Housing and Property Chamber
First-tier Tribunal for Scotland

Written Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(6) of the Housing (Scotland) Act 2014 ('the 2014 Act')

Chamber Ref: FTS/HPC/LA/22/1721

Re: Property at 3 Kinloch Park Dundee DD2 1 EF ("the Property")

Parties:

Dr Josh Jones, Dr Helen Jones
("the Applicant")

Northwood Dundee Ltd 2 Panmure Street, Dundee DD1 2BW ("the Respondent")

Tribunal Member:

Jan Todd Legal Member and Frances Wood Ordinary Member

Background

1. This was a hearing to consider the application by the Applicant for a breach of Paragraph 82 of the Letting Agent Code of Conduct.
2. At a previous case management discussion (CMD) which was held by teleconference call on 22nd September 2022, Dr Josh Jones attended for the applicants and Mr Ron Campbell the owner and director of Northwood Dundee Ltd represented the respondent.
3. Dr Jones confirmed that he and his wife had brought this action because they were extremely disturbed and distressed by the fact that the Respondent which he believed was a letting agent, had entered the Property while they were not present and without notice on 28th September 2021. He advised that they had a feeling the property was not quite the same as they left it and they then received confirmation that a routine inspection had been carried out. He advised that they had not received notification of this although when they complained he advised they were originally told an e-mail had been sent but was not received, then the Respondent changed their position and said it hadn't

been sent. Dr Jones advised that he found the Respondent's response to his complaint evasive and aggressive in tone. He noted they had offered an apology in the e-mail correspondence but he was not satisfied that this addressed the breach of the code. He advised that if they had felt this was a genuine human error as suggested by the Respondent they would not have pursued a claim but wanted the tribunal to impose a penalty for breach of the code of practice.

4. Mr Campbell confirmed that he was the owner and sole director of the Respondent and openly admitted that a breach of the code had occurred. He advised that as per the e-mail correspondence that was lodged by the Applicants he and Mr Mike Anderson had offered an apology for the lack of notice being given to the tenants of the inspection carried out on 28th September 2021 and that he felt they had addressed the breach in those e-mails. He explained that it was Mr Mike Anderson an employee of the Respondent who carries out the inspections and conducts about 1000 a year. He advised that Mike admitted at the time that he had made an error but initially Mr Campbell advised that there was never any suggestion that the e-mail had been sent but not received, but that it was just a genuine error that it had not been sent, that Mike had apologised for this and that Mr Anderson was not trying to cover it up as the Applicant had suggested. He confirmed this was just a genuine human error and that they were not trying to cover it up.
5. Later under questions regarding Mr Anderson's e-mail of 29th September 2021 which said "I have noted that the e-mail to yourself was not delivered for some reason and for that I apologise." Mr Campbell conceded that Mr Anderson must have said that in his e-mail.
6. Mr Campbell advised that they have a standard letter they usually send out to tenants about two weeks before an inspection is due, which mentions the possibility of using their key if the tenant is not in. He was not able to recall or report the exact wording of the letter but advised this could be produced.
7. Dr Jones advised that he received such a letter before the next inspection which was scheduled for February and he read out part of it which indicated that the Respondent may enter the property if they did not hear from the tenant. The Tribunal indicated it would wish to see both the standard letter and a copy of the letter sent to Dr Jones in February. Dr Jones confirmed that he rearranged the timing of that inspection and it proceeded without incident.
8. The Tribunal asked Mr Campbell what happened on the 28th September and why a member of the Respondent would enter the Property without the tenant's consent but Mr Campbell was unable to answer these questions as he advised he does not do the inspections and it would be Mr Mike Anderson who could answer those questions.
9. Dr Jones mentioned that he did not receive a copy of the letting agent's complaint procedure although he did not specifically ask for it and the Tribunal indicated they would like to see a copy of this as well.

Having considered all of the information before it, the tribunal concluded that it was not in a position to make a decision on the application at the CMD. While some facts were agreed between the parties, there were various issues to be resolved namely:-

Issues to resolve

1. What was and is the Respondent's standard letter to tenants regarding arranging and carrying out inspections.
2. What is the Respondent's procedure either written or in practice for carrying out inspections when tenants are not present and have not directly consented to the inspection being carried out in their absence.
3. Was an e-mail sent to the Applicant advising of the proposed inspection on 28th September 2021 and not received or was one not sent?
4. Why did the inspection take place if the Applicant had not consented or responded to agree to an inspection in their absence?
5. What was the effect on the Applicants?
The tribunal arranged for a video hearing to take place on 13th December 2022 by WebEx to allow for further information and evidence to be provided by both parties, including evidence from witnesses they wish to bring.

1. The tribunal issued a direction to the parties along with a note of the CMD setting out the further information which it sought from the parties.

2. Both parties responded to the Direction, with the Applicants responding on 1st October and providing copy e-mails and inspection reports and the Respondents replying on 21st October 2022 and providing copy letters and copy procedures.

3. On 6th December 2022 the Tribunal received correspondence and a mandate from Bannatyne Kirkwood and France solicitors advising that they were now acting for the Respondents and asking if the hearing could be postponed and if they could provide written submissions instead. The Tribunal invited a response from the Applicant to this request and the Applicant responded advising he wished to proceed with the hearing. Given the late notice of the request the Tribunal refused the request but advised the question of written submissions would be considered and discussed at the hearing.

4. On 9 December at 16.39 the Tribunal administration received detailed written submissions from the Respondents solicitors. Unfortunately these were not received by the Tribunal members until Monday afternoon after the decision regarding the postponement had been made. The Written submissions included a preliminary point that the action was incompetent due to the Respondents not being letting agents but in fact being landlords in the tenancy with the Applicants.

The Hearing

1. The hearing commenced at 10am on 13th December on the WebEx video platform and the following parties were in attendance:-

2. Dr Josh Jones for the Applicants
3. Mr Ron Campbell for the Respondents
4. Ms Alexandra Wooley for the Respondents solicitors.

5. The Tribunal asked Dr Jones if he had received the Respondents submissions and he confirmed he had. The Tribunal asked if Dr Jones would like further time to consider these and to seek any legal advice and he advised that he did not wish to do so.
6. The Tribunal noted that the submissions were lodged late. However the Tribunal has to act in accordance with the overriding objective which is to act justly and fairly and the Respondents had raised, albeit late in the proceedings, a matter of fundamental importance to the application, namely whether or not the application was competent and whether the Tribunal had jurisdiction. The Respondents were now submitting that they were not in fact letting agents but actually landlords and therefore the basis of the complaint being a breach of the letting agent code of conduct could not apply to them,
7. The Tribunal indicated this was a preliminary matter and had to be discussed and if necessary evidence taken before the complaint itself could be considered. The Tribunal once again offered Dr Jones the chanced to take advice and postpone the hearing and he once again indicated he did not wish further time and was ready to proceed. The Tribunal indicated therefore that it would hear from Ms Wooley in initial submissions regarding this point and would wish to hear evidence from Mr Campbell regarding this matter and went on to hear evidence on this preliminary matter.
8. Ms Wooley submitted that Northwood do not run the Property as a letting agent rather that they entered into a guaranteed rent agreement (GRA) with the owners to whom they paid a fee monthly or annually and in return had the right to sublet it to other tenants. She explained that Northwood were acting as mid tenants and were able to and did sublet the Property to Dr Josh Jones and Dr Helen Jones. She advised that it is Northwood that thereafter choose who to let it out to, what rent to charge, when to evict a tenant and they could do repairs without the owner consent, although those costs are usually passed on to the owners as they have a responsibility to Northwood as their tenants. She advised that in the lease with the tenants the landlord is noted as Northwood Dundee Ltd.
9. As this was a hearing the Tribunal went on to hear evidence from Mr Campbell and Dr Jones and the Tribunal asked questions.
10. Mr Campbell advised that Northwood Dundee Ltd offered a percentage service, a fully managed service and a guaranteed rent agreement which he advised was unique in Scotland. He advised that it is up to the landlord to choose which option suits them and what financial risk the landlord was prepared to accept. The Tenant not paying rent is a risk and he advised that the guaranteed rent agreement is where the Respondent, Northwood Dundee ltd, rent the property from the landlord and pay them rent, and then the Respondent finds a tenant, rents the property to the tenant at a rent set by the Respondent. He then confirmed that the Respondent effectively takes the risk of the tenant not paying rent to them, they manage everything about the property including instructing repairs and collecting rent. Ultimately however they can request under their agreement with the owners that they do the repair to fulfil the owner obligation to the mid tenant. He also confirmed that any legal action needed against the tenant is Northwood's responsibility.
11. He confirmed that Northwood Dundee ltd are named as landlords on the lease which has been drawn up in the style provided by their legal team.

They advertise properties on their website for rent, conduct viewings with prospective tenants and then follow the standard tenancy process.

12. Mr Campbell under questions confirmed that the Respondents do not normally advise tenants they are not the owners or the ultimate landlord. He confirmed that they would not normally explain whether Northwood were operating under the Guaranteed rent agreement or a fully managed service and would not discuss payments from Northwood to an landlord. He also confirmed that the rent agreement will continue until such time as the tenancy ends or the period of the GRA is at an end when they give the owner and their landlord the option of changing schemes. Mr Campbell advised that they have 300 properties that are rented out currently and of them 60% are on the guaranteed rent scheme.
13. He was then asked by the Applicant if his letters, in relation to a repairs issue, said "waiting on landlords approval" and did this not mean he was acting as a letting agent? Mr Campbell advised that this may have been a letter from Mike Anderson (one of Northwood's employees) waiting on Mr Campbell's response. He confirmed that ultimately repairs were the Respondent's responsibility, that decisions regarding these would come to him and there was no financial ceiling that he had to operate under. He said if it involved structural issues then they might discuss that with the owner, who as their landlord was ultimately responsible for repairs. Mr Campbell also confirmed that it was his naivety that resulted in him admitting at the CMD that Northwood were letting agents. It was only after taking legal advice after the CMD that he realised legally the Respondents were the mid- tenant.
14. Mr Campbell advised that for Guaranteed rent contracts the Respondent agrees a rent with the owner and will pay this regardless of whether the property is tenanted or where the tenant they find pays the rent agreed with the Respondent. The rent agreed with the ultimate tenant is not related to that agreed with the owner. He advised that they base their offer of rent to the owner on market rent and seek to get a higher rent from the ultimate tenant they find. It is Northwood that then takes the risk of the ultimate tenant not paying the rent as they will keep paying the agreed rent payments to the owner and their landlord.
15. At the end of the hearing on this preliminary point, the Applicant advised that Northwood had misled them and they had never realised they were a landlord.
16. Ms Wooley, submitted that the fact the Respondents do refer to the owner of the property and in their correspondence mention the letting agent code of conduct does not alter what they actually are. She confirmed that the Respondents have not been appointed as letting agents. The fact their letters contain a reference to letting agents is because they do act as letting agents in other cases and it would be impracticable to change their letter head for this case. She submitted that the template letters do not alter the nature of their relationship with the Applicant which is as landlord and tenant and not letting agent. She submitted it was similar to the situation where an owner rents out their property directly.
17. Ms Wooley referred to her written submissions and invited the Tribunal to dismiss the application suggesting that there was no jurisdiction where the Respondent was not appointed as a letting agent.

Facts Found

- The Applicant and the Respondent entered into a lease dated 19 July 2021
- The Applicant was the tenant in the lease
- The Respondent was the landlord in the lease
- The Respondent is also named as the letting agent in the lease.
- The Respondent had entered into an Agreement with the owners of the property to let the Property to them for an annual rent of £8,400. That agreement is continuing.
- The agreement allows and envisages that the Respondents will sublet the property and be entitled to collect a separate rent from a 3rd party.
- There is no appointment of the Respondent as a letting agent therefore the Respondent is not a relevant letting agent in terms of S48 of the 2014 Act.

Reasons

1. The lease entered into between the Applicant and the Respondent states in Section 2
   " LETTING AGENT
   Name: Northwood Dundee Ltd
   Address: 2 Panmure Street
   Dundee DD1 2BW
   Telephone number: 01382 221343
   Registration number: LARN 1812037
   Email address: dundee@northwooduk.com
   The Agent will deliver the following services on behalf of the Landlord: Fully Managed Service
   The Agent is the first point of contact for the following: Rent collection Maintenance management All tenant queries
2. LANDLORD
3. Name: Northwood Dundee Ltd ("the Landlord(s)")
4. Address: 2 Panmure Street Dundee DD1 2BW
5. Email address: dundee@northwooduk.com"

6. Section 46 of the Housing (Scotland) Act 2014 (the 2014 Act) sets out the basis for the Code and its application to "letting agency work".

7. Section 46 states as follows: 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.

Section 48 of the 2014 Act provides the legislative basis under which a tenant (including a former tenant) can apply to the First-tier Tribunal (FTT) where they believe a relevant letting agent has failed to comply with the Code when carrying out “letting agency work”.
In relation to an application by a tenant or former tenant, a “relevant letting agent” is defined by section 48(2) and is a letting agent appointed by a landlord to carry out “letting agency work” in relation to a particular property.

8. Section 48 states:
(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—
(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
(b) in relation to an application by a landlord, a letting agent appointed by the landlord,
(c) in relation to an application by the Scottish Ministers, any letting agent.
(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.
(9) References in this section to—
(a) a tenant include—
(i) a person who has entered into an agreement to let a house, and
(ii) a former tenant,
(b) a landlord include a former landlord.

“Letting agency work” is defined by section 61 of the 2014 Act, which states as follows:

(1) For the purposes of this Part, “letting agency work” means things done by a person in the course of that person’s business in response to relevant instructions which are—
(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord’s house as a dwelling, or
(b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).
(2) In subsection (1)—
(a) “relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and (b) “occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the 2004 Act.
(3) The Scottish Ministers may by order— (a) provide that “letting agency work” does not include things done—
(i) on behalf of a specified body, or
(ii) for the purpose of a scheme of a specified description, or
(b) otherwise modify the meaning of “letting agency work” for the time being in this section.
(4) A scheme falling within a description specified by the Scottish Ministers under subsection (3)(a)(ii) must be—
(a) operated by a body which does not carry on the scheme for profit, and
(b) for the purpose of assisting persons to enter into leases or occupancy agreements.

The Respondents solicitors submit in their written submissions that “ What can be drawn from this is that:
1) the Code applies to only those carrying out “letting agency work” (section 46(1)(a)).
2) Letting agency work must be done in the course of a person’s business (section 61(1)).
3) Letting agency work requires to be carried out on behalf of a third-party landlord in relation to that third-party landlord entering into a lease with another party who is not related to them or for the purpose of managing that property for the third-party landlord (section 61(1)(a) and(b)).
4) A tenant (or former tenant) can only seek a determination from the FTT in relation to a “relevant letting agent” (section 48(1)).
5) A “relevant letting agent” is one who carries out “letting agency work” in relation to the specific house occupied (or to be occupied) by the tenant and the fact that someone may carry out letting agent work in relation to different properties and for different third-party landlords does not make that person a “relevant letting agent” in relation to that property (section 61(2)

9. The Respondents primary position is also set out in their written submissions where they state “Notwithstanding the discussions at the CMD on 22 September 2022 which were without the benefit of legal advice, it is submitted that, as the Respondents were operating under a GRA arrangement as landlords of the former tenancy with the Applicants, the Respondents did not

carry out “letting agent work” in relation to that property or tenancy. There are no “relevant instructions” from a third-party landlord and any lease entered into with the eventual occupants is between the Respondents and those occupants and not the owner of the property. It is the Respondents who hold the interest as landlords, and it would be the Respondents who would be entitled to pursue any occupants for arrears of rent or even to seek to evict them from the property. The owners would have no legal right to do either whilst the GRA is in place. There is no difference between this situation and that of a landlord who self-manages a property without a letting agent. Accordingly, any activities carried out relative to any property subject to a GRA arrangement (such as the former tenancy between the Applicants and Respondents) are not subject to the Code and nor does the FTT have jurisdiction to hear the Application. The Application should therefore be dismissed or rejected by the FTT for want of jurisdiction.” They go on to assert that “For the reasons stated above the Respondents’ position is that the FTT has no jurisdiction to consider the Application and that it cannot competently be made against them. That being the case, in terms of the FTT’s note dated 22 September 2022, the issues that were identified to be resolved at the hearing, it is submitted are not competent or relevant matters for the FTT to consider as they relate to issues surrounding the Code and whether there has been a failure to comply with same. “

10. On this primary position the Tribunal firstly agrees that it has to determine whether or not the Respondents are relevant letting agents for the purpose of this application. If they are not relevant letting agents then this application must be dismissed as it would not be competent to raise a complaint that there is a breach of the letting agent code of conduct if the Respondents are not letting agents or were not acting as relevant letting agents in this case.
11. It is not disputed that the Respondent do act as letting agents and are registered as such. However it is submitted that despite this and despite the fact their letters carry that logo and information, they were not acting as relevant letting agents in the tenancy of this Property to the applicants. Indeed it is their primary submission that in fact they are the landlords of the Applicants who were the tenants. To support this the Respondents have submitted a copy of the lease which in section sets out that the Landlord is “ Northwood Dundee ltd.” They have also submitted the GRA with the owners.
12. The Tribunal has seen a recent copy of the title deeds to the Property which confirms Dr Kumar Periasamy and Dr Ranitha Kumar are the owners. The GRA agreement sets out that Dr Periasamy and Dr Kumar have rented the Property to the Respondents for £8,400 per annum and details the responsibilities of both parties. The Agreement confirms the verbal statements of Mr Campbell that the Respondents have rented the Property from the owners; that a rent separate to that of the one agreed with the Applicants has been agreed, namely a rent of £8400 pa that will be paid regardless of whether the Applicants as sub tenants pay the Respondents. It also sets out the liability for repairs.
13. The Tribunal notes that the owners have no direct lease with the Applicant.
14. S46 sets out what a letting agent requires to be and to have a letting agent there is a requirement to have been appointed. No letting agent agreement has been produced. Such an agreement does not have to be in writing but there does have to be an agreement or appointment to act as such. The only

agreement produced is that of the GRA which confirms the Respondents submissions that this is not a normal fully managed service which they fully admit that they offer where a landlord/owner wishes to have this. The GRA states “that the Landlord (defined as Dr Periasamy and Dr Kumar) lets and the tenant (defined as Northwood Dundee) takes the Property for the Term (which is one year from 13th May 2019) and at the Rent payable (which is set out as £8400 per annum paid in one initial payment of £370 on 27th May 2019 and thereafter 11 monthly payments of £730). The Agreement goes on to narrate the terms and conditions, including the duty to pay rent monthly including beyond the fixed term of the tenancy if it continues and including a right to allow the Tenant (Northwood) to sublet the whole property under a Private Residential Tenancy, and various other clauses binding the Respondents if they do sublet the Property to require the subtenant to register for council tax, to have the subtenant responsible for utilities and to ensure the sub tenant does not carry out any structural work to the Property. The Landlord in this Agreement namely the owners also have the right of inspection of the Property but subject to access being granted by the sub tenant.

15. The Applicant was clearly not aware that the Respondent was not a letting agent in this tenancy and Mr Campbell until this hearing had not indicated otherwise to the Applicant. The question for the Tribunal is was the Respondent a relevant letting agent or not. If they were not then there are no grounds for the application.
16. It is noted firstly that the Respondents had initially accepted that they were a letting agent and had replied to the initial letter of complaint accordingly. It is on that basis the application was accepted. However verbal acceptance of the position does not necessarily mean that they were in fact a relevant letting agent and since taking legal advice the Respondents have asserted that they are not in fact letting agents. Whilst it may be very unfortunate, and has led the Applicants to make this application in good faith believing that the Respondents were in fact a letting agent and were acting as such in this tenancy, the Respondents have lodged documentary evidence and verbal evidence that this is not the case. The Tribunal accepts that Mr Campbell was certainly confused and maybe did not realise the import of having a GRA, openly initially accepting that they were a letting agent. He certainly did not try and assert at the CMD or prior to that in written submissions that the Respondents were not in fact a relevant letting agent in this tenancy, but instead concentrated on the merits of the application. However the overriding objective of the Tribunal is to act justly. The Tribunal cannot in good faith ignore what is now being submitted and could be a fundamental challenge to the competency of this application and so the Tribunal considers whether there is an agreement to act as a letting agent.
17. The terms of the GRA make it clear that the Respondents are renting the Property from the owners, Dr Kumar Periasamy and Dr Ranitha Kumar who are their landlords and have the right to sublet it to a 3rd party or parties who will be tenants with the Respondent being a mid – tenant and landlord. There is no other interpretation of that agreement the terms of which are clear. This is supported by the oral evidence of Mr Campbell who could explain in detail how owners seeking to rent out their property are offered a choice of how they wish the Respondents to act whether as a letting agent with a fully managed

service or to rent it to the Respondents where they in turn sublet it to another party of their choosing and at a rent they themselves negotiate. The only suggestion that the Respondents were acting as letting agents is in the lease between the Applicant and the Respondent which states in section 2 that they are in fact both landlord and letting agent. However the Respondent submits that is an error. It is clear from a recent search of the title of the property that the owners are Dr Periasamy and Dr Ranitha. The Tribunal accepts that a GRA has been entered into between the owners and the Respondents and there is no suggestion there is any written agreement between the Applicants and the owners. The Applicants have only dealt with the Respondents and claim it was not clear that they were not letting agents. The Tribunal accepts and concurs that it is not clear from the tenancy agreement that the Respondents are not letting agents, however the definition of relevant letting agent is in terms of S48 of the 2014 Act

"(2) A relevant letting agent is—

a) ***in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant***

18. The Tribunal accepts that the Applicants are tenants in a lease of the Property but given the terms of the lease itself and the fact that the Respondents have let the property themselves from the owners with the purpose of subletting it to a 3rd party, the Tribunal accepts from this evidence that the Respondents are indeed landlords in the lease with the Applicants.
19. Given the Respondents are Landlords they cannot also be letting agents in this case. To meet that definition there needs to be an appointment to act as a letting agent. The terms of the GRA are contradictory to the appointment of Northwood as a letting agent and would in fact be contrary to the purpose of a GRA where the Respondent takes on the responsibilities of being landlord to the ultimate tenant who they find. The fact that there is written agreement entered into between the owner and the Respondents clearly setting out that they will act as mid landlord to the ultimate tenant leads the Tribunal to conclude that despite the misleading terms of the tenancy agreement there is no letting agent agreement or appointment of the Respondents as a letting agent and this is fundamental to a claim that the Respondents are letting agents.
20. Many of the responsibilities of a letting agent would fall to a landlord in the absence of there being a letting agent such as collecting rent, carrying out repairs, liaising with the tenant and taking action to recover possession when appropriate. The fact the Respondents carried out those tasks does not by itself make them a letting agent even though they do act as a letting agent and carry out those tasks as part of their business for other landlords, for this there has to be an appointment or agreement. Many individual landlords carry out these tasks themselves and in this case the Tribunal finds that this is what the Respondents did in this tenancy where they were landlord and the Applicants were their tenants. The Tribunal concludes on the evidence before it that there is no agreement or appointment to act as a letting agent for the reasons stated above.
21. The fact that the tenancy agreement does refer to the landlord being the Respondent but also refers to the Respondent being the letting agent, especially as it states this is part of a fully managed service, is very

misleading for the Applicants and quite contradictory. This is maybe part of a pro forma tenancy agreement where the Respondents do act as letting agents and have a fully managed service contract with the owners to act in that capacity. Going forward it would certainly be helpful if that was amended in their standard leases where they are acting as landlord and not letting agents. The Tribunal notes that in this case it has led to the Applicants being misled.

22. As there is no agreement/appointment for the Respondents to act as a letting agent, there is no relevant letting agent and therefore the claim cannot be competently made against the Respondents and the Tribunal agrees it should be dismissed.

Decision

Application is dismissed as incompetent.

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.

_____ **9th January 2023**

Legal Member **Date**