



**Decision with Statement of Reasons of the First Tier Tribunal for Scotland  
(Housing and Property Chamber ) on an Application in terms of section 48(1)  
of the Housing ( Scotland ) Act 2014**

**Chamber Ref: FTS/HPC/LA/21/1995**

**Parties:**

**Ms Natasha McGourt, 104 Broomfield Crescent Edinburgh EH12 7LX (“the Applicant”)**

**DJ Alexander, 1 Wemyss Place Edinburgh EH3 6DH, Registered Letting Agent,  
Registration Number LARN1812026 (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Mike Links (Ordinary Member)**

**Decision**

**The First Tier Tribunal determined that the Respondent had not failed to comply with Paragraphs 100 and 111 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice ( Scotland ) Regulations 2016 and refused the Application.**

**The Decision of the Tribunal was unanimous.**

**Background**

1. By application to the Tribunal dated 16 August 2021 the Applicant sought an order in respect of the Respondent’s failure to comply with the Letting Agent Code of Practice made under the Letting Agent Code of Practice ( Scotland ) Regulations 2016,(“the Code”). The Applicant’s complaint was that the

Respondent had failed to comply with paragraphs 100 and 111 of the Code. The relevant sections of the various paragraphs are set out below.

2. Paragraph 100 of the Code states that a Letting Agent must not try to persuade or force the tenant to leave without following the correct legal process.
3. Paragraph 111 of the Code states that a Letting Agent must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.
4. The Applicant complained that a member of staff within the Letting Agent had tried to persuade and force her to leave the property by comments and language used. She further complained that the language used towards her was abusive, intimidating and threatening.
5. The Application was accompanied by a letting agent notification letter, a tenancy agreement, emails between the applicant and Richard Anderson, a former member of staff at the Respondent's office, a series of emails between the Applicant and Kevin Fraser, Head of Property Management at the Respondent's office, documentation regarding a formal complaint made by the Applicant to the directors at DJ Alexander, email correspondence between Kevin Fraser and the Applicant's mother, a number of documents which the Applicant had received from the Respondent in response to a subject access request and documents from the Respondent regarding a change of energy supplier at the property. In an email dated 3 November 2021 enclosing a list of the documents the Applicant intended to rely on in support of her application she indicated that she wished to seek compensation from the Respondent.
6. The Respondent submitted only one document upon which they wish to rely in support of their position and this was a document sent by Kevin Fraser Head of Property Management to the Applicant dated 1 September 2021.
7. A Hearing was fixed in relation to the application for 19 November 2021 at 10 am. The Applicant attended the hearing and represented herself and was accompanied by a supporter. The Respondent was represented by Mr Kevin Fraser, Head of Property Management for the Respondent.

### **The Hearing**

8. At the start of the hearing the Tribunal raised an issue regarding some of the productions lodged by the Applicant and how those related to the code breaches set out in the Letting Agent Code of Practice Notification letter.
9. The Applicant's position was that her original application related to comments made by Richard Anderson as set out in the letting agent code of practice notification letter. She said that this had been acknowledged and that an apology had been offered on 1 September 2021. She said she did not feel that this amounted to an apology and she had included further comments and what she said could be further breaches, but did not send another code of practice notification letter given the relations between the parties. On the point of the change of energy supplier she indicated that she had hoped the situation would be rectified but the new supplier would not discuss the situation with her and as a result she could not obtain her warm home discount which was important to her as a single parent on universal credit. On behalf of the Respondent Mr Fraser indicated that they were just trying to sort matters out and had no other comment to make in relation to the additional material lodged by the Applicant.

10. The tribunal chair explained to the Applicant that as a matter of law it could only consider matters which had been intimated to the Respondent in terms of the code of practice notification letter and as a result the tribunal would require to restrict its consideration of the application to the matters set out in the notification letter alleging breaches of code paragraphs 100 and 111. This was accepted by the Applicant and the Hearing commenced with the Applicant giving evidence and referring to the code of practice notification letter and quotations within from communications sent to her by Richard Anderson who was then a maintenance manager for the Respondent. She indicated in her evidence that the comments amounted to manipulation, coercion, emotional blackmail bullying and intimidation by him.
11. At the time the comments had been made the Applicant had been served with a notice to leave the property where she lives with her son. In August 2020 the notice to leave was formally withdrawn. The Applicant said that initially she had believed that the service of the notice to leave was a direct response to issues she had raised regarding the repairing standard. After discussion with the owners she believed that the reasons behind the notice to leave were genuine. However she did not feel it was fair to herself and her son that efforts would be made to evict her to allow the landlord's son to move in and she had even offered to help him with housing and benefit applications to assist him in obtaining a place to live. As at the date of the Hearing the Applicant continued to live at the property with her son but another Notice to Leave having been served, proceedings are ongoing in relation to an eviction order application which was due to proceed to Hearing some time after 19 November 2021.
12. The Applicant referred to specific comments in the Letting Agent Notification Letter which had been made by Mr Anderson in the course of communication with her regarding the initial Notice to Leave. She referred to him saying ' why would you not vacate and instead go to tribunal ?' , going to the tribunal "would only delay the inevitable and mean stress and unpleasantness for all involved". She referred in particular to 2 emails on 14 July 2020 where one comment made was 'you don't want your name on the public record as being evicted' .
13. The Applicant's position was that these comments were intended to scare her into giving up her tenancy but these efforts had not been successful.
14. Mr Fraser gave evidence on behalf of the Respondent. He said that he wanted to apologise to the Applicant if she felt that his apology in his email of 1 September 2021 was not acceptable. He said he didn't want any person to feel the way she had described. He said that he felt the Applicant's position was a personal perspective and that she had misconstrued email communications sent to her for her own objectives which were to stay in the property. He said he found interaction with the Applicant to be difficult and challenging and did not agree that the communication by Mr Anderson could be described in the way that it had been characterised by the Applicant. He said he became involved in the matter after Mr Anderson had left the employment of DJ Alexander. Mr Anderson had been seconded into the maintenance team but had previous experience in dealing with this type of issue and Mr Fraser believed that he could handle matters. Mr Fraser said that when he got involved the objective of the letting agent was resolution of matters. He said that options had been discussed with the Applicant with a view to finding a resolution and other properties had been offered to the Applicant.

15. Mr Anderson gave evidence to confirm that he had worked at DJ Alexander. He said that he had 10 years or thereabouts experience within the property industry. He had experience of situations when landlords served a notice to leave or a notice to quit. He had encountered situations where tenants refused to leave and had been involved in previous communications of this nature. He had helped to resolve such situations previously. He accepted this was a stressful time for all those involved. He wanted to find an amicable solution without taking matters as far as the first-tier Tribunal. In his experience an amicable resolution was almost always able to be found. Until this matter he didn't know if he'd ever come across a situation where the matter could not be resolved. He had not been accused of this type of thing previously and he said that he was shocked that the dispute centred around his communication. He said that he appreciated at the time he was engaged in communication with the Applicant that this was a stressful time for all those involved. He said that DJ Alexander always had lots of property available and the upside of that was that they had hoped they could find the Applicant another property.
16. He said that his purpose in communicating with the Applicant was to seek resolution of matters and to offer alternative options. He accepted that having a notice to leave served was stressful and difficult and he apologised if he had added to that stress. Mr Anderson was cross examined by the Applicant who asked why options had not been put to the owner's son as the property was to be vacated by her for him to live in it. She put to him that asking her to leave was thought to be the path of least resistance. Mr Anderson's position was that it was the owners who had indicated that they required the property for their son to live in at that time.
17. Mr Anderson was asked what his objectives were in communicating with the tenant on 14 July 2020 and making remarks in relation to the public nature of an eviction order. He said that he was exploring possible alternatives given that other accommodation was available. He said that it was clear the Applicant was not going to be keen to leave the property after the notice to leave was issued. He said he was exploring if an alternative option in the same street which was slightly lower price wise than what she was paying, could be offered but this was an alternative which did not come to fruition. He said he did not feel that the Applicant's reasons for staying in the property were legitimate. He also indicated that he wanted to make it clear to the Applicant the consequences of going to the first-tier Tribunal.
18. After the evidence of Mr Anderson parties made submissions to the tribunal. The Applicant indicated that she knew her rights and she was setting an example for others who didn't have the confidence to challenge letting agents who behaved in this way. She indicated that Richard Anderson's assertion that he was letting her know what would happen as far as the eviction and it becoming a matter of public record was simply not correct. It was her view that he was aware that she had knowledge of the law in this area and would know that the outcome of an eviction application would become a matter of public record. She reiterated her comments regarding the unacceptable nature of the language used in the emails which she had referred to in her evidence. She said she was not the difficult person that witnesses had made her out to be and during her whole tenancy she had been subject to unnecessary stress, her mental health

had been affected and she said that there had been no need for Richard Anderson to make such comments to her.

19. On behalf of the Respondent Mr Fraser indicated that it was a matter of regret on the part of the Respondent that the matter had to reach a hearing. They had hoped to reach resolution of matters between the parties. He pointed out that the landlords themselves had endured stress and health issues and needed to move on and sell the property now. He apologised if the language used by Mr Anderson was not in accordance with the Applicant's expectations and he reiterated that the Respondent wished a resolution of matters.

### **Findings in Fact**

20. The Applicant entered into a private residential tenancy at the property with effect from 19 September 2018 and this tenancy continues.
21. The Respondent is named as the letting agent for the property in the tenancy agreement.
22. The Respondent deals with the management of the tenancy on behalf of the landlords.
23. In July 2020 a Notice to Leave was served on the Applicant on the basis that the property was required by the landlords for a relative to live in following a marriage breakdown.
24. After the service of the Notice to Leave there were a series of email communications between the Applicant and Richard Anderson, maintenance manager for the Respondent.
25. In these communications Mr Anderson queried why the Respondent would not vacate the property and instead choose to take the matter to the first-tier Tribunal, and indicated that she should be able to commit to a particular date to vacate the property. He further stated that the First Tier Tribunal was there to deal with legitimate cases where a third party is required to find a resolution.
26. In further emails Mr Anderson set out that going to the first-tier Tribunal would only delay the inevitable and mean stress and unpleasantness for all parties involved in the tenancy and that any eviction would become a matter of public record
27. The Applicant perceived that these email comments were intended to scare her into leaving the tenancy in response to the Notice to Leave.
28. The Applicant did not vacate the property at that time and the Notice to Leave was rescinded in August 2020.

### **29. Reasons for Decision**

The Tribunal's consideration of matters raised in the application was restricted to material lodged by the Applicant to support what she said were breaches of paragraphs 100 and 111 of the code in relation to comments made by Richard Anderson, maintenance manager for the Respondent in communications between the parties in July 2020. Section 48(4) of the housing ( Scotland ) Act 2014 indicates that no application can be made unless the Letting Agent has been notified of the breach in question. Although the Applicant had lodged material which she said could amount to further breaches postdating the matters raised in the notification letter to the letting agent, the Tribunal could

not consider these matters as the letting agent had not been formally notified of them in the Notification letter.

30. The Applicant's complaint related to comments made by Mr Anderson which she perceived as being designed to scare her into leaving the property after the service of a Notice to Leave. She complained that these amounted to a breach of paragraphs 100 and 111 of the code and described the comments as amounting to manipulation, coercion, emotional blackmail bullying and intimidation.
31. It was clear that she was very concerned by these comments which were made at a time when she was potentially facing eviction, a time that she described as very stressful.
32. The Tribunal considered the communications in detail and the language used by Mr Anderson. The Tribunal also considered the context in which the comments were made both in terms of the email communication and the situation with the tenancy at the time.
33. Whilst the tribunal found that the comments were unhelpful, unnecessary and could well have added to the stress which the Applicant was undergoing at the time, the tribunal took the view that these did not amount to an attempt by the Respondent to persuade or force the Applicant to leave the property without following the correct legal process. The Tribunal also considered that the method of communication used was not abusive or intimidating or threatening.
34. The Tribunal accepted the evidence of Ms McGourt as to how she perceived the communication by Mr Anderson. The words used require to be interpreted in context and looking at matters objectively the Tribunal took a different view from the interpretation placed on the comments by the Applicant and found that the comments did not amount to breaches of the two paragraphs of the Code.
35. The Tribunal accepted the evidence of Mr Fraser, the Head of Property management for the Respondent that the intention was to try to resolve matters in a difficult situation. This position was echoed by Mr Anderson but as stated above the Tribunal found that some of the language used by him in the emails to be unhelpful and unnecessary, and that these served to make a difficult situation more stressful for the Applicant.

## **Decision**

The Tribunal refuses the application and finds that the Respondent did not fail to comply with the letting agent code of practice in terms of paragraphs 100 and 111.

## **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

Date 19.11.21