

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision on an application made under Section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/25/0055

Property: 27 Lauriston Gardens, Edinburgh EH3 9HJ ("the property")

The Parties:-

Mrs Ashley Don McWilliam-Strasser, Haughhead Farm, Laurencekirk AB30 1ED ("the Applicant")

Umega Lettings Ltd, The North Quarter, 469 Ferry Road, Edinburgh EH5 2DL ("the Respondent")

Tribunal Members:

**Graham Harding (Legal Member)
Gordon Laurie (Ordinary Member)**

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') having made such enquiries as it saw fit for the purposes of determining the application determined that the Respondent had breached paragraphs 19 and 21 of the Letting Agent Code of Practice and further determined to make a Letting Agent Enforcement Order.

The decision is unanimous

Introduction

In this decision the Housing (Scotland) Act 2014 is referred to as "the 2014 Act"; the Letting Agent Code of Practice is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

The Respondent's duty under section 48(1) of the 2014 Act to comply with the Code arises from the date it came into force namely 31 January 2018.

1. By Application dated 20 November 2024 the Applicant complained to the Tribunal that the Respondent had breached paragraphs 17, 18, 19, 21 and 27 of the Code.
2. The Applicant provided the Tribunal with written submissions in support of her application together with copies of emails between herself and the Respondent.
3. By Notice of Acceptance dated 28 February 2025 a legal member with delegated powers referred the Application to a Tribunal.
4. The Respondent submitted written representations to the Tribunal by email dated 26 June 2025.
5. The Applicant submitted further written representations by email dated 30 June 2025.
6. The Respondent submitted further written representations to the Tribunal dated 2 July 2025.
7. The Applicant submitted further written representations to the Tribunal dated 3 and 12 July 2025.

The Case Management Discussion

8. A Case Management Discussion ("CMD") was held by teleconference on 22 July 2025. The Applicant attended in person and was represented by her husband. The Respondent was represented by Miss Norman, Mrs Craven and Miss Whitehead.
9. Mr Strasser explained that the property had previously been the Applicant's family home and the windows had not opened during that time and it had not been a problem. Mr Strasser went on to say that the property had been let out previously with different letting agents, Aberdeen Considine, in 2019 and they had not said there was a problem nor had the tenants raised any issues with the windows.
10. In response to a query from the Tribunal as to how much interest in the legislation affecting the letting of property the Applicant had taken, Mr Strasser said that they had some knowledge as regards the standard of the flat and had installed a new smoke alarm system and had been under the impression that it met all the requirements. Mr Strasser went on to say that following some refurbishment of the property and the carrying out of some minor electrical repairs and the installation of a new floor and better insulation they had instructed the Respondent as their letting agents. Mr Strasser said that the Respondent had come back with the information that the windows did not open. Mr Strasser explained that as this had not previously been an issue and as they had spent a substantial amount on the refurbishment, they did not want to address the repairs to the windows at that time and it had not been seen as a red flag by the

Respondent. Mr Strasser confirmed that all three bedroom windows and the living room window did not open. Mr Strasser also said that the first tenants who moved into the flat had been fully aware that the windows did not open and had not raised any issues.

11. Mr Strasser went on to say that he had received information from the Respondent that after new tenants had moved into the property in July 2024 one of the windows had a cracked pane and shortly after that they had been told that the tenant had complained that the windows did not open. Mr Strasser said that he had asked if the tenant had been told in advance of the tenancy that the windows did not open and had been advised that they had not been informed but that the windows had to open to comply with the legislation. Mr Strasser said that he had not been aware of any change in the legislation and had not wanted to go ahead with the repairs however when he realised that the tenant had not been informed and expected fully functioning windows and that this was a legal requirement then they had immediately contacted Architectural Services who first repaired the cracked window and then repaired the windows so that they opened properly. Mr Strasser then went on to say that the Respondent had changed their position and had said that the tenants had been advised that the windows did not open.
12. For the Respondent, Miss Norman said that she was not aware of any change in the legislation and that when the issue had been brought to her attention, she had raised her concerns. For her part Mrs Craven said she was aware that the property had to meet the repairing standard and had told the Applicant that there could be a problem with condensation and ventilation if the windows did not open but that she had been told that the property had been rented out before. Mrs Craven went on to say that the Respondent had obtained quotes to repair the windows on 13 July 2023 at a cost of £915.00 plus VAT. Mrs Craven said that she had been under some pressure to put the property on the market and had sought advice from ARLA and had not been told that the property would not meet the repairing standard at that time.
13. In response to a query from the Tribunal Miss Norman confirmed that the Respondent would send the Tribunal a copy of its terms and conditions.
14. With regards to the windows not opening Mrs Craven said that the second tenants would have been aware from the advertisement that the windows did not open but may not have been told about them at handover. With regards to the cracked window pane, Mrs Craven said that she had arrived twenty minutes after the tenants and had not seen any crack and although the tenants had said the window was cracked when they moved in, she thought it had been caused by them trying to open the window. In response to a query from the Tribunal as to how matters had been left with the tenants Mrs Craven said the Respondent had offered the Applicant compensation by meeting the cost of the repair to the window pane and had not taken it up with the tenants. Mrs Craven confirmed that this offer remained open.

15. The Tribunal queried with Mr Strasser if it was accepted that although he and the Applicant might have been happy to live in the property despite the windows not being able to be opened was it accepted that the position changed on becoming a landlord. Mr Strasser accepted that this was the case but that they should have been told earlier.
16. The Tribunal referred Mr Strasser to the email exchange of 30 June 2023 and subsequent emails. Mr Strasser said that he could not recall the quote from the glazier of July 2023 but said he thought they expected a larger quote as there were at least seven windows.
17. The Tribunal noted that by August 2024 the Respondent's position had evolved in that it then considered that the Applicant was in breach of the repairing standard by having windows that did not open and queried with Mr Strasser how this affected the Applicant's position. Mr Strasser said that he and the Applicant had not wanted matters to get out of hand and although the Respondent was saying that they had not done anything wrong they could not see that there had been any change in the legislation. Mr Strasser went on to say that it had not felt the right time to be put under pressure from the Respondent and they had gone to the tenants and arranged for their own contractors to carry out the repairs.
18. The Tribunal referred Mr Strasser to the draft invoice from J W Soutar Ltd, Laurencekirk, dated 18 June 2025. And noted that the cost for mileage and parking was in excess of £500.00 and there was therefore a substantial oncost for choosing to use the Applicant's own contractor. Mr Strasser said that it was important to the Applicant that they were in charge and that it was probably fair that they use a contractor of their choice. In response to a further query from the Tribunal Mr Strasser confirmed that the Respondent continued to manage the property for the Applicant. The Tribunal queried with Mr Strasser what the cost might have been had he used his own contractor to repair the windows in 2023 and Mr Strasser offered to see if he could provide that information.
19. The Tribunal referred Miss Norman to the quotes from Project Glass and Joinery dated 11 July 2023 and 28 August 2024 who confirmed they had been uploaded to the portal but there had been no response.
20. With regards to the Applicant's formal complaint, Miss Norman said this had been initially dealt with by herself and then escalated and concluded by the Respondent's email dated 4 September 2024. Miss Norman accepted that there had been a significant oversight on the part of the Respondent and understood the Applicant's concerns and offered the Respondent's apologies and had offered compensation. Miss Norman also said that although the advert made reference to the windows not opening it could not be confirmed that the tenants had been told directly.

21. Mr Strasser indicated that the Applicant's position remained as set out in the Applicant's written submissions accompanying the application and their subsequent written representations.
22. By email dated 22 July 2025 the Respondent submitted to the Tribunal a copy of its terms and conditions.
23. By email dated 5 August 2025 the Applicant submitted further written representations.

The Tribunal make the following findings in fact:

24. The Respondent acts as letting agent on behalf of the Applicant.
25. The Applicant and her husband lived in the property prior to renting it out.
26. When the Applicant and her husband lived in the property, they were aware that the windows in the bedrooms and living room did not open.
27. When the property was first rented under the management of Aberdein Considine the Applicant was not advised that the failure of the windows to open would be a breach of the repairing standard.
28. During the period in which Aberdein Considine managed the property no issue was taken by the Applicant's tenants as regards the windows not opening.
29. Following some refurbishment of the property in 2023 the Applicant instructed the Respondent to market the property for rent.
30. The Respondent noted that the windows did not open and advised the Applicant that this could be an issue as regards condensation and ventilation but did not explain that the property would not meet the repairing standard.
31. The Respondent offered to obtain a quote from contractors to repair the windows and a quote dated 11 July 2023 was posted on the Respondent's portal on 13 July 2023.
32. The Applicant did not wish to carry out the repairs to the windows in July 2023 as she had spent a substantial amount refurbishing the property.
33. The Respondent advised potential tenants in their advertisement for the property in 2023 that the windows did not open.
34. The Tenants who occupied the property between about July 2023 and July 2024 did not raise any issues about the windows not opening.

35. In or about July 2024 the Respondent advised the Applicant that the property did not meet the repairing standard as the windows did not open.
36. Shortly after the new tenants moved into the property a window pane cracked and was replaced.
37. The Respondent obtained a quote to replace the window pane at a cost of £275.00 plus VAT.
38. Around about the same time the tenants complained that the windows did not open.
39. Repairs to the windows have been carried out by the Applicant's contractors, JW Soutar Ltd, Laurencekirk, at a cost of £2006.87.
40. The Respondent obtained a quote from Project Glass and Joinery, Midlothian, in 2023 to repair the windows at a cost of £1098.00 and to repair two of the bedroom windows in August 2024 at a cost of £438.00.

Reasons for Decision

41. The Applicant's position is that by failing to properly advise her in 2023 that the property failed to meet the repairing standard the Respondent is in breach of the various sections Code referred to in the application. The Applicant has submitted that if the Tribunal considers the flat rentable despite some of the windows being locked, she requests that the Respondent be ordered to compensate for all repair costs associated with making those windows operational as their failure to disclose all known facts regarding these locked windows to the tenants directly resulted in her current liability for repairs. Alternatively, the Applicant has submitted that If the Tribunal considers the flat unrentable and determines that repairs are necessary for compliance, she requests that the Respondent be held responsible for compensating her for those repair costs. The Respondent further submits that had the Respondent advised her regarding the "unrentable condition" of the flat initially, she would not have rented it out in an unrepaired state, forcing her to repair it but would have most likely sold it in its existing state without undertaking any repairs and now that it is rented, she cannot request that tenants vacate and is left without options on how to proceed.
42. Before considering the Applicant's submissions in detail it is worth looking at the contract that exists between the parties. Under the heading "Tenancy Safety" of the Respondent's Terms and Conditions the Applicant is referred to the terms of the Housing (Scotland) Act 2006 and *inter alia* to the requirement that "any fixtures and fittings and appliances provided under the tenancy are in reasonable repair and proper working order." The Applicant signed that she understood the terms of the agreement.

43. The onus is on a landlord to ensure compliance with all the legislation affecting rental property. Nevertheless, when a party appoints a letting agent to manage their property they are entitled to a certain standard of service and that includes compliance with the Code. Dealing now with the Applicant's submissions as to whether the property was "tenantable" or "untenantable" these are really misnomers. Just because a property fails to meet the repairing standard does not mean either that it can or cannot be rented out. What it does mean is that if it is rented and a complaint is made by a tenant and a landlord fails to carry out necessary repairs the tenant can apply to the Housing and Property Chamber and a Tribunal may make a Repairing Standard Enforcement Order requiring the repairs to be carried out.
44. In the current circumstances there are two clear issues for the Tribunal to consider. Firstly, why did the Respondent in 2023 not know that the windows not opening would mean the property would not meet the Repairing standard? The Respondent has submitted that they sought advice from ARLA and this was not raised by them at the time but the Tribunal does not find this to be a satisfactory response. The legislation in respect of fixtures and fittings has not changed in recent years. There are numerous decisions on the Housing and Property Chamber website where references to faulty windows can be found. The Tribunal is satisfied that the Respondent ought to have known that irrespective of whether there were issues with regards to condensation and ventilation (which may well be the case) the property would not meet the repairing standard if the windows did not open as they are fixtures that need to be in reasonable repair and proper working order. Secondly, why did the Applicant not know that the property would not meet the repairing standard if the windows did not open? The Applicant is a registered landlord. That required the Applicant to sign a declaration that she was complying with all the legislation relating to property letting. She was not. The Applicant is not a professional landlord and it may be that she thought she could rely on the advice of those professional firms she instructed to manage the property on her behalf but the Tribunal does not consider that absolves her of all responsibility to know and understand the legislation affecting the letting of property.
45. The Tribunal was presented with little or no evidence from either the Applicant or her husband as regards being deprived of an opportunity to sell the property in 2023 rather than proceed to rent it out. The Tribunal was told that the Applicant had spent a substantial amount on refurbishment of the property presumably with the intention of renting it and possibly at an increased rent. Furthermore, it cannot be said that the property was untenable only that if the repairs were not done there was a risk a tenant might complain. As it happened the original tenant accepted the situation and made no complaint.
46. The Tribunal accepts that the Applicant has incurred not insubstantial costs by instructing contractors from Laurencekirk, with whom they are

familiar, to undertake the repairs. However, in doing so they have incurred significant additional travel and parking charges that would have been avoided if they had used the contractors proposed by the Respondent.

47. Had the repairs been carried out in 2023 then the cost is likely to have been slightly less than the cost actually incurred by the Applicant in 2024 and the difference has been estimated by the Applicant to be about £90.00.
48. In respect of OSP 17 the Tribunal has to determine if the Respondent has been honest, open, transparent and fair in its dealings with the Applicant. From the evidence before it the Tribunal has seen no evidence to suggest that the Respondent has done anything that would suggest that it has breached this section of the Code.
49. With regards to OSP 18 the Tribunal is satisfied that in July 2023 the Respondent ought to have made it clear to the Applicant that the windows not opening would result in the property failing to meet the repairing standard. That should have been apparent to the Respondent and the information should have been provided to the Applicant in a clear way. The Tribunal therefore finds that the Respondent is in breach of OSP 18.
50. In respect of OSP 19 the Tribunal has to determine if the Respondent has provided the Respondent with information that is deliberately or negligently false. Although the Respondent may have been negligent in that it did not explain to the Applicant that the property would not meet the repairing standard as the windows did not open it cannot be said that it provided either deliberately or negligently false information (as it would if for example it had said the property DID meet the repairing standard). The Tribunal therefore finds that the Respondent has not breached this section of the Code.
51. In respect of OSP 21 the Tribunal has to determine if the Respondent has carried out its services using reasonable skill and in a timely way. The Respondent ought to have known that the windows not working would result in the property not meeting the repairing standard. By not telling the Applicant that in July 2023 the Respondent was in breach of OSP 21.
52. In respect of OSP 27 the Tribunal has to determine if the Respondent failed to inform the Applicant of any important issues or obligations or repairs. The Respondent did point out to the Applicant that the windows were in need of repair and went as far as to obtain a quote from Project Glass and Joinery Midlothian. The Tribunal has on balance determined that although it might have been preferable if the Respondent had also highlighted the repairing standard issue as this has been addressed above the Tribunal accepts that the Respondent is not in breach of this section of the Code.

53. In conclusion the Tribunal has determined that the Respondent is in breach of Sections OSP 18 and 21 of the Code. However, the Tribunal does not consider that the Respondent should be expected to meet the cost of the repairs to the windows incurred by the Applicant. Apart from anything else these costs were significantly increased due to the Applicant's choice of contractor resulting in substantial mileage and parking charges. Furthermore, the Respondent cannot be held entirely responsible for the Applicant's decision to rent the property when it did not meet the repairing standard. If a property owner decides to become a landlord, then there is an obligation on that person to become familiar with all the legislation imposed on landlords and to keep themselves aware of any changes in the legislation. Although a landlord can expect to obtain good professional advice from a letting agent ultimately the requirement to comply with the law falls on the landlord. In this case it was apparent that the Applicant and indeed her husband were unaware of the provisions of the Housing (Scotland) Act 2006 and even when it was pointed out to them by the Respondent in August 2024 that the property would not meet the repairing standard, they continued to dispute this was the case (email from Applicant to Respondent dated 5 September 2024).

54. The Respondent has made an *ex gratia* offer to settle the Applicant's complaint. This was refused by the Applicant. The Tribunal is satisfied that a financial award is justified but does not consider that the sum claimed by the Applicant is a reasonable reflection of the loss or damage sustained by the Applicant nor does it reflect the degree of culpability exhibited by the Respondent which the Tribunal considers to be relatively minor given that it relied at the time on the advice it was given from ARLA. In all the circumstances the Tribunal considers that an award of £420.00 is an appropriate amount

Decision

55. The Tribunal having carefully considered the evidence presented to it at the CMD and the written submissions of the parties finds that the Respondents are in breach of paragraphs 19 and 21 of the Letting Agents Code of Practice and therefore will make a Letting Agent Enforcement Order (LAEO) obliging the Respondent :-

1. To make payment to the Applicant the sum of £420.00 within 30 days of the date of service of the LAEO.

Appeals

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 and Chair

15 September 2025 Date