

Housing and Property Chamber First-tier Tribunal for Scotland



**Decision 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”)**

by

**Ms Lesley Kennedy, 47 Waverley Court, Kirkintilloch, East Dunbartonshire G66
2DB per her representative Mr Graham Stephen, 47 Waverley Court, aforesaid
("the applicant")**

against

**Purplebricks Group, trading as Purplebricks, Suite 7 Cranmore Place, Cranmore
Drive, Solihull, B90 4RZ ("the respondents")**

Re: 11 Allan Court, Gardenhall, East Kilbride G75 8BU

Chamber Ref: FTS/HPC/LA/21/2294

Tribunal Members:

**David M Preston (Chairman) and Ms Elizabeth Williams (Ordinary (Housing)
Member).**

Decision

The Tribunal unanimously determined that the respondent has failed to comply with sections 24, 25, 28, 60, 68, 69, 71, 73 and 74, of the Letting Agent Code of Practice (“the Code”) in terms of section 46 of the Act. Therefore, in terms of section 48 (7) of the Act, the Tribunal makes a Letting Agent Enforcement Order (“LAEO”) which should be read with this decision.

Background:

1. Following the Case Management Discussion (“CMD”) on 22 December 2021 and the Direction dated 23 December 2021 the respondents submitted an email dated 6 January 2022 together with further documentation as required by the Direction.
2. On 19 January 2022 a hearing took place by telephone. Present at the hearing were: the applicant and her representative; and Mr Daniel Brookfield, Customer Experience Manager on behalf of the respondents.

3. Mr Brookfield confirmed the terms of his email of 6 January 2022 and acknowledged that the respondents admitted failures to comply with the Code. He confirmed that efforts had been made to reach a settlement agreement with the applicants, but they had decided to continue with the application to obtain the findings and award from the tribunal.
4. Both parties indicated that they were content to leave the question of the terms of any award to be determined by the tribunal.

Hearing

5. In relation to the particular complaints outlined in the application, Mr Brookfield accepted that:
 - 5.1. While the respondents had prepared an Inventory of Contents at the start of the tenancy in April 2019, they had not ensured that the tenants had signed and acknowledged their agreement to the Inventory.
 - 5.2. The respondents had failed to carry out six monthly inspections of the property. By way of explanation, Mr Brookfield referred to the problems of access caused by the restrictions imposed by the pandemic but acknowledged the failure to carry out an inspection in October 2019. The respondents did not seek to depend upon the pandemic restrictions as an excuse for this failure and acknowledged that they had not provided adequate information or explanation the applicant for the tenants as to what was being done in the circumstances.
 - 5.3. Personal details of third parties unconnected with the applicant had been incorrectly posted to the applicant's portal. Mr Brookfield confirmed the information in his email of 6 January 2022 that the matter had been raised with the company Data Protection Officer and said that that the problem had been rectified. He also acknowledged a subsequent data breach in respect of information relating to a separate tenancy being made available to the tenants.
 - 5.4. Mr Brookfield explained that the respondents' Complaints Procedure had been amended as a result of the difficulties which had arisen in this case. He explained that the 3-stage procedure in place at the time of the applicant's complaint had been replaced by a 2-stage procedure because the Head of Lettings to whom the third stage should have been referred had left the company and it would not have been appropriate for him to conduct a review as he had done so at stage 2. He said that this was the reason that the full complaint procedure had not been followed through. He pointed to the efforts which he had made to reach an amicable solution which the applicant had rejected.
 - 5.5. Mr Brookfield advised that the keys to the property would be with the local property expert.
6. Mr Brookfield did not accept the alleged breach of section 28 of the Code. He said that he had not seen any correspondence which he would consider to be intimidating, threatening or abusive
7. The applicant expressed concern at the fact that the GDPR issues did not seem to have been resolved. She was able to confirm that the portal had been rectified since

she had last checked in early December prior to the CMD, and the incorrect information had been removed. However, she referred to the further apparent breach, details of which had been submitted to the tribunal on 3 January 2022.

8. in relation to the tone of correspondence and alleged breach of section 28 of the Code the applicant explained that she had replaced the boiler on the advice of the fitter who had carried out a service of the boiler. At the time of installation of the new boiler, the tenants had been present and the relevant paperwork had been handed to them by the fitter. She said that she had passed a copy had been passed to the respondents. She referred to the exchanges of emails and complained that in the circumstances surrounding the installation of the boiler it was inappropriate for the respondents to advise the tenants not to use the gas until they (the respondents) had received the appropriate certificate. Mr Brookfield did not accept that the tone of the correspondence was threatening, intimidating or abusive
9. The applicant said that she had paid the respondents for a service which had not been provided. She was concerned that nobody had accepted responsibility for the failures, and she had been unable to ascertain the whereabouts of the keys or details of the tenants' deposit. She complained that this was a failure in communication. Mr Brookfield said that he would deal with the issues of the keys, deposit and float following the outcome of the tribunal.
10. The applicant clarified that she had paid for the "Fully Managed" service at a rate of £72 per month in addition to the £425 paid on completion of the let. In total she had paid monthly management fees of £2018.10 to the respondents over the course of the tenancy. She confirmed that the tenants remained in the property but that they were now making payment of the rent direct to her and not through the respondents' offices and she was no longer paying the monthly fees to the respondents.
11. The applicant complained that the respondents had not responded timeously to their complaints and concerns. They referred to an apparent culture of blaming other people who had departed from the company. They complained that their complaints had been passed around various people between August 2021 and October 2021 before eventually coming to Mr Brookfield's attention.
12. After a short adjournment, Mr Brookfield ascertained that the keys were in the hands of the local agent, Samantha. The applicant explained that she had initially made enquiries of the respondents whom she had considered to be a reputable company who would be able to manage the tenancy effectively on her behalf. She had met with the then local agent, Margot Wilson who had inspected the property and found the tenants. The respondents do not have local offices and their local agents deal with the business on the ground. There is a network of area managers throughout the UK to whom the local agents are responsible. He explained that there is a "key log" to record the location of keys and if an agent leaves the company, they are required to pass on the keys in their possession along with the key log. Mr Brookfield said that the company was currently reviewing the process by which keys are retained.

Findings in Fact

13. The applicant engaged the respondents to manage the property on her behalf on the basis of the Fully Managed service as outlined in the Service Agreement dated 10 March 2019.
14. The respondents procured the tenants on behalf of the applicant in terms of Private Residential Tenancy Agreement dated 9 and 10 April 2019 with effect from 11 April 2019 at a rent of £800 per month and a deposit of £800 which was deposited by the respondents with Letting Protection Service Scotland under reference 16869126. The tenants remain in occupation of the property.
15. The respondents prepared and Inventory at the commencement of the tenancy but failed to ensure that the tenants agreed with its terms and the contents as outlined in the Inventory.
16. The respondents failed to carry out 6-monthly checks on the property as required in the Service Agreement. The tribunal accepted that the pandemic restrictions may have created a practical difficulty, but in any event no property check was carried out in October 2019 prior to the pandemic and no information was provided either to the applicant or the tenants as to any arrangements to make provisions for the checks in the circumstances.
17. The respondents wrongly posted information relating to a third party to the applicant's management portal.
18. The respondents corresponded with the applicant in February 2020 in terms that the tribunal determines was ~~threatening or~~ intimidating.
19. The respondents had not failed to respond to the applicant's complaints within reasonable timescales.

Reasons

20. The tribunal carefully considered the oral and written representations, submissions and documents supplied by both parties. In the main the respondents acknowledged their failures to comply with the Code.
21. The tribunal was concerned about the adequacy of many of the respondents' procedures and systems. Mr Brookfield advised that these were being updated and amended. In particular the tribunal considered that the applicant was rightly concerned about the security of the keys to the property in the possession of the respondents. There seems to be inadequate security provisions made for the custody of the keys. The tribunal was also concerned at the apparent breaches of GDPR although it restricted its findings to the scope of the Code and the handling of private information in line with legal requirements. There appeared to be inadequate supervision of personnel by the respondents to ensure compliance with their own internal systems procedures.
22. In relation to section 28 of the Code, which was the complaint left to be determined by the tribunal, it had regard to the particular situation described in relation to the boiler having been replaced by the applicant. The email from the tenants to the respondents dated 24 February 2020 appears to include a picture of part of a Commissioning Checklist and installation of a gas boiler system. The tenant asked the respondents to confirm that this was what was being sought. The email from

the respondents to the applicant of 25 February 2020 timed at 16:14 neither referred to what had been sent to them nor explained adequately what else was required. The respondents' email of 26 February was, in the opinion of the tribunal, unnecessary. They had received at the very least a picture of part of a certificate and, if the whole certificate had not come through on the email it could have been requested from the tenants without any suggestion of the installation not being adequate or being unsafe in any way. The tribunal accepted that this is an important matter, and the respondents have an obligation to ensure that all gas safety certificates are in order. It does not accept that in the particular circumstances the correspondence was appropriate and found that the applicant and her tenant felt intimidated by the tone.

23. In relation to the alleged breach of section 108 of the Code, the tribunal had regard to the correspondence between the parties from August 2021. Initially she sought to terminate the agreement by giving 30 days' notice by email of 22 August 2021. A response was sent the following day which time the complaint had been passed to Ms Faye Allan. On 29 August 2021 the applicant chased up Ms Allan who responded on 31 August 2021 following her return from illness the previous week to advise that it had been passed to the Customer Experience team. The application to the tribunal was dated 21 September 2021. Ideally a response might have been expected from the respondents in the intervening three-week period, but the tribunal does not consider that such a delay is unreasonable to the extent of amounting to a breach of the Code. There was not a catalogue of delays in responding to correspondence.

Letting Agent Enforcement Order

24. Section 48 of the Housing (Scotland) Act 2014 provides:

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

(8) A letting agent enforcement order-

(a) must specify period within which each step must be taken; and

(b) May provide that the letting agent must be 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.

25. The outcome sought by the applicant was to the effect of terminating her agreement with the respondents and releasing her from any obligations thereunder. In such an event the tribunal has difficulty in identifying any steps to be taken to rectify the failures. Accordingly, the tribunal has taken a broad view of the requirements of section 48 and determines that the management fees paid by the applicant to £2018 should be refunded and the Service Agreement terminated without payment of any termination fee, notwithstanding that the tenants remain in the property.
26. In addition, the respondents will deliver the keys to the property to the applicant and refund the float of £200. They will make such arrangements as are necessary with Letting Protection Service Scotland to remove themselves from the deposit arrangements in respect of the property and to transfer the arrangements to the applicant.

27. Section 48(8)(b) of the Act only provides for compensation in respect of loss suffered by the applicant. The applicant noted in the application form that she had suffered no loss and accordingly the tribunal is unable to make an award of compensation notwithstanding the inconvenience and frustration occasioned by the tribunal process.

28. The tribunal determined that a period of two weeks was adequate for the respondents to comply with the terms of the LAEO.

Appeals:

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.

21 January 2022