



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

Reference number: FTS/HPC/LA/25/2296

The Parties:

Mr Alan Davie, 1253 Chemin d'enjégun, Maison Rose Blanche, Berdoues, 32300, France ("the Applicant")

Umega Lettings Limited, Portfolio Management, The North Quarter, 496 Ferry Road, Edinburgh, EH25 2DL ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member); Sara Hesp (Ordinary Member)

Background

[1] The Applicant seeks findings that the Respondent has breached their obligations under the Letting Agent Code of Practice "*The Code*". The Application was opposed by the Respondent. The Respondent had set out a detailed response to the allegations denying the alleged breaches. The Application had previously called for a Case Management Discussion which made case management orders in the form of a Direction and thereafter continued the Application to an Evidential Hearing.

[1.2] The Paragraphs of the Code alleged to have been breached are:

"Overarching Standards of Practice": Paragraphs 16, 17, 19, 20, 21, 23, 26, 27 and 28.

"Lettings": Paragraphs 38 and 61.

"Management and Maintenance": Paragraphs 73, 74, 75, 90, 93 and 94.

"Communications and resolving complaints": Paragraphs 108, 111 and 112

“Handling landlords’ and tenants’ money, and insurance arrangements”: Paragraphs 125 and 129.

The Hearing

[2] The Application thereafter called for an evidential Hearing at 10 am on 24 June 2026 in George House, George Street, Edinburgh. The Applicant was personally present. Ms Olga Godfrey was present on behalf of the Respondent along with her representative from Clyde & Co solicitors and with Ms Kirsty Shaw, Advocate. The Tribunal began by ensuring that everyone had access to the same papers. This proved something of a time-consuming task as the documentation before the Tribunal was vast and it became apparent that everyone did not have the same documentation before them. It was also apparent that the referencing for the documentation was less than clear. Thankfully over the course of an adjournment, the parties were able to address these concerns in order that the Tribunal could efficiently begin hearing evidence.

The Applicant

[3] The Applicant was seeking £14,427.80 as damages from Umega Lettings relating to their management of a tenancy let out to a third-party tenant from September 2022 to September 2024. While the Application alleged many breaches of the Code, the Application alleged four “key grounds”. These were as follows.

- 1. Failure to conduct proper tenant checks*
- 2. Poor property inspections and contractor oversight*
- 3. Deposit and billing mismanagement*
- 4. Financial and emotional impact*

[4] The Applicant’s narrative was set out in a high level of detail in his Application which was extremely detailed, vast and covered almost every aspect of the parties’ interactions over two years. However, nine “issues” were clearly identified. They are set out as follows in the Application:

Issue 1 – First experience of Umega’s contractors

Issue 2 – Problem with the Bathroom renovation by Umega Property

Issue 3 – June Inspection Report (Apparent after my visit in September)

Issue 4 – Notice of termination – Property marketed before preparation

Issue 5 – End of Let, Inspection.

Issue 6 – House clearance and restore to original standard

Issue 7 – Inadequate deep clean of property (very unsatisfactory)

Issue 8 – Indirect threat from Umega

Issue 9 – The Final Straw – after we left Umeqa

Comment on the evidence

[5] The Applicant began presenting his evidence and spoke to the nine issues set out in the Application. Ms Shaw's helpful cross-examination addressed each of the issues in turn. The Tribunal considers each issue in turn.

Issue 1 First experience of Umeqa's contractors

[6] The allegation was that in September 2022, the Respondent instructed "*Gas Care Domestic*" to attend the Property for repairs when there was a service plan in place with Scottish Gas which would have incurred no additional cost. It was put to the Applicant that Scottish Gas actually couldn't attend on the Friday in question and so the Respondent acted reasonably in sourcing another company, Gas Care Domestic Ltd to attend on the same day. Scottish Gas could only have attended on the Monday.

[6.2] It was put to the Applicant by Ms Shaw that this was a reasonable course of action; the tenants were without heating and hot water and it was reasonable to carry out a repair as soon as possible. The Tribunal agrees with this contention and cannot conclude that the Respondent acted contrary to their obligations in this regard. In any event the bill for Gas Care Domestic was £85.00 and the Applicant did not pay the bill in question as the Respondent paid it and considered the matter resolved. The Tribunal was surprised that in these circumstances the Applicant was still aggrieved about this matter and it was an issue that appeared long since resolved.

Issue 2 "Problem with the Bathroom renovation by Umeqa Property"

[7] This issue is perhaps best framed by referencing how it was set out in the Application:

"Approx 11 months after the tenant had moved into the property, I was made aware of what was suspected to be a burst pipe flooding the upstairs hall. The tenant had rightly contacted Umeqa who had sent someone out to investigate and they advised that it was likely a burst pipe but difficult to find. I contacted Direct Line Landlord Insurance with whom I have insurance cover. They sent out an investigator who advised this was not a burst pipe but very likely to have been caused due to leakage from the bathroom shower, down the edges of the bath which had not been sealed properly at the wall and water had made its way under the partition wall into the upstairs hall. Direct Line, in a conversation with me were aware the bathroom renovation was completed within the last 12 months, as this was the cause the policy would not cover the cost of repair as it was due to faulty workmanship, if it had been wear and tear the situation would have been different. I contacted Umeqa advising that the renovation they had completed 9/10 months before was the fault. The bath not being properly sealed was the cause. The project property manager at

Umega was in denial, as was Umega initially and advised it wasn't them and we would have to bear the costs of repair. It took about 4 weeks of communication with Umega with me finally writing to the Managing Director at Umega before they accepted responsibility. By this time, it was apparent the water damage was not only in the hall but also in the bedroom floor and walls and the walls had to be cleaned and treated with anti-fungal along with floors carpets etc. and some of the upstairs hall floor had to be replaced. Eventually Umega agreed to pay the costs

[7.2] It was put to the Applicant that bathroom works were carried out a week before the tenants moved in. 11 months later, in August 2023, the tenant reported a possible leak. The Respondent sent out a contractor. On 30 August 2023, when the contractor attended, no leak could be found.

[7.3] The Respondent organised repairs and the Applicant received an estimate of what it was going to cost him when later, dampness was eventually found in the bedroom. It was discovered that the bath needed resealing and had been the source of the problem. This was carried out under warranty and at no expense to the Applicant. The Applicant was concerned that it took a long time to resolve and the issue penetrated into the bedroom and more work was needed because of the delay. A routine inspection had been carried out on 27 October 2023. It was unclear whether the Respondent may have delayed in having the further works carried out- the evidence was hard to entirely understand but what was clear though was that in any event the Respondent again appeared to have actually paid for the works themselves. The Respondent's initial scepticism that any leak was as a result of their contractor's bathroom renovation seems unremarkable given the passage of almost a year since the works were completed and without there being any issue raised at all. The Tribunal could find no basis to make a positive finding that the Respondent had breached their obligations under the Code.

Issue 3 "June Inspection Report (Apparent after my visit in September)"

[8] The next issue was an inspection of the Property which contractually should have been carried out by the Respondent on the Property in terms of their agreement with the Applicant but which the Respondent failed to carry out. It was accepted that the Respondent had neglected to carry out the inspection of the Property which should have taken place in June 2023. The Respondent had accepted their oversight and offered the Applicant £100.00 in compensation for this omission. The Applicant was unwilling to accept that as a resolution and had rejected the offer and refused to receive the payment. The Tribunal was of the view that the offer of £100.00 compensation seemed reasonable in the circumstances and noted that the Respondent had accepted that they should have carried out the inspection.

[8.2] The Applicant was challenged on a related issue he had raised regarding damage carried out to the Property by the tenant during their occupation and while the Property was being managed by the Respondent. The Applicant was keen to attribute much of the frustration caused by this to failings of the Respondent. The Applicant in his

evidence accepted that it was the tenant who had neglected the garden and damaged a glass door rather than anything of the Respondent's doing. He accused the Respondent of missing damage to items in their inspection reports that were carried out and in particular "*pet damage*". However, when the Tribunal looked at the photos and the inspection reports that were undertaken, there was no sign of any obvious omission on the part of the Respondent. For example, it was not obvious to the Tribunal that there was any clear basis for the claim that there was "*pet damage*" in the form of claw marks; it appeared to the Tribunal that the marks could have been caused in general ordinary wear and tear such as occurs in the everyday use of a property.

Issue 4 "Notice of termination – Property marketed before preparation"

[9] The Applicant explained his position that the Respondent took steps to immediately market the Property for rent after the tenant had left the Property despite it being in a poor condition. However, there was very little evidence to support this claim.

[9.2] The Tribunal was taken to contemporaneous emails which were sent around the time of the marketing of the Property. Nothing suggested that the Property was in a poor condition around the time of the marketing. There was no direct evidence that the concerns raised by the Applicant had any foundation. The Respondent's position was that: "*The marketing materials for the property were prepared based on an inspection carried out on 25 June 2024, less than two months before the tenants served notice. This inspection confirmed that the property's condition remained consistent, aside from minor wear and tear, which was recorded and communicated to the landlord by the property manager on 15 July 2024.*"

[9.3] The Tribunal could find no positive reason to reject this assessment and find that the Respondent had breached their obligations under the Code.

"Issue 5 – End of Let, Inspection"

[10] The Applicant claimed that at the end of the tenancy, the garage was left full of rubbish, the single bedroom bed and mattress had "*claw damage*" and the double bedroom mattress had claw damage. There were also concerns about the roof panels and damage to the conservatory. Ms Shaw again put to the Applicant that ultimately it was the tenant who had damaged the Property and left it in a poor condition. The Applicant ultimately accepted that this was true. Again, the Tribunal could find no reason to attribute this to any failings of the Respondent. The Respondent appear to have been diligent in their management of the tenancy albeit they did neglect to carry out one inspection which was missed. It seemed unreasonable to blame the Respondent for these issues.

[10.2] The Respondent's written representations summarised the position as follows:
"Comparing the June 2024 inspection report with the September 2024 checkout report, it is evident that the condition of the property had deteriorated by the end of the tenancy. During the June inspection, damage was noted - a cracked glass door, and the tenants confirmed they would carry out the necessary repairs. At that time, carpet damage was attributed to general wear and tear, partly caused by an unsecured threshold, rather than pets. Subsequent repairs were completed by the contractors and invoiced at £172.80. Additional damage and deterioration were observed at checkout, and a claim for the full deposit to cover the tenants' damages was successfully submitted."

[10.2] The Tribunal could find no obvious failing on the Respondent's part here.

Issue 6 "House clearance and restore to original standard"

[11] The issue here as set out in the Application is:

"My son and I worked endlessly on the Saturday the 21/09/2024 to empty the house of all the rubbish belonging to the tenant into the garage for collection. This consisted of the lounge suite, single bed base, cracked mirror wardrobe door, single bedroom carpet, small chest freezer numerous black bags full of clothes, plastic bottles, food from the fridge/freezer, cat toys, and standard lamp. Umega offered to arrange for their third-party contractors to collect the rubbish from the garage and have a cleaning firm they contract with undertake a deep clean of the property.

I had to fly back to France on the 25/09/2024 but during the time I was in Edinburgh I achieved the following: -

- *Sourced a new second hand sofa*
- *Sourced a new second hand single bed frame*
- *Requested Umega to supply a mattress covers for the Double mattress (by the time we moved away from Umega this had not been supplied)*

Single mattress (by the time we moved away from Umega this had not been supplied)

- *Emptied the house of all the rubbish with help from my son*
- *Delivered a very large dog cage to Pets at Home for use by someone who couldn't afford one*
- *Arranged a Gardner for front and back garden*
- *Arranged with CR Smith to quote, accepted the quote and arranged a date for fitting the new door glass and left the date with Umega*

- *Arranged with Scottish gas for a boiler service which was overdue and left the date with Umega who forgot, and the neighbour had to allow him entry*

Umega had to arrange: -

- *a cleaning team for a deep clean*
- *a collection of the rubbish in the garage*
- *the locks front and rear to be changed as soon as the tenant left (the front was done but the rear had not been done by the time we left Umega)*

It was becoming obvious that we were not a priority for Umega as they never appeared to be in any hurry to get things done. Given that simple jobs which take little or no time to do are missed but as stated earlier in the report "They are never at fault".

Examples

- *Promise to get covers for the double and single mattresses, when the pictures were taken for the marketing, the covers were still not in place even although I had reminded them, and I was told the photographer will take them out to the property on the day of taking photographs. In the latest marketing photographs the covers had not been supplied and fitted.*
- *Due to the time, it took the tenant to vacate the property we asked if as soon as they had gone for the lock barrels in the front and back doors be changed. The front was actioned the day after they vacated the back door even after reminders is still outstanding.*

[11.2] Ms Shaw explored with the Applicant the basis of the allegation here. At the end of the tenancy, the Respondent offered to source a third party to carry out a deep clean of the Property. The Respondent had gone ahead and arranged this. The Tribunal could not understand what the specific allegation was here and certainly could not find any evidence of the Respondent falling short of the standards set out in the Code. It also appeared that an item had been removed from the garage by the tenant and the Respondent had missed reviewing the garage in their inspection, but the landlord was able to recover the costs of this item from the tenant's deposit meaning that there was no loss to the landlord.

Issue 7 – "Inadequate deep clean of property (very unsatisfactory)"

[12] This issue partially related to the previous issue - that when the Applicant attended at the Property to inspect it after his tenant moved out, he was unsatisfied with the deep

clean carried out by the Respondent's contractor. He contacted the Respondent and expressed his dissatisfaction with the clean. The Respondent then contacted the cleaners and arranged for them to return to the Property and address the various issues flagged by the Applicant. The Tribunal considered this a straightforward issue and could find no failure in terms of the Code by the Respondent in this regard. The Respondent's written representations summarised the position as follows: *"We regret that the cleaning carried out by Polished Properties did not initially meet the expected standard. At the time, other works were still ongoing at the property, so a full inspection of the clean had not yet been conducted. Once we were made aware of the issue, we promptly instructed the contractor to return and rectify the shortcomings, which they agreed to do."*

[12.2] The Tribunal could find no positive reason to reject this assessment and find that the Respondent had breached their obligations under the Code.

Issue 8 "Indirect threat from Umega"

[13] The Respondent's written materials summarise the issue here as follows:

"We acknowledge the landlord's concern regarding the duplicate deduction of £540 from the deposit. Following a review of our records, we identified that the sum of £540, intended for Castle Removals (rubbish removal), was inadvertently paid twice - once directly by the landlord and once deducted from the deposit. This was an unintentional oversight arising from a miscommunication regarding payment allocation.

The email from Safe Deposit of Scotland dated 21/11/2024 confirmed that there was no response from the tenant, who had a deadline to respond by 20/11/2024. Consequently, the full deposit amount of £2,800 was scheduled to be repaid to Umega by 27/11/2024. On that date, the amount was received into Umega's accounts and allocated to cover outstanding invoices/payments as follows:

- £124.99 – Umega – Commission for Rent Arrears
- £84.00 – Umega – Gas Safety and Boiler Service (safety checks completed 20/08/2024)
- £172.80 – Umega Home Repairs – maintenance works
- £540 – Castle Removals – clearing of garage

The remaining balance of £1,818.21 was repaid to the owner's account with the description: "Rest of deposit return from previous tenancy."

We acknowledge the oversight in paying £540 from the deposit to Castle Removals in error, due to prior miscommunication over payment responsibilities. Funds from Castle Removals are expected to be returned – they have confirmed a double payment upon checking their records. We will process repayment to the landlord as soon as the amount is recovered. In the meantime, we kindly request confirmation of the recipient's bank details to ensure prompt repayment once the funds are returned. We sincerely apologise for this error and any inconvenience caused."

[13.2] The Tribunal considered this a straightforward issue and could find no failure by the Respondent in this regard in terms of the Code. They had made a simple error and quickly corrected it. The Tribunal did not find this a reason to make a finding that there had been any breach of the Code.

Issue 9 – “The Final Straw – after we left Umega”

[14] The Applicant attempted to claim for the rent arrears owed to him by his tenant under the terms of a rent guarantee and legal protection policy held with Direct Line. His complaint was that his insurance provider refused to honour the terms of the policy because the tenant had not had a credit check carried out prior to the Property being let to them and he considered that the letting agent was at fault; they should have carried out a credit check. Ms Shaw however took the Applicant to the emails sent to the Applicant by the Respondent setting out the potential tenants interested in moving into the Property

[14.2] It was clear that the Respondent had specifically brought to the Applicant’s attention that they were unable to carry out a credit reference check on the tenant ultimately selected by the Respondent because she was moving from the United States. Nevertheless, the Applicant then made a positive decision to let the Property to that tenant despite having been offered others who could be credit checked. In these circumstances, the Tribunal considered this a straightforward issue and determined that the Respondent had not failed to meet the terms of the Code in the circumstances in this regard.

[14.3] The Applicant also suggested that he had encountered tax problems because of his receipt of rental income while living in France. He suggested that the Respondent ought to have deducted this at source and presumably settle the sums due with the appropriate authorities. The Applicant however could point to no such arrangements as having been agreed between the parties. The Tribunal could see no reason why the Applicant’s management of his own tax affairs was anything other than his own issue and certainly nothing to do with the Respondent.

[14.4] The Respondent also submitted an account of their communications with the Applicant regarding his complaints and after the ending of the business relationship between the parties. They explained as follows:

“On 2nd December 2024, an email was sent to director Andy Whitmey raising concerns regarding the property. On 9th December 2024, Andy responded, thanking Mr Davie for his detailed feedback, acknowledging his dissatisfaction, and expressing regret for the challenges faced. The response clarified that all actions were carried out in accordance with the agency’s agreement, explained efforts to coordinate repairs, and invited Mr Davie to use the formal complaints process for any further review. On 12th December 2024, a Subject Access Request was submitted under the General Data Protection Regulations (2018) for all information and

correspondence relating to the property at 8 Neidpath Court, Edinburgh, EH12 8GP. An acknowledgement of the Subject Access Request, including confirmation of the specific information being processed, was sent on 16th December 2024. Following receipt of confirmation from the landlord, the full requested information was provided on 8th January 2025. On 8th January 2025, Mr Davie acknowledged receipt and stated he would review the information and respond if anything was missing. No further communication was received from Mr Davie after this date."

[14.4] The Tribunal could find no positive reason to reject this assessment and find that the Respondent had breached their obligations under the Code.

Assessment of the Applicant's evidence.

[15] The Tribunal, having reviewed the evidence, considered that the Applicant appeared to blame the Respondent for many of the problems that had occurred during the tenancy. The truth of matter seemed more that the Respondent had unfortunately accepted a tenant who had caused some damage to the Property and stopped paying rent. There was very little basis to find that the Respondent had done anything wrong other than fail to carry out an inspection. It was actually even the Applicant who had selected the tenant even though he was informed that no credit check could be carried out. The Applicant had not taken any steps to recover his losses from the tenant and instead appeared to want the Respondent to be vicariously liable. There was no legitimate basis for the Tribunal taking such an approach.

[16] Having considered the documentation and having heard evidence the Tribunal made the following findings in fact.

Findings in Fact.

- 1. The Applicant is the owner of the Property known as 8 Neidpath Court, Edinburgh.*
- 2. The Applicant instructed the Respondent to act as his letting agent.*
- 3. The Respondent managed the Property for the benefit of the Applicant which was let out to a third-party tenant from September 2022 until September 2024.*
- 4. The tenant accrued rent arrears and damaged the Property.*
- 5. In September 2023, the Respondent acted reasonably in arranging a third-party gas contractor to attend at the Property urgently when Scottish Gas, with whom the Applicant had a service plan, could not urgently attend. In any event the Respondent paid for the third party's invoice to the other gas contractor themselves.*
- 6. The Respondent managed a report of a leak in the bathroom of the Property appropriately and ensured that the Applicant was not left out of pocket even though resolution of the leaks/mould issues was not straightforward and was not as a result of any failings on the part of the Respondent.*

7. *The Respondent failed to carry out a contractual inspection of the Property which should have been carried out in June 2023. The Respondent offered the Applicant a payment of £100.00 and transferred this payment to the Applicant who then refused to accept it and returned it. The Respondent acted reasonably in dealing with their mistake.*
8. *There is no evidence to suggest that the Respondent showed the Property to prospective tenants while it was in a degraded or inappropriate state to do so.*
9. *At the end of the tenancy, the Respondent arranged for contractors to carry out a deep clean of the Property. When it was brought to their attention that the cleaning was inadequate, they acted quickly to remedy the defects and pressed the contractor to return and address the concerns.*
10. *The Respondent communicated with the Applicant appropriately regarding a simple misunderstanding regarding whether a contractor's invoice had been settled by the Applicant directly or whether it was to be paid by the Respondent.*
11. *The Applicant made a positive and informed choice which tenant he wished the Property to be let to, and he did so in the knowledge that they could not be made subject to any credit check.*

Decision

[17] Having made the above findings, the Tribunal then considered the paragraphs of the Code alleged to have been breached by the Respondent. The Tribunal noted that the Respondent, by their own admission, missed carrying out an inspection of the Property in June 2023.

[17.2] This is a breach of paragraph 73 which is in the following terms.

"73. If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code."

[17.3] Under Section 48 of the Act, where the Tribunal finds that the Letting Agent has failed to comply with the Code, it must make a Letting Agent Enforcement Order. In terms of Section 48 (8), of the Act the Tribunal makes a Letting Agent Enforcement Order in the following terms:

[17.4] *"The Respondent must pay the Applicant the sum of £100.00 in compensation within 30 days".*

[17.5] The Tribunal considers this an appropriate remedy for the breach taking account the whole facts and circumstances of the case.

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.

Andrew McLaughlin

Legal Member/Chair

25 August 2026

Date

