants visited the offices of the Respondent on 20 November 2023.
23. The Respondent arranged for a property inspection on 28<sup>th</sup> November 2023
24. The Landlord did not arrange for the mould to be cleaned, or the WC painted. The Applicants were not provided with a dehumidifier.
25. A further leak into the WC in February 2025 was repaired promptly.
26. The WC was capable of being used during the tenancy except for a few days at the beginning of November 2023 and a few days around 21 February 2024.
27. The Respondent provided the Applicants with a copy of their Complaints Procedure in August 2024, in response to a request for this.

## **Reasons for Decision**

28. Section 48(4) of the Housing (Scotland) Act 2014 states that, “No application may be made (to the Tribunal) unless the applicant has notified the letting agent of the breach of the code of practice in question”. Section 48(3) requires an Applicant to set out in their application, the Applicant’s reasons for considering that the letting agent has failed to comply with the Code. The Tribunal is satisfied that the application clearly sets out the complaints and that the Respondent was properly notified of the complaints.

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

29. The complaint under this section of the Code is that the Respondent failed to disclose existing issues with leakages and mould at the start of the tenancy.
30. Based on the information provided at the CMD, and the documents lodged, there is no evidence that there had been any water ingress which had affected the property immediately prior to the start of the tenancy or that the Respondent had any knowledge of any previous leaks, water damage or mould. The mould/water damage in the WC appears to have been the result of a leak from an upstairs flat which occurred on or about 31 October 2023, five months after the start of the tenancy. The main bathroom may have been slightly affected by mould from the start of the tenancy. The Applicants provided photographs which appear to show some black marks (possibly mould) on the seal round the bath. They provided an extract from an email dated 3 July 2024 (although not the email itself) in which a member of staff referred to some mould being present at the start, that it appeared to have become worse and suggesting they clean it. The Respondent also provided the check in report. This includes a number of photographs of the bathroom showing it to be in a similar condition to the Applicants' photographs. This inventory was signed by three of the tenants, including the second Applicant. It is not clear when the Applicants first viewed the property but unless it was some months before they moved into the property, it is likely that the mould on the bath seal was present at the time it was viewed.
31. There is no evidence that the Respondent was aware of mould issues affecting the main bathroom prior to the check in report. This report was accepted by the tenants. The Tribunal is not persuaded that the Applicants have established that the Respondent failed to be honest, transparent and open about the condition of the property.

**Section 5, Paragraph 90 - Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedure.**

32. The Applicants state that the Respondents response to repair requests was not prompt. Although they had reported the mould and water damage in the WC, it took weeks for them to respond.
33. This complaint appears to relate to the leak in the WC. However, the Tribunal also heard evidence and were provided with documents about the leak from the bath in the main bathroom.
34. The Tribunal is not persuaded that the Applicants have established a breach of this section of the Code for the following reasons: -
- (a) The Tribunal was told that the Landlord attended and carried out a repair in the main bathroom. When this did not fully address the issue, she returned and installed extra shower curtain. The combination of the repair and the additional curtain appear to have resolved the leak. The Applicants timeline

(outlined in an email to the Respondent on 5 September 2024) indicates that the leak was reported on 19 September 2023. The Landlord attended and re-sealed the bath (between 21 September and 19 October – exact date not provided). The leak recurred on 21 October, and she returned and fitted the extra curtain. It therefore appears that the matter received reasonably prompt attention and that the Respondent had notified the landlord shortly after the leak had been reported.

- (b) The Respondent did not have the authority to arrange repairs themselves. Mr Carter said that they always telephoned the Landlord when repair issues were reported and would call again if the Applicants got back in touch to say that she had not attended. While this may have been a somewhat unsatisfactory arrangement for the Applicants, it was the landlord who was responsible for ensuring that the property met the repairing standard. Tenants have a legal remedy where their landlord fails to do this.
- (c) In relation to the WC, it appears that the damage was caused by a leak from the upstairs flat at the end of October 2023. The Applicants became aware of it on 31 October and reported it. The letting agent for that property arranged a repair which was carried out on 2 November 2023. The Applicants received an email from the Respondent on 3 November 2023 with an update. A similar leak occurred a few months later (in February 2024) and was again repaired promptly. On neither occasion was the Respondent or the Applicant's landlord responsible for fixing the leak.
- (d) It is not disputed that the damage caused by the leak – mould and some water damage to the floor – was not repaired. The Respondent confirms that there should have been remedial work, and a dehumidifier should also have been provided. However, this was the Landlord's responsibility.

**35.** Based on the available evidence, the Tribunal is not persuaded that the WC was unusable from October 2023. The area of mould did not appear to be extensive, and they provided no evidence that there were other areas of hidden mould. While it is not disputed that mould can cause or contribute to health issues, the room affected was a WC, not a living space or bedroom, where the tenants would expect to spend significant periods of time.

**Section 5, Paragraph 91 – You must inform the tenant of the action you intend to take on the repair and its likely timescale.**

**Section 7, Paragraph 108 – You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and as fully as possible and to keep those making them informed if you need more time to respond.**

**36.** Based on the available information and evidence, the Tribunal is satisfied that the Respondent failed to respond to email enquiries from the Applicants on 7 and 9 November 2023. They Applicants did receive replies to their initial reports of the leak. Two emails were sent on 3 November 2023 from Rachel

McQueen. The Applicants provided copies of their unanswered emails and Mr Carter did not dispute that there were no responses. When no reply had been received by 20 November 2023, the Applicants had no option but to visit the Respondent's office. The Respondent's explanation is that a property manager left suddenly, and they did not have access to his emails. This is highly unsatisfactory. There should have been systems in place to ensure that landlords and tenants did not suffer any detriment as a result of staff changes.

37. The Tribunal also notes that the email of 3 November 2023 stated that the water damage would be repaired. It does not mention that this would only occur if the landlord agreed to do the work. The Applicants had good reason to believe that the Respondent was arranging for work to be carried out to remove the mould.
38. The Tribunal is not persuaded that any other delays or failures in communication have been established. In the paperwork there is a reference to a lack of updates between the end of November 2023 and the new leak in February 2023. However, the Respondent explained that the landlord had undertaken to deal with the mould and water damage. They assumed that she had done so and there is no evidence that the Applicants contacted the Respondent for an update or to report that the Landlord had not been in touch between 23 November and 19 February. The Tribunal is also not satisfied that the Applicants have demonstrated communication failures in relation to the bathroom. The Respondent's position in relation to the mould reported in May 2023 is that it was a minor cosmetic issue which did not require a repair. The Applicants appear to have accepted that at the time. The issue with the bath/shower was referred to the landlord who took steps to address it.
39. The Tribunal is therefore satisfied that the Respondent has breached paragraphs 91 and 108 in relation to their failure to respond to the emails issued to them on 7 and 9 November 2023.

**Section 7, Paragraph 112 – You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.**

40. The complaint under this section is that the Respondent failed to provide the Applicants with a copy of their Complaints Procedure until 26 August 2024. They state that it should have been apparent that the Applicants wanted to make a complaint during the tenancy.
41. The Tribunal is not satisfied that a breach of this section is established. The Applicants did not tell the Respondent that they wished to make a formal complaint until August 2024, when there was a dispute about the deposit. The Respondent was not obliged to treat their enquiries as a formal complaint or provide a copy of the procedure until they did so. Although not submitted to the Tribunal, the correspondence establishes that the Respondent provided

the Applicants with the written procedure when it was requested and thereafter processed their complaint.

### **Letting Agent Enforcement Order (LAEO)**

42. In their application the Applicants state that they are seeking compensation of £2300. They state that this is the equivalent of one month's rent and that this is an appropriate sum because they were unable to use the WC from October 2023 to the end of the tenancy in May 2024.
43. The Tribunal has only upheld the complaints under Paragraphs 91 and 108 of the Code, and that only to the extent of emails issued on 7 and 9 November 2023. The Tribunal concludes that a modest award of compensation is appropriate in the circumstances, given the relatively short period of time involved. As previously indicated, the Applicants have not established that the WC was unusable. They may have chosen not to use it, but there was insufficient evidence to show that they could not do so. Furthermore, even if they had grounds to avoid using the WC, they still had a fully functioning bathroom, and it was the Landlord and not the letting agent who had failed to fulfil their obligations to the Applicants. The Tribunal awards the Applicants the sum of £100.

### **Appeals**

**An Applicant or Respondent 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.**

Josephine Bonnar