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 Section 48 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/24/2572

Re: Property at 51D 2/2 Low Glencairn Street, Kilmarnock, KA1 4DQ ("the Property")

Parties:

Mr Daniel Parker, 9 Dunipace Road, Edinburgh, EH12 9GH ("the Applicant")

247 Property, 28 John Finnie Street, Kilmarnock, KA1 1DD ("the Respondent")

Tribunal Member:

Nairn Young (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:

- Background

1. This is an application for a letting agent enforcement order ('LAEO') against the Respondent, who manages the Property on behalf of the Applicant. It called for hearing at 10am on 27 May 2025, by teleconference. The Applicant was on the call in-person and gave evidence on his own behalf. The Respondent was represented by Ms Susan Laird, one of its employees. She also effectively gave evidence on its behalf, albeit she had little direct knowledge of the circumstances.

2. The case previously called for case management discussion ('CMD') on 24 September 2024. The Applicant explained there that his claim relies on an alleged breach of three paragraphs of the Letting Agent Code of Practice ('LACP'):

   Para 61: *You must take all reasonable steps to confirm the applicant's identity and to verify references, in line with your agreement with the landlord;*

   Para 78: *You should inform the landlord in writing of the late payment of rent, in line with your written procedures or agreement with the landlord;* and

   Para 79: *In managing any rent arrears, you must be able to demonstrate you have taken all reasonable steps to recover any unpaid rent owed to the landlord….*

3. A direction was made by the Tribunal at that CMD, requiring the Applicant to provide, so far as he held them, copies of all correspondence he had had with the Respondent prior to the tenant in question being accepted as a tenant of the Property; any correspondence he had regarding a claim against his insurance policy that he had referred to; and any correspondence with the Respondent regarding the rent arrears. The Respondent too was asked to provide such copies of correspondence regarding the rent arrears as it retained, as well as a copy of its written rent collection procedures. The Applicant responded to that direction on 2 October 2024: the Respondent on 8 October 2024. Neither party was able to provide full documentary records of relevant exchanges between them; although some additional information was provided.

4. During the hearing, the Respondent also made reference to a letter which had not been included among any of the documents submitted that far, which it said it sent to the tenant encouraging him to seek advice regarding his eligibility for universal credit. This was potentially of direct relevance to the claim of a breach of paragraph 79. Given this was a discrete item of documentary evidence on a very specific point, the Tribunal extraordinarily

decided to issue a direction at the conclusion of the hearing itself, requiring the Respondent to lodge a copy of the letter. Thereafter, the Applicant was offered an opportunity to submit representations on whether the letter should be received, and, if it were, any comment on its significance. In the event, the Respondent forwarded a letter from the DWP to it, relating to the tenant requesting direct payment of universal credit. The Applicant responded essentially disputing the relevance of this to the case. The Tribunal agreed that it was not relevant and did not take it into account. It was not a letter demonstrating any particular action on the part of the Respondent that was relevant to the claim.

- Relevant Law

5. The following provisions are of relevance to this application:

Section 46 of the Housing (Scotland) Act 2014 ('the Act') states:

"Letting Agent Code of Practice

(1) The Scottish Ministers may, by regulations, set out a code of practice which makes provision about—

(a) the standards of practice of persons who carry out letting agency work,

(b) the handling of tenants' and landlords' money by those persons, and

(c) the professional indemnity arrangements to be kept in place by those persons.

(2) The code of practice is to be known as the Letting Agent Code of Practice.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate on a draft of the code of practice."

6. In terms of the powers granted under this section, the Scottish Ministers produced the Letting Agent Code of Practice (Scotland) Regulations 2016, which contained the LACP in its Schedule. This came into force on 31 January 2018. The relevant paragraphs of the LACP referred to in this case, are quoted above at paragraph 2.

7. Section 48 of the Act states (so far as relevant to this application):

"Applications to First-tier Tribunal to enforce code of practice

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is … in relation to an application by a landlord, a letting agent appointed by the landlord, …

(3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a "letting agent enforcement order") require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.

(8) A letting agent enforcement order—

(a) must specify the period within which each step must be taken,

(b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply."

- Findings in Fact

8. The Applicant retained the Respondent as his letting agent in relation to the Property, in terms of an agreement dated 12 August 2020.

9. Within the terms of that agreement there is a section where the landlord is asked to confirm whether they wish to require a tenant to have a credit check. In the case of the Applicant, this box was not checked. There is nothing in the agreement regarding timescales for informing the landlord of late rent payments.

10. On 17 November 2020, one of the Respondent's employees contacted the Applicant by email, as follows [punctation and typos as in the original]:

"I conducted 2 viewings at your property today. I have got an application into us for the property however we have asked the potential tenant for some more information that we would require in the search for proof of affordability such as source of income – he does attend college but we need something more concrete such as benefits or part time earnings. We asked the name people from the tenant for references as the tenant has had issues with mental health previously and because of this we have asked the potential tenant to supply a guarantor as a back up to his application."

11. The Respondent answered by email on 18 November 2020, saying, among other things, "Happy to accept without a guarantor if tenant receives LHA and council agree to pay directly to letting agency [sic]."

12. No credit check was carried out on the potential tenant; although a personal reference was received from one of his college lecturers, which was very positive.

13. In addition, the college agreed to pay the rent up-front for three months.

14. The tenant was accepted by the Respondent on the Applicant's behalf, with a tenancy commencing on 2 December 2020. Rent of £350 was due on the second day of each month.

15. The tenant's rent account was generally in surplus for the first year of the tenancy.

16. In February 2022, the tenant fell into arrears of £100. He missed the rent payment in March 2022, too; but then cleared the arrears with a payment of £600 on 27 April 2022.

17. The rent payment on 2 May 2022 was also missed, with the effect that the tenant fell into arrears of £200. He remained in arrears until the tenancy came to an end on 2 July 2023.

18. During that period the tenant made payments on seven occasions (one occasion being two instalments on one day). He was in contact with the Respondents in relation to the arrears and agreed on various occasions to address them, entering into a payment plan. He was by this point employed as a chef. The amount owed fluctuated, but rose to an apparent peak of £1,400, towards the end of 2022. Thereafter, the arrears began to fall, due to additional payments being made, until a final payment was made on 28 March 2023. Shortly after that, the tenant appeared to have abandoned the Property.

19. The Respondent had no written rent collection and handling procedure in place at the relevant time; although it does now. It was the Respondent's policy at the time generally to contact a tenant first where a payment was missed, by text, phone and email, to inquire as to what the position was. Where that proved unsuccessful, or no progress towards addressing the arrears was otherwise made within a week to two weeks, the Respondent would inform the landlord of the situation, generally over the phone. In this case, the Applicant contacted the Respondent regularly requesting updates relating to the arrears, which meant he took the initiative in communicating about them. He was aware of the payment plan that had been entered into.

20. The tenancy was not formally ended until 2 July 2023. There having been no further payments made since March of that year, the arrears had risen again to £2,250. £350 was received from universal credit on 7 July 2023, bringing that figure down to £1,900.

21. On gaining possession of the Property on behalf of the Applicant, the Respondent additionally attributed repairs costs to the sum of £1,831.50 to damage caused by the tenant.

22. On attempting to claim against an insurance policy for the damage, the Applicant's claim was repudiated, in part due to inspection records required in terms of the policy being unavailable.

- Discussion and Decision

23. In terms of the factual basis supporting the Applicant's case, the three alleged breaches may be considered most naturally to proceed as two heads: para.61 relating to the constitution of the tenancy, and paras.78 & 79 to matters relating to its final part. Discussion and consideration of the points raised will therefore be set out in that manner.

24. Para 61: *You must take all reasonable steps to confirm the applicant's identity and to verify references, in line with your agreement with the landlord;*

    In regard to para. 61, the Applicant's concern was that the tenant sourced by the Respondent was not properly vetted, in accordance with the approach agreed between the parties. The Applicant referred to the email correspondence set out in the findings in fact above at paragraphs 10 and 11. There, he states that he was happy for the tenant to be accepted if he was in receipt of local housing allowance (i.e. universal credit); but the tenant was not in fact in that position. Following the termination of the tenancy, there were arrears of rent and damage to the property, totalling £3,731.50. The Applicant's claim on his insurance had been refused, he said, on the basis that proper reference checks had not been carried out by the Respondent.

25. Ms Laird referred in written submissions to the fact that no agreement was made between the parties to carry out a credit check on a tenant. So far as this particular tenant was concerned, she stated the Applicant must have been aware of the tenant's situation before the latter was offered the let of the Property, since the first three months rent was to be paid by the tenant's college. This arrangement would not have proceeded without the Applicant's agreement, she asserted. There was no documentary evidence of any such discussion with the Applicant, however.

26. As will be apparent from the findings in fact, the Tribunal could not accept Ms Laird's assertion as to the Applicant's agreement having been obtained, given the lack of direct evidence of any such agreement; however, it nonetheless

concluded that there had been no breach of para.61 of the LACP. That is because the paragraph in question is concerned with confirming the potential tenant's identity and verifying references. The tenant undoubtedly did not fit the description the Applicant said he would be happy to accept in his email of 18 November 2020; but none of the criteria he set out there relate to either confirming the tenant's identity or verifying his reference. There was no suggestion that the tenant was in fact misidentified; and, in terms of the reference received from his college, the willingness of that institution to stand behind it was demonstrated amply by its agreement to pay three months rent up-front. The Applicant may understandably be aggrieved that his instruction was not followed; but it was not a breach of this term of the LACP not to do so.

27. The Tribunal would note that, even if it had found a breach of this paragraph, it did not consider that the Applicant had established that that breach caused the loss he referred to. In the first place, the repudiation letter he submitted from his insurance company did not refer to any issue with vetting of tenants as being the reason for its position. In the second, the tenant was ahead of his rent payments for the first year of the tenancy. That was long enough to suggest that there was no 'inherent issue' with this tenant, but rather that his falling into arrears was due to a change in his circumstances. A similar change may very well have happened to a tenant who had met any criteria set down by the Applicant, so could not be said to be attributable to a faulty vetting procedure.

28. Para 78: *You should inform the landlord in writing of the late payment of rent, in line with your written procedures or agreement with the landlord;* and

    Para 79: *In managing any rent arrears, you must be able to demonstrate you have taken all reasonable steps to recover any unpaid rent owed to the landlord….*

29. In regard to paras 78 and 79, the Applicant's complaint is that he was not made aware of the rent arrears when they arose, but rather that he had to

contact the Respondent about them. He stated that he considered that a landlord should be contacted immediately a payment is missed, or, at most, within a couple of days. He also suggested that the arrears were not pursued adequately. In particular, he stated that he felt an application should have been made for rent payments to be deducted automatically from any universal credit the tenant was in receipt of, or formal proceedings to terminate the tenancy be initiated.

30. Ms Laird accepted the Respondent had not contacted the Applicant immediately the arrears arose; but he had contacted it and it had responded. That was acceptable practice. It did not understand that the tenant was in receipt of benefits at the time the arrears arose, so direct payment of the rent from that source would not have been possible. The tenant was contacted and was engaging with the Respondent to address the arrears, to the extent that a payment plan was entered into, and the arrears were falling. It would not have been acceptable to serve a notice to leave on a tenant on grounds of rent arrears, where there was a payment plan in place. After the final payment was made to the account, the tenant abandoned the Property, and this therefore became the correct and most effective ground on which to end the tenancy.

31. The Tribunal considered that there was no breach of either para.78 or 79 of the LACP. In regard to the first of these, it did not appear from the evidence presented that there was any written or agreed procedure relating to communication around late payment of rent. That being the case, it is not possible for the Respondent to be in breach of any such procedure. The Applicant's assertion that contact should be made immediately a payment is missed, or within a couple of days thereafter, had no basis in any explicit agreement; and would not be a reasonable standard to imply, where payments can be missed for any number of innocuous reasons, and any recovery action required is only likely to be effective across some weeks or months, rather than days. The fact that the Applicant mostly initiated exchanges with the Respondent on the rent arrears was not relevant to this paragraph; other than that, insofar as the Applicant was liable to ask for

updates very regularly, his initiating that conversation would relieve the Respondent of having to do so, in order to meet any implied term there might have been to keep him updated.

32. On balance, the Tribunal did not consider there was a breach of para.79, either. The Respondent took all reasonable steps to recover the rent arrears, in a context where the tenant had been a good payer for the first part of the tenancy; he continued to engage with them on reducing the arrears, to some effect; and a payment arrangement was entered into. The Tribunal accepted that the Respondent did not understand the tenant to have been in receipt of universal credit at the time the arrears arose, on the basis that he was in employment as a chef. They were correct to conclude that a notice to leave would be premature, where a payment plan was in place and the arrears were decreasing. Once the tenant had left the Property, they were correct to conclude that proceeding on the basis of abandonment was a more straightforward and quicker way to bring the tenancy to an end.

- Decision

Application refused.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

21 October 2025

_____	_____
Legal Member/Chair	**Date**