

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014 (Act) and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No.328)) (Rules)

Chamber Ref: FTS/HPC/LA/22/1001

Re: Property at 101 Kirktonholme Road, East Kilbride, Glasgow, G74 1BB

Parties

**Mr Greig McArthur (Applicant)
Angel Homes (Scotland) Ltd (Respondent)**

Tribunal Members:

Alan Strain (Legal Member) and Eileen Shand (Housing Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has not complied with paragraphs 16, 18, 21, 24, 68-71 and 74-75 of the Code of Practice for Letting Agents (Code) as required by the Act and issues a Letting Agent Enforcement Order (LAEO).

Background

This was an application under section 48 of the Act and Rule 95 alleging various breaches of the Code of Practice for Letting Agents and seeking to enforce the Code against the Respondent.

The Tribunal had regard to the following documents:

1. Application received 5 April 2022;
2. Written Submissions from the Applicant contained within the Application;
3. Written Submissions from the Respondent dated 20 July 2022;
4. Notice of Direction to both Parties;
5. Respondent's and Applicant's response to Direction.

Hearing

The Applicant participated and represented himself. The Respondent participated and was represented by Ms Laura Simpson (Director) and Ms Jeanette Gardiner (Office Manager).

The Tribunal set out the procedure to be followed at the outset and identified the documents and productions that would be referred to.

The Applicant asserted a breach of paragraphs 16-19, 21-24, 30, 38, 55, 62, 68-71, 74-75, 101-102 and 104 of the Code.

The Tribunal then heard evidence from the Applicant specifically with regard to the allegations against the Respondent. The Applicant's evidence was (in the main) contained within the detailed written submission which had been submitted in response to the Direction.

Ms Simpson gave evidence on behalf of the Respondent. Her evidence was (in the main) contained within the detailed written submission which had been submitted in response to the Direction in this application.

The tribunal members asked questions of both Parties, the Applicant was questioned by the Respondent and vice versa.

Having heard the Parties' oral and written evidence the Tribunal made the following findings in fact:

1. The Applicant entered into an agency agreement with the Respondent dated 14 and 19 February 2018;
2. The agency agreement provided for the Respondent to prepare a check-in inventory of the Property (Clause 18);
3. No check-in inventory was prepared;
4. The Respondent was to market the Property for let. The Respondent undertook to provide photographs for this purpose but instead used a previous agent's photographs;
5. The Respondent did not provide references for the tenants until after this action was raised;
6. The agency agreement provided for the Respondent to undertake 6 monthly inspections of the Property (Clause 22.2);
7. The Respondent only inspected the Property on 10 August 2018, 8 February 2019 and 26 July 2021;
8. The Respondent did not inform the Applicant or seek his consent for the tenant to have a dog in the Property;
9. The agency agreement provided for the Respondent to be paid a management fee of 8% plus VAT of the monthly Rent of £675;
10. The Respondent prepared a check-out inventory on 9 August 2021;
11. The tenants had failed to maintain the garden and to clean the Property on exit;
12. The tenants had removed a shower screen from the bathroom and disposed of it;
13. The tenants had removed one bedroom carpet and damaged 2 bedroom doors;

14. The tenants had replaced existing hall flooring with laminate (with the landlord's consent) which the landlord considered of unacceptable standard;
15. The tenants paid the deposit of £675 to the Applicant on exit;
16. The Applicant incurred redecoration costs of £1600;
17. The Applicant replaced the missing carpet and laminate flooring at a cost of £280;
18. The Applicant replaced the damaged doors at a cost of £165;
19. The Applicant undertook the cleaning of the Property and maintenance of the garden himself and incurred costs in respect of garden machinery in the sum of £126.90;
20. The Applicant sent a detailed letter of complaint to the Respondent by letter of 25 November 2021;

Having considered the evidence and made the above findings the Tribunal decided:

(a) Paragraph 16 of the Code

This paragraph requires a letting agent to conduct its business in a way that complies with all relevant legislation. The Applicant complains that the Respondent failed to comply with the Code in that it failed to produce a check-in inventory as required under the agency agreement and paragraph 68 of the Code.

The Respondent conceded that it had not produced the check-in inventory. The tribunal accordingly find that the Respondent has breached this paragraph of the Code.

(b) Paragraph 17 of the Code

This paragraph requires a letting agent to be open, honest, transparent and fair in dealings with tenants. The Applicant complains that the Respondent failed to inform him of viewings, references and all applications made in respect of the Property.

Whilst the Tribunal accept that the Respondent has failed to communicate with the Applicant to adequately inform him of viewings, references and applications it does not consider this to constitute a breach of Paragraph 17.

(c) Paragraph 18 of the Code

This paragraph requires a letting agent to provide information in a clear and accessible way.

The Tribunal considered that the Respondent had breached paragraph 18 in that it had failed to provide the Applicant with information about viewings, references and applications.

(d) Paragraph 19 of the Code

This paragraph requires a letting agent not to provide information that is deliberately or negligently misleading or false.

This complaint again relates to failure to provide the Applicant with information about viewings, references and applications.

Whilst the Tribunal accept that the Respondent has failed to communicate with the Applicant this does not constitute a breach of Paragraph 19. The Tribunal does not consider that there was evidence of deliberate or negligent provision of information.

(e) Paragraphs 21 - 24 of the Code

These paragraphs require Letting Agents to carry out services provided in a reasonable and timely way; not to unlawfully discriminate; ensure compliance with the Code and maintain appropriate records of dealings with landlords and tenants.

The Applicant's complaint was that the Respondent failed to conduct 6 monthly inspections and keep records of this. This was admitted by the Respondent.

The Tribunal considered that the Respondent had breached paragraph 21 and 24 in that they had not carried out their service with regard to inspections in accordance with the agency agreement or in a reasonable or timely way. The Respondent does not have records of inspections for that reason

(f) Paragraph 30 of the Code

This paragraph requires a Letting Agent to agree what services are to be provided and service standards.

The Applicant contends this has been breached by the Respondent's failure to provide check-in inventory or to do 6 monthly inspections.

The Tribunal did not consider that this paragraph had been breached as clear written terms of agreement had been provided.

(g) Paragraph 38 of the Code

This paragraph requires a Letting Agent to be clear and accurate when advertising and marketing a Property.

The Applicant contends this was breached by the Respondent's failure to take photographs for them to market the Property. Photographs from a previous agent had been used.

The Respondent had not provided advertising or marketing material which was inaccurate or misleading. The Tribunal found this paragraph had not been breached.

(h) Paragraph 55 of the Code

This paragraph requires a Letting Agent to inform the Landlord of all applications on the Property as soon as possible.

The Applicant contends the Respondent did not inform him of all applications. The Respondent contends that there was only one application which was from the successful tenants.

The Tribunal accept the Respondent's evidence on this point and find this paragraph has not been breached.

(i) Paragraph 62 of the Code

This paragraph requires a Letting Agent to prepare a tenancy agreement which covers all legal requirements and the tenant's obligation of cleaning and upkeep.

The Applicant contends that the tenancy agreement clearly did not provide for the upkeep of the garden and cleaning of the Property given the state of the Property at exit.

A copy of the tenancy agreement was not produced or referred to so the Tribunal could not conclude that this paragraph had been breached.

(j) Paragraphs 68-71 of the Code

These paragraphs all relate to the Letting Agent preparing (and having signed and accepted) a check-in inventory.

The Respondent accepted this had not been done.

The Tribunal found that these paragraphs had been breached.

(k) Paragraph 74-75 of the Code

This paragraph requires the Letting Agent to carry out routine inspections, record any issues or breaches of the tenancy agreement and bring to the landlord's attention.

The Applicant contends that the Respondent failed to carry out routine inspections (which the Respondent accepts) and failed to bring matters of repair/maintenance or breaches of the tenancy to his attention. This led to the internal damage to the property and the failure to maintain the garden.

Furthermore, the Applicant had never been informed or asked for permission for the tenants to have a dog in the Property. This was accepted by the Respondent. The Tribunal found that these paragraphs had been breached.

(l) Paragraph 101-102 of the Code

These paragraphs require the Letting Agent to give the tenant notice of their responsibilities on exit and to manage the check-out process.

The Applicant contends the Respondents failed to inform the tenants of their obligations on exit and to manage the check-out process due to the failure to produce a check-in inventory. If they had done so then the tenants would have carried out the cleaning and repair required internally and upkeep of the garden externally.

The Respondent carried out a check-out inventory which was produced. The Tribunal accepted the Respondent's evidence that the removal of the tenants was expedited as the Applicant wished to sell the Property.

The Tribunal found no evidence to support the contention that the Respondent had failed to manage the exit in accordance with these paragraphs.

(m) Paragraph 104 of the Code

This paragraph requires the Respondent to inform the tenant of any damage and proposed repair costs identified during check-out.

The Applicant contends that in so far as he is aware this was not done.

The Tribunal noted the check-out report and the exchange of emails between the Respondent and the tenants over the deposit and the condition of the Property. In the end of the day the deposit was repaid in full to the Applicant.

The Tribunal consider that this paragraph has not been breached.

(n) Remedy

Having determined the breaches of the Code by the Respondent the Tribunal considered the impact this had on the Applicant and any losses suffered by him as a direct consequence of that.

The Tribunal considered and found that the Respondent's main failings were in relation to their failure to prepare a check-in inventory and to inspect the Property as required. There had also been a failure to communicate with the Applicant.

The Applicant wishes reimbursement of the management fees paid to the Respondent and also reimbursement of the costs of the repairs he has incurred on the Property. The Applicant confirmed that he had not pursued the tenants in respect of the costs incurred by him. The Tribunal notes that the Applicant has a remedy against the tenants for the repairs, maintenance and damage occasioned to his Property. It is debateable to what extent the Respondent's breaches of the Code have contributed to this (if at all).

What is clear, however, is that the Respondent did not adhere to their contractual obligations or the Code in the respects identified above. For that reason the Tribunal consider that an appropriate remedy is for the Respondent to refund part of the management fees paid by the Applicant in respect of their services.

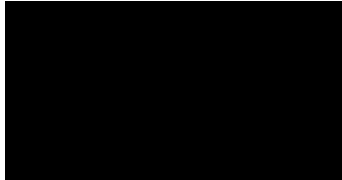
The Tribunal consider that a fair, proportionate and just amount of compensation in respect of their multiple breaches of the Code would be the sum of £500.

The Tribunal made the following Letting Agent Enforcement Order:

- 1. The Respondent shall pay the sum of £500 by way of compensation to the Applicant within 21 days.**

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.



Legal Member/Chair

14 October 2022

Date