Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 in an application under section 48 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/LA/21/1008

Re property at 3B Station Road, Dunblane, FK15 9ET ('the Property')

The Parties:

Mrs. Esther Harrington, residing at 1 Braemar Avenue, Dunblane FK15 9EA ("the Applicant")

Cathedral City Estates, 4 & 6 Beech Road, Dunblane, FK15 0AA ("the Respondents")

Tribunal Members:

Steven Quither (Legal Member) and Frances Wood (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Letting Agent has not failed to comply with Paragraphs 73, 74 and 89 of the Letting Agent Code of Practice ("the Code").

The decision is unanimous.

BACKGROUND

1. Between about May 2018 and December 2020, the Applicant was the owner of the Property and the Respondents were the Letting Agents appointed by her to manage the letting of the Property, in terms of an Appointment Letter and Leasing Services Agreement, both prepared by the Respondents as such agents and signed by the Applicant on 10 May 2018, copies of which comprise pp 132-134 in the Respondents' bundle of productions, referred to hereafter.

2. By application dated 12 May 2021, the Applicant applied to the Tribunal for a determination that the Respondents had failed to comply with Paragraphs 73, 74, 88, 89 and 94 of the Code subsequently amended, by e-mail of 1 September 2021, to delete reference to said Paragraphs 88 and 94, which restricted reference the Applicant had intimated and confirmed to the Respondents by e-mail of 23 June 2021, having previously intimated the

reference to the original 5 paragraphs to the Respondents by e-mail of 10 June 2021.

Accordingly, The Tribunal was tasked with assessing whether or not the Respondents had breached Paragraphs 73, 74 and 89 of the Code, which Paragraphs provide as follows:--

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

74. If (the Agents) carry out routine visits/inspections, (they) must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).

89. When notified by a tenant of any repairs needing attention, (the Agents) must manage the repair in line with (their) agreement with the landlord. Where the work required is not covered by (said) agreement (the Agents) should inform the landlord in writing of the work required and seek their instructions on how to proceed."

3. By Notice of Acceptance dated 22 September 2021, the Tribunal confirmed its acceptance of the application for a Hearing, which was duly assigned for 26 November 2021 at 10am, to take place by conference call. Said Hearing was duly intimated to the parties on 15 October.

4. By e-mail of 24 November the Applicant advised that she would be unable to attend the Hearing on 26 November due to difficulties obtaining time off her employment to do so. Thereafter, by direction of the Tribunal the Applicant was contacted on 25 November by e-mail and telephone to clarify if she was formally seeking postponement of the Hearing but she did not respond to the e-mail and failed to answer the telephone call.

Notwithstanding this lack of clarification of the Applicant's position, the Tribunal felt it was implicit in her e-mail of 24 November that she was seeking a postponement and sought to clarify the Respondents' position.

Mr Markus Beher, co-Director of the Respondents, was very candid and reasonable about the issue, stating that he felt it would be "useful" for the Applicant to attend and state her case and he was confident he would be able to meet same.

When specifically asked if he was opposing a postponement he stated he did not intend to do so. In response to a request from him as to what other options might be available to him, the Tribunal advised and confirmed it was not able to offer advice to him regarding such matters.

Further consideration was given to the terms of said letter to the Applicant of 15 October, which the Tribunal was concerned to note could perhaps be read as not making specifically clear to her that she was required to participate in the Hearing, leading perhaps to the possibility of some misapprehension on her part as to whether her attendance was actually required at the Hearing.

The Tribunal therefore considered it just to postpone the Hearing to a further date, which was duly fixed for 28 January 2022.

It also issued a Direction for guidance of the parties regarding various documentation upon which it sought clarification, with which Direction the parties complied prior to said postponed Hearing. As part of this procedure, the Respondents very helpfully produced and provided to the Tribunal a timeline of their dealings with the Applicant, forming part of a larger bundle of productions. Where page numbers are referred to herein, they relate to these productions.

HEARING 28 JANUARY 2022

Both parties duly attended by telephone conferencing and, after confirming they were content to proceed, the Tribunal asked the Applicant to state her case, under specific reference to the Paragraphs of the Code upon which it was founded.

She confirmed her position to be as follows:--

Paragraphs 73 and 74

In essence, the substance of her complaint in respect of these 2 paragraphs was the same, namely that she had engaged the services of the Respondents to manage the property, part of which involved the carrying out of routine inspections, but she felt that this had not detected or prevented what turned out to be a fairly substantial repair being required to her bathroom, leading to her having to sell the property to fund said repairs. She further said that if the Respondents had carried out their duties under said Paragraphs, the extent of the repair work might have been identified and addressed sooner, at much less expense and further deterioration of the property would have been prevented.

Paragraph 89

The Applicant's complaint related to the failure by the Respondents to advise her of 2 matters which she said had been brought to her attention by her tenants by e-mail on 22 November 2020, a week or so before her business relationship with the Respondents came to an end on or about 1 December 2020, which matters comprised:--

a) The bedroom window not closing properly (subsequently repaired by tradesmen instructed by the Applicant); and
b) Some remedial "snagging" work being required after replacement of a boiler in or about May 2020 (similarly repaired).

The Applicant produced at the Hearing the e-mail in question, in which the tenants expressed some surprise that she did not know they had brought these matters to the Respondents' attention. No evidence was produced that the tenants had brought these matters to the attention of the Letting Agent, other than their having said so in the email.

In response to enquiry from the Tribunal, the Applicant advised she was not sure how often inspections were to be carried out by the Respondents but expected these would be done at the start and finish of tenancies and regularly throughout the duration of tenancies. Reference was made to the Appointment

Letter and Leasing Services Agreement between the parties but it was noted that no particular frequency of inspection was specified therein, beyond a "settling in inspection after 4 weeks….periodically afterwards (and) at termination of lease" (p133, Paragraph 13).
By way of further information, the Applicant advised she had not been happy either with the proposed timescale provided by the Respondents for replacement of the boiler stating that she had been told it could take six weeks, and she had accordingly arranged for her own plumber to attend to same within a shorter period.

In answer, the Respondents' position was:--

Paragraphs 73 and 74
They considered they had provided all the management services they were required to and referred to pp164-220 of their productions, detailing 9 inspections made on 31 May, 4 September and 12 and 17 December 2018, 13 February, 12 and 15 August and 19 September 2019 and then 12 March 2020. They had communicated all of these to the Applicant, generally by e-mail (although not all the e-mails were produced and they could not recall the full extent of any advice or guidance provided in relation to the inspections in said e-mails). An e-mail of 16 March 2020 illustrated the sort of communications sent after inspections. The timeline entries referred to on p31 for 4 September 2018 and 13 February 2019 were typical of how this system operated.

Paragraph 89
They could not find any trace in their records of the complaint about the window, but suggested it could possibly have been taken by a former member of staff who had left for personal reasons. In any event, it could have been easily fixed at minimum cost;
They further advised at a later stage of the Hearing that they were aware of discussions about the boiler "snagging" work (which was about the boxing in of pipework relating to the new boiler and did not leave any hot piping exposed) and referred to p7 of a previous set of productions lodged by them, referring to an e-mail exchange on or about 12 May 2020 between the member of staff and the tenants which, in essence, indicated the issues were not of any immediate concern or seriousness and would be addressed once the then ongoing coronavirus "lockdown" had eased.
In response to enquiry from the Tribunal, the Respondents advised their general system for inspections where a tenant was moving in was:-
a) Pre-move in;
b) 6 weeks or so thereafter; and
c) Every 4 to 6 months thereafter, or in response to specific issues being raised.

The Tribunal then discussed and enquired further with the parties, in the course of which it was ascertained:--
a) The Applicant did not dispute the fact of the inspections having taken place or being intimated to her, rather it was the adequacy of the inspections and

the quality of the advice she obtained from the Respondents thereafter about which she was unhappy, especially regarding the bathroom repair, which was now focussed as being the main issue between the parties;

b) The Respondents reiterated the frequency of inspections carried out and referred to their communications with the Applicant about the bathroom on 4 September 2018 and 13 February, 15 and 30 July and 12 August, all 2019 (pp31-32) as indicative of how they would deal with any issues arising;
c) Pp132-134 confirmed the inspection regime operated by them, said Paragraph 13 on p133 in particular;
d) Although both parties were aware of a possible problem in the bathroom, they did not know the full extent or cause of it;
e) The Respondents did not know if the boiler snagging work would be likely to cost over £100, which would require to be discussed with the Applicant (Paragraph 15, p134);
f) The window and boiler work were not mentioned in the final inspection report dated 12 March 2020 (p318);
g) The Applicant felt investigation of the bathroom issue should have been more thorough and she had been guided by the Respondents in deciding what action to take, namely to effect an essentially cosmetic repair. Her instruction to her own builder had been restricted to obtaining a quote for that work, rather than to carry out a more thorough inspection to ascertain if there was a bigger problem causing the dampness etc;
h) There was nothing in particular to indicate there was a bigger problem, eventually traced back to the roof of the bathroom, which had originally formed an outhouse (coal cellar) and had a flat roof. The Home Report available to the Applicant at the time of her purchase of the Property in 2018 did not raise any particular issue regarding the bathroom, although some other parts of the Property were classed as having "Repairs or replacement requiring future attention, but estimates are still required";
i) The Respondents would have brought any such apparent, obvious issues to the Applicant's attention. In any event, they had brought issues with the bathroom to her attention as early as 7 September 2018, per timeline note for said date (p31) and thereafter had only suggested possible courses of action to her, leaving the final decision to her. When she had instructed her own builder and then, per timeline note of 12 August (p32), decided and advised them of her intention to use 6 months advance payment of rent from a new tenant to finance the bathroom work, they considered that she had satisfied herself as to the position. They had consulted appropriate tradesmen who had suggested possible repair work and could have instructed specialists if the Applicant wished them to.
j) The bathroom work was not carried out until the Applicant required to do so to enable her to sell the Property, although in August 2020 a repair was instructed by the Respondents after discussion with the Applicant. It was the tradesman's report back of his unsuccessful attempt to effect that repair that led to further investigation being made into the cause of the dampness.

The Applicant summarised her position as being that the Respondents did not carry out sufficiently thorough inspections or provide her with sufficiently

thorough and informed advice, as a result of which the dampness in the bathroom had deteriorated between about June 2018 and August 2020 to such an extent that she required to carry out more expensive repairs than she would otherwise have had to do. In answer to an inquiry from the Tribunal she agreed that she did not have any evidence of survey work before and after the problem was identified, but feels she should simply have received better advice. She produced a statement of costs, but conceded she would only seek the cost of the repairwork (£10,908), rehousing her tenants while the work was being carried out (£476) and a rent reduction afforded to her tenants as a gesture of goodwill (£1500).

The Respondents maintained their position that they had carried out inspections reasonably, in accordance with the Code and the terms of their agreement with the Applicant and had recorded and brought to the Applicant's attention any issues arising as appropriate. The bathroom repair was one which no-one could have foreseen and they could not be financially responsible for it. Mrs Gemma Beher, co-Director of the Respondents, said that the expectations placed on Letting Agents by the Code were clear and they felt they had acted in good faith throughout and upheld professional standards. It was not the responsibility of the agents to remedy the "horrible" situation in which Mrs Harrington found herself in relation to the bathroom repairs and there had not been any negligence.

THE TRIBUNAL'S CONSIDERATION AND DECISION

In considering the application, the Tribunal was careful not to stray outwith what it was being asked to do, namely consider whether the Respondents had been in breach of their obligations under the Paragraphs of the Code referred to.

In relation to Paragraphs 73 and 74, the Applicant accepted inspections had been carried out and that she was advised of the outcome of them. The substance of her complaint appeared to be more as to the thoroughness of these inspections and advice and guidance provided to her arising out of them. She maintained the Respondents failed her in both respects. However, the Tribunal is of the view that sufficient was done by the Respondents to defeat this complaint. There clearly was a system of inspection in place and carried out by the Respondents, as evidenced in their Production 11, the 9 Inspection Reports between May 2018 and March 2020 (an average frequency of less than 3 months), which appears to the Tribunal to be reasonable.

Furthermore, the Paragraph 74 obligation is then simply to bring any issues to the Applicant's attention, which the Respondents appear to have done.

As previously referred to, the question of the bathroom repair was raised as early as September 2018 and thereafter there appeared to be an ongoing dialogue between the parties about it, as brought out in the timeline, none of which was particularly challenged by the Applicant. In these circumstances, the Tribunal is satisfied that the Respondents discharged their duty to "record any issues identified and bring these to the ….landlord's attention", as required by Paragraph 74. The Tribunal found it surprising that against the background of the bathroom issue being raised in September 2018, the Applicant did not instruct her builder to carry out a thorough investigation of it when she instructed him in August 2019, especially given the ongoing discussions about that very

matter, as evidenced in the Respondents' timeline (pp31-32). Instead, she simply asked him to quote for work that had been suggested to her by the Respondents. The Tribunal felt this was the ideal opportunity for the Applicant to find out what was causing the issue in the bathroom, an opportunity which was missed.
The Tribunal took the view that the Respondents had at all times been candid and open with the Applicant about matters and acted in good faith throughout.
In any event, there was no evidence as to what, if any, difference the "delay" in remedying the dampness made to its extent or level of seriousness. Accordingly, even if the Tribunal was content to find the Respondents had breached Paragraph 74, which it was not, there was no evidence before it upon which it could arrive at any conclusion about any connection between that breach and the Applicant's eventual repair costs, which were not vouched in any event.

So far as the Paragraph 89 complaint was concerned, the Applicant did not particularly persist with it. The Tribunal notes the repairs in question were fairly minor in nature.
Also, from the excerpt of the tenants' e-mail to the Respondents of 12 May 2020 and the tenants' e-mail to the Applicant of 22 November 2020, both previously referred to, the tenants appeared to be satisfied with what was proposed by the Respondents in relation to addressing the issues raised. In these circumstances, the Tribunal is satisfied they were being dealt with by the Respondents "in line with (their) agreement with (the Applicant". There was nothing giving the tenants concern and both issues arose during a difficult time for everyone due to the coronavirus pandemic in 2020. Up until they could be further looked at, there was nothing to indicate they would cost in excess of the £100 requiring the Applicant's approval, per Paragraph 15 of her Agreement with the Respondents (p134).

In these circumstances, the Tribunal is of the unanimous view that the Respondents have not breached the Paragraphs of the Code referred to and accordingly REFUSES the application.

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.

SR QUITHER	**7 FEBRUARY 2022**
Legal Member/Chair	**Date**