



**First-tier Tribunal for Scotland (Housing and Property Chamber)  
Decision and statement of reasons under Section 48 of the Housing (Scotland)  
Act 2014.**

**Reference number: FTS/HPC/LA/21/2293**

**The Parties:**

**Mr John Inglis, 21 Arkleston Drive, Paisley, Renfrewshire, PA1 3EN (“the Applicant”)**

**R & G Financial Services Ltd, 57 Townhead, Kirkintilloch, G66 1NN (“the Respondent”)**

**Outcome**

- 1. The tribunal decided that the respondent has breached paragraphs 20, 21, 24,29d), 32a) 74, 85,90,101,102 and 104 of the Letting Agent Code of Practice and the tribunal issued a Letting Agent Enforcement Order which should be read with this decision.**

**Background**

- 2. This was a second hearing in connection with an application in terms of rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017, ‘the rules’ and s48 of the Housing (Scotland) Act 2014, ‘the Act’. The applicant attended the hearing. The respondent was represented by Mr Gary McNulty, a director of R & G Financial Services Ltd. Ms Carolyn Graham, an employee also attended the hearing. The applicant and the tribunal members attended by video on WebEx. The respondent participated on a WebEx phone link. A first hearing on 11 January 2022 was adjourned to today. The applicant did not attend the first hearing and he was not represented. Both Mr McNulty and Ms Graham attended. The tribunal made the following directions on 11 January 2022:**

**The Applicant is required to provide:**

- (1) Vouching for any losses that he submits he has suffered as a result of**

**the breaches of the code he has set out in his application.**

- (2) A schedule with 4 columns giving full details of:**
  - (a) The paragraph of the code the applicant submits has been breached.**
  - (b) What the breach was and what part of the information the applicant has lodged relates to that breach.**
  - (c) When the breach occurred.**
  - (d) Any losses the applicant has incurred as a result.**
- (3) A list of witnesses who will be giving evidence at the forthcoming hearing.**
- (4) Any other documents he has to substantiate his position.**

**The Respondent is required to provide:**

- (1) A copy of the letter sent to the applicant on 23 September 2022.**
- (2) A copy of their complaints procedure.**
- (3) A copy of the check in report for the property from 2015.**
- (4) A copy of the check out report for the property from 2021.**
- (5) Any documentation they have regarding the release of the deposit to the tenant around July 2021.**
- (6) A list of witnesses who will be giving evidence at the forthcoming hearing.**
- (7) Any other documentation they have to substantiate their position.**

**The said documentation should be lodged with the Chamber no later than close of business on 1 February 2022.**

### **Preliminary matters**

3. The applicant lodged a schedule in compliance with paragraph (2) (a) and (b) of the direction. No proof of loss was provided. The respondent lodged documents in compliance with paragraph (1) to (4) of the direction. Both parties confirmed they had received the productions.
4. The tribunal noted that the email dated 23 September 2021 sent by the respondent in response to the applicant's code of practice notification letter of 21 September 2021 read as follows:

*I am writing to confirm receipt of your complaint dated 21 September 2021 and can confirm that I will be dealing with this matter.*

*I have attached a copy of our complaints procedure for your attention.*

*As you can see, I am now required to investigate this matter and reply to you within 15 working days however before I am able to commence the investigation, I require you to provide specific details in regards to each of the*

*sections that you claim we have failed to comply with, under the Code of Practice for Letting Agents.*

*Once I have received this information, I will be able to start the complaints procedure and carry out a full and thorough investigation.*

5. The respondent also lodged the applicant's response to this email which read:

*I think we're both aware that the process was already 'exhausted' the day you mailed to tell us you were unwilling to discuss the situation any further. As such, my claim has already been issued to the Tribunal and they are aware that our previous discussion ended that way. So far, they have accepted my submittal and are working on it now.*

6. The application was made on 21 September 2021, the same day that the code of practice notification letter was sent. Now that this further information was available to the tribunal, it appeared that the respondent had not been given a reasonable time to rectify the breach in terms s48 of the Act which provides:

*48 Applications to First-tier Tribunal to enforce code of practice*

(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.

7. It was put to the applicant that the last sentence of the notification letter he sent to the respondent reads:

*Please acknowledge receipt of this letter and I await your response in resolving my complaints.*

It was also put to him that he failed to enter into any discussion or correspondence with the respondent in an effort to resolve matters. The applicant accepted this, and it was his view that as the tribunal had accepted his application he was not obliged to enter into any further negotiation with the respondent or provide the respondent with any more time to resolve matters before he made his application. He felt that he had waited 8 weeks from 21 July 2021 to 23 September 2021 and it was the applicant's view that the respondent's communication dated 13 and 23 August 2021 indicated they were not willing to assist, and he was therefore obliged to proceed to the tribunal.

8. It was the respondent's position that communication with the applicant since 21 July 2021 had been like a game of tennis. His company fully accepted that there were things in the letting of the property that they could have done better. They tried to engage with the applicant with a view to achieving a positive result. It became clear that the applicant had no intention of trying to reach an agreement. He had failed to set out what they had done wrong and had failed to provide a list of items that he considers they should replace. He invited the tribunal to reject the application on the basis that they had not been given a reasonable time to rectify the breach.

9. The tribunal took the view that the applicant had failed to provide the respondent with a reasonable time in which to rectify the matters raised in his notification letter before he made the application. The tribunal however has discretion. The tribunal 'may' reject the application if the respondent has not had a reasonable time to rectify the breach but is not obliged to do so. Taking into account the background to the application, the respondent's admission that the service they have provide to the applicant is lacking, and the time that has elapsed since the application was made, the tribunal decided to allow the application to proceed. The tribunal decided this was the fairest way to proceed taking into account the overriding objective.

10. The tribunal noted that the applicant had not provided any proof of his losses as required by paragraph 1 of the direction. He stated that firstly that he was not aware of what was being sought by the tribunal. He also stated that he had not had the time to obtain proof of his losses. The tribunal noted that the applicant had not participated in the first hearing when the directions were made. The tribunal considered that the terms of the direction and the written note of the first hearing were clear. If the applicant was in any doubt of the meaning he could have sought

clarification and he did not do so. The applicant had lodged a schedule in which he stated he was claiming for losses in respect of blinds, living room carpet, washing machine, lampshades, curtain poles, curtains, grass from back garden, undersized boiler, and laminate flooring. The applicant also stated that the main reason for making the application was in relation to the failure on the part of the respondent to provide proper checks on his property and the resultant inconvenience, rather than any items that were damaged or changed by tenants. The tribunal proceeded with the hearing on the basis of the written evidence that had been lodged and on the basis of hearing the available oral evidence and in the absence of any vouching in support of the applicants' losses.

11. The tribunal had before it the following copy documents:

- (1) Application dated 21 September 2021.
- (2) Notification letter dated 21 September 2021.
- (3) Emails between the parties from 21 July 2021 until 23 August 2021.
- (4) Full Managed Service Agreement Between the Parties dated 3,8 August 2015.
- (5) Emails to the tribunal by the applicant dated 12 October 2021, 18 November 22 November 2021.
- (6) Written submissions by the respondent dated 21 December 2021.
- (7) Emails between the parties dated 23 September 2021.
- (8) Respondent's Complaints Procedure.
- (9) Check in report for the property.
- (10) Correspondence from SafeDeposits Scotland dated 29 July 2021 and 9 August 2021.
- (11) Invoice from Pckwikfix limited dated 27 June 2020.
- (12) Invoice from generaljunk.co.uk dated 15 December 2019.
- (13) Check out report dated 20 July 2021.

### **Evidence of the applicant**

12. The parties entered into an agreement in connection with the letting of the applicant's 4 bedroom detached house in 2015. The property was let out to 4 different tenants as follows:

- 23 March 2015 until 14 December 2016
- 10 February 2017 until 10 March 2019
- 28 March 2019 until 20 September 2019
- 7 November 2019 until 16 July 2021.

13. The applicant lived abroad and did not return to his property until August 2021. Until that point, the applicant was satisfied with the service provided by the respondent.

14. When the applicant received the check out report for the property in July 2021 he was concerned about the condition of his property. He was told by the respondent that he had to accept fair wear and tear after renting the property for 6 years. The

applicant was due to return and live in the property around 10 days later and he was keen to hold the outgoing tenant responsible for the cleaning and other matters that required to be addressed. The respondent did not think that they could be held to account and the applicant asked to see the various check in and check out reports that had been prepared over the 6 year period in an effort to understand how each of the tenants had left the property. He was advised that the reports were not available due to a server failure in which data had been lost.

15. The respondents arranged to have the property cleaned at their expense and the applicant took entry on 4 August 2021. He was unhappy with the condition of the property and the various items that had been changed without his permission. The applicant asked on 4 August 2021 via email for a member of staff from the respondent to attend at the property so that he could point out the matters that he was unhappy about. The joint meeting never took place.
16. On the 8 August 2021 the applicant prepared a full list of the items that he was concerned about and sent this to the respondent. The respondent replied to the various headings and the general thrust of their comments were that he had authorised the changes to the furnishings and that he has to allow for fair wear and tear over the 6 year letting period with 4 sets of tenants.
17. The respondents were unable to provide the check in and check out reports with the exception of the original check in report from 2015 due to their server crashing which had resulted in a loss of digital data.
18. The applicant has intended to draw up a list of his losses for the various items but had never done so.
19. Since moving back in to the property the applicant has replaced all of the blinds throughout the property. He is unable to advise the cost of the blinds or provide even a rough estimate of what he spent.
20. Regarding the living room carpet, it was the applicant's evidence that a tenant had requested to replace the living room carpet with laminate. He had no objection, provided the carpet was stored in the garage. The carpet was stored for a time but when he returned to the property in July/August 2021 the carpet had been removed from the garage. The laminate fitted in the living room is grey and it does not match the laminate in the hall and dining room which is brown. The applicant has not changed the laminate.
21. Regarding the washing machine, it was the applicant's evidence that he installed a top of the range washing machine in the property at a cost of around £1000 around 2013. The machine in the property when he took entry in July/August 2021 was a different model and, in his view, is a cheaper type albeit it is in working order. He has not replaced it.
22. The applicant has replaced some curtains and curtain poles, but he gave no information about what this cost.

23. There are a couple of lampshades missing in the property.
24. There is some grass missing in the garden which the applicant will require to replace.
25. The applicant considers that the boiler in the property is the wrong size for a 4 bedroom property. This was replaced some time ago. The respondent obtained some quotes at his request, and they arranged to have a new boiler fitted. The boiler had not formed part of the application and the applicant has not produced any evidence that the boiler is the wrong size or that if it is the wrong size, the respondent has any responsibility for that.
26. The vinyl tiles in the kitchen have been replaced with a poorly fitted laminate. The applicant was not consulted about this change and is unaware of when it occurred. He is not aware if the laminate is suitable for a kitchen, and it is chipped in places. The vinyl was laid in the property around 2013. The applicant has not replaced the kitchen laminate.
27. The applicant was contacted by the respondent regarding the cooker. The applicant understood that one of the rings was broken but the tenant was happy to use the other 3 rings and no action was required. Upon taking entry to the property, the applicant discovered that the control for the ring was broken altogether. The applicant felt annoyed and let down and did not feel that this problem should have been left without being fixed.

### **Evidence of Mr McNulty for the respondent**

28. The parties had a good relationship over the 6 year period and the respondent endeavoured to do a good job. They acknowledge that there are things that they could have done better. They relied on an individual to prepare the check in and check out reports and he did not do a good job. He has been replaced by a self employed former police officer who works exclusively for the respondent.
29. The respondent accepts that the property was dirty when the tenants left in July 2021. The respondent did not retain any money from the deposit as they did not have the check in report and the tenants were disputing that they had left the property in a dirty condition. The respondents paid £195 to have the property thoroughly cleaned and did not pass that bill on to the applicant in the circumstances.
30. Regarding the other matters raised by the applicant, the respondent had indicated in their email of 6 August 2021 that they were open to negotiations with the applicant for his inconvenience. They asked for his proposals and a breakdown of the sums he was seeking, and nothing was forthcoming.
31. Regarding the lounge carpet, it was the respondent's evidence that the carpet was

rolled up and placed in the garage at the applicant's request. Around March 2019 a tenant requested that the garage was emptied as they wished to make use of it. The applicant agreed and a bill for £120 from 'generaljunk.co.uk' was issued in November 2019 which was paid by the applicant without demur. It was the respondent's evidence that the applicant made no specifications regarding the colour of the laminate in the lounge.

32. The respondent was not aware of when the washing machine was changed or by whom.
33. The respondent was not aware of when the kitchen laminate was changed or by whom.
34. Regarding the cooker, it was the respondent's position that they got the same written report regarding the cooker as the applicant. The respondent was aware that one out of the 4 rings was not functioning and as the applicant and tenant were content to leave it at that, no action was deemed necessary.
35. The respondent reiterated his position regarding the digital records. It was their practice to scan copies of the check in and check our reports into the computer system and then shred the originals. No file copies were kept. They were advised that this is the best way to manage data given the demands of GDPR and they did not keep a back up of the computer files. All of the data was lost in a cyber attack. They have produced an invoice from Pckwikfix regarding the replacement of their server (item (11) above).

### **Sections of the code at issue**

36. **Section 2 paragraph 17: You must be honest, open and transparent in your dealings with landlords and tenants (including prospective and former landlords and tenants).**
37. It was the applicant's position that the respondent had breached this in relation to the change of flooring in the lounge and in relation to their handling of the garage being emptied. The tribunal found nothing in the information presented by the applicant or in the explanation provided by the respondent that would enable the tribunal to conclude that this paragraph of the code had been breached.
38. **Section 2 paragraph 18: You must provide information in a clear and easily accessible way.**
39. it was the applicant's position that when he complained to the respondent about some of the changes to his property, the respondent suggested that the changes were made by the applicant, despite the fact that he lived abroad and had not accessed the property since 2015. He gave the example at the hearing of the



telephone cable which had been attached to the skirting board in an unsightly manner. He raised this with the respondent by email on 8 August 2021. The respondent replied on that date as follows: 'I assume this was done by you or another safety conscious person to avoid a trip hazard'. The tribunal understood that the applicant disagreed with this statement. Nevertheless, the tribunal was not satisfied that this amounted to a breach of the code in this regard.

**40. Section 2 paragraph 19: You must not provide information that is deliberately or negligently misleading or false.**

41. It was the applicant's position that the code had been breached as the respondent had failed to provide check in and check out reports or to provide evidence that the property was regularly inspected. The tribunal did not consider this to fall within this paragraph of the code and there was no evidence presented to the tribunal to suggest that this paragraph of the code had been breached.

**42. Section 2 paragraph 20: You must apply your policies consistently and reasonably.**

43. The agreement between the parties provides at para 1.9 that the respondent will "Organise a detailed inventory and/or Schedule of Conditions of subject property and at para 1.11 "Check the tenant out of the property and assess dilapidations'. If this policy had been followed consistently it is reasonable to assume that the change of flooring in the kitchen and change of washing machine among many others, would have been picked up in the process. The tribunal understood that there had been a loss of important data in 2020 and these reports were no longer available. However, the loss of data would only have been an issue when the final tenant was being checked out in 2021. The check out report from July 2021 refers throughout to items as being 'as per inventory'. Given the check in report from 2019 would not be available to the person compiling the check out report, the tribunal was unaware what 'inventory' was being referred to and the respondent was unable to assist. Further, the tribunal had heard evidence from both parties in connection with damage to the cooker in the property. This was no reference to any damage to the cooker in the check out report. The tribunal concluded that that report was inaccurate and of little value. The respondent had not followed their own policy and there had been a breach of the code in this regard.

**44. Section 2 paragraph 21: You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely manner.**

45. The applicant's evidence was that he was content with the services provided by the respondent until he was due to return to the property and he received the check out report. The applicant was aggrieved at the way the respondent had dealt with his concerns and in particular the failure on the part of the respondent to carry out a joint inspection with the applicant so that he could point out all of the issues he had with his property. It was the respondent's evidence that the applicant has been argumentative towards staff and they had been reduced to tears. The tribunal took the view that a joint inspection may have helped to resolve matters however the respondent did deal with the applicant's inquiries in a prompt manner and over the

course of a three week period there were multiple emails. The respondent did acknowledge that they could have done things better and on balance the tribunal decided that this was a marginal breach of the code.

**46. Section 2 paragraph 24: You must maintain appropriate records of your dealings with landlords, tenants, and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code's requirements.**

47. The respondent's position that they maintained appropriate records and they were lost due to circumstances outwith their control. The tribunal accepted this to some extent. However, the failure to maintain a back up or paper copy meant that they were unable to comply with the code or demonstrate compliance. This constitutes a breach.

**48. Section 2 paragraph 28: You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.**

49. The applicant erroneously thought that because the respondent threatened to discontinue negotiations in some of their emails, this came under this paragraph of the code. There was no breach in this regard.

**50. Section 3 paragraph 29d): In your dealings with potential landlords, if you become aware in the course of your business that a property does not meet appropriate letting standards (eg repairing standard, houses in multiple occupation and health and safety requirements), inform the landlord of this.**

51. The applicant took issue with matters that were not brought to his attention regarding changes to the property. There was no suggestion that the property did not meet the repairing standard at the start of the letting process in 2015 so there was no evidence of breach at the start of the tenancy. However, the faults with cooker and the bath tap may indicate it failed to meet the standard during the last tenancy – this should have been brought to the attention of the landlord so there is a minor breach of the code in this regard.

**52. Section 3 paragraph 32a): Your terms of business must be written in plain language and alongside any other reasonable terms you wish to include, must clearly set out (a) the services you will provide to that landlord and the property they relate to. For example tenant introduction, letting services and full management service.**

53. The agreement between the parties provides in paragraph 1.17 that the agent will endeavour to " Visit the property on a regular basis (unless otherwise agreed) after the commencement of the tenancy to carry out an inspection". The applicant had no idea when inspections had been carried out. The evidence of the respondent was that inspections had been carried out. He also stated that the requirements of landlords vary, and some ask for a quarterly report, some twice a year and some

annually. The tribunal decided that there was a lack of clarity in the respondent's terms and conditions, and this was borne out by the fact that the applicant had no idea how often an inspection of his property would take place. The tribunal decided that there had been a breach of this paragraph of the code.

**54. Section 3 paragraph 32m): How a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.**

55. The application was made before the complaints procedure was exhausted. The tribunal did not consider there to be a breach in this regard.

**56. Section 3 paragraph 36: If the landlord or tenant (including former landlord and tenant) applies to the Tribunal because they think you have failed to meet your Code obligations, the Tribunal may, depending on the nature of the circumstances, expect you to show how your actions meet your agreed terms of business as part of complying with the code.**

57. This was the purpose of the hearing and there was no breach of the code.

**58. Section 4 paragraph 54: You must agree with the landlord the criteria and process for managing and approving tenancy applications from prospective tenants.**

59. The applicant took issue with the respondent taking on a tenant with cats which was contrary to the applicant's instructions. As this was in 2015 it predated the code which came into force in January 2018. The tribunal did not consider this paragraph.

**60. Section 4 paragraph 57: You must agree with the landlord what references you will take and checks you will make on their behalf.**

61. The applicant erroneously thought this paragraph related to checks on the property rather than checks on the tenants. The tribunal accordingly disregarded this paragraph.

**62. Section 5 paragraph 74: If you carry out routine visits/inspections, you 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 visitors, and paragraphs 85 to 94 on repairs and maintenance).**

63. It was the applicant's position that if regular inspections had taken place and proper records kept, he would have been made aware of changes to the property and acted accordingly. The respondent did not dispute the applicant's contention and accordingly the tribunal decided there had been a breach in this regard.

**64. Section 5 paragraph 85: If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations**

**(e.g. electrical safety testing: annual gas safety inspections: Legionella risk assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.**

65. The respondent was responsible for managing repairs to the property. The respondent did not inspect the work carried out by tenants to change the flooring to the property. Additionally, the cooker was not repaired despite it being known to be faulty. This was a breach of the code.

**66. Section 5 paragraph 90: Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.**

67. The applicant's written procedure at 1.16 states that they will '*organise and, where necessary, supervise repairs/routine maintenance work as required, in line with good management practice.*' The fault with the cooker is likely to mean that the repairing standard has not been met as the cooker was not in 'proper working order'. Accordingly, the repair to the cooker should have been insisted on and this constitutes a breach of the code.

**68. Section 6 paragraph 101: Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visits unless there is good reason not to. For example evidence of violent behaviour.**

69. The respondent by their own admission did not inform the outgoing tenant in July 2021 of their obligations regarding the cleaning of the property as the respondent did not have a record of the condition of the property at the start of the tenancy in 2019. There has been a breach of the code in this regard.

**70. Section 6 paragraph 102: If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/ schedule of condition where one has been prepared before the tenancy began.**

71. By their own admission there has been a breach of this paragraph of the code. The check out report was inaccurate and no link was made with the condition of the property on entry and no photos were available.

**72. Section 6 paragraph 104: You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared.**

73. By their own admission there has been a breach of the code in this regard.
74. **Section 6 paragraph 111: You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.**
75. The applicant erroneously thought that because the respondent threatened to discontinue negotiations in some of their emails, this came under this paragraph of the code. There was no breach in this regard.
76. **Section 6 paragraph 113: The (complaints) procedure must also set out how you will handle complaints against contractors and third parties; any recourse to the complaints procedures of a professional or membership body you belong to ; whether you provide access to alternative dispute resolution services; if you are also subject to another regulatory body (for example the Scottish Legal Complaints Commission), and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once your complaints process has been exhausted or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.**
77. The tribunal decided that the complaints procedure was lacking in clarity. It states that in stage 1 they will acknowledge a complaint within 5 working days of receipt and in stage 2 they will give a detailed reply within 10 days. The tribunal read this to mean a substantive response within 10 days however in the respondent's email of 23 September 2021 there is a reference to 15 working days which would mean that the 5 and 10 day periods are cumulative. This is not the plain meaning of the wording in the complaints procedure. There has been a breach of the code in this regard.

#### **78. Findings in fact**

- That the applicant is the owner of the property.
- The parties entered into an agreement in August 2015 that the respondent would act as letting agent.
- The property was let out to four different sets of tenants between 23 May 2015 to 14 December 2016; 10 February 2017 until 10 March 2019; 28 March 2019 until 20 September 2019 and 7 November 2019 until 16 July 2021.
- The applicant returned from abroad to live in the property in July 2021.
- Around June 2018 the applicant agreed that the tenant could replace with living room carpet with laminate.
- The respondent did not check the work carried out.
- The carpet was stored in the garage at the applicant's request.
- A subsequent tenant disposed of the carpet when the garage was being cleared

for their use.

- At some point over the course of the 6 years a tenant changed the kitchen vinyl for laminate.
- Neither party were aware of this, and this is unlikely to have been picked up in the check out report.
- Tenants over the years have made changes to curtains, curtain poles and light fittings.
- These changes were not brought to the attention of the applicant or identified in check out reports.
- The system of check in and check out reports used by the respondents did not adequately link with the inventory for the property.
- In failing to do so the respondents did not comply with their own written policy.
- The cooker in the property was not in full working order and the respondent was aware of this.
- The respondent did not act in accordance with their written policy as well as the repairing standard, and ensure that the cooker was repaired.
- The respondent's records for the property between 2016 and 2020 were lost due to a server failure as a result of a cyber attack.
- The respondent did not have a back up of their records, either in hard copy or digital form.
- The respondent did not draw this to the applicant's attention and seek any other information until the applicant asked for the check in and check out reports for his property.
- The outgoing tenants in July 2021 left the property in a dirty condition.
- The taps in the bathroom were damaged.
- The respondent returned the deposit of £1050 to the tenants in full.
- The respondent did not have the check in report to enable a proper discussion to take place with the outgoing tenants.
- The respondent paid £195 for the cleaning of the property.
- The checkout report was inaccurate as it referred to the inventory where none existed.
- The check out report also failed to identify the broken control on the cooker.
- The respondent requested that the applicant provide a list of items he wished to claim for, with the costs for same.
- The applicant provided a list but failed to provide any costs.
- The applicant requested that the respondent carry out a joint inspection at the property.
- The respondent declined to attend for an inspection.
- The applicant suffered inconvenience as a result of the respondent's breach of the code.

## Reasons

79. At the conclusion of the evidence the applicant sought to adjourn the proceedings to enable him to obtain vouching in connection with his losses. The tribunal refused

to adjourn on the basis that the applicant had chosen not to attend the first hearing and he had also chosen not to comply with the direction issued which requested vouching in connection with his alleged losses. The tribunal therefore made a decision on the basis of the evidence before it. The tribunal was satisfied that there had been breaches of the code and that the applicant had suffered loss as a result. The applicant had not been able to quantify his losses and the tribunal could therefore not make any order in relation to the various matters such as the flooring in the kitchen, curtain poles, curtains, lampshades and grass.

80. It was clear that the applicant had suffered inconvenience. He had returned to his property after 6 years abroad and it was not in the condition he expected it to be in. The respondent did not have the check in and check out reports so that he could get a clear picture of what had gone wrong. Even if those reports had been available, the tribunal was not satisfied that the changes to the fittings and fixtures and the washing machine would have been picked up.
81. The respondent stated that they had been let down by the person they had paid to do the reports and they now had it sorted. However, the most recent check out report fails to mention the broken part of the cooker and it repeatedly referred to the inventory when no inventory was available due to the lost data.
82. The applicant's frustration at the situation was apparent from the correspondence passing between the parties. It did appear to the tribunal that this may have been avoided if the respondent had agreed to a joint meeting.
83. The respondent tried to resolve matters by paying for the cleaning and offering to pay for items lost. They repeatedly made reference to fair wear and tear when communicating with the applicant. The tribunal decided that a leaflet (in digital or paper format) given to new landlords explaining this issue may go some way to managing the expectations of clients.
84. The respondent may be a member of Council of Letting Agents at the Scottish Association of Landlords, in which case the tribunal recommends that they consider using the guidance and documentation available to underpin their policy and processes.
85. There was a time pressure on the parties as the applicant was returning to the property around 10 days after the tenants left. The tribunal consider that it was up to the respondent to manage expectations in this regard, given the property had been rented out for several years.

## **Letting Agent Enforcement Order.**

86. The tribunal consider that it is reasonable in all of the circumstances to issue a letting agent enforcement order.
87. The tribunal has decided that the respondent should revise their complaints procedure to make the timescale for dealing with complaints clear and unambiguous.
88. The tribunal has decided that the respondent should draw up in house guidance to be followed when a property is being taken on and when the property is being checked in and checked out. There should be a specific procedure for checking floorcoverings, appliances and fittings to ensure that they are the same items that the tenant started with. They should consider the use of photographs in this regard.
89. The respondent should carry out a review of their record keeping to ensure that the circumstances that gave rise to this application do not occur again. This may involve them keeping a digital back up of scanned records or maintaining a paper copy in compliance with the rules regarding storage of data.
90. The respondent should review their terms and conditions to ensure that they clearly set out their procedures regarding inspection and repairs, explaining the process for deposits, damage to property, fair wear and tear and issues that may come up at the end of a tenancy

The respondent should draw up a digital or paper leaflet to give to new landlords to give information about fair wear and tear and to manage their expectations of the lettings process and the situation when a property is handed back to a landlord.

91. In the absence of any proper estimation of the applicant's losses the tribunal are making an order for the respondent to pay the applicant the sum of £500 for his inconvenience as a result of the respondent's failure to comply with the code.
92. The Letting Agent Enforcement Order accompanies this decision and should be read in conjunction with it.

## **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.**

**In terms of section 51(1) of the Housing (Scotland) Act 2014, a letting agent who, without reasonable excuse, fails to comply with a Letting Agent Enforcement Order commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.**

**14 February 2022**

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**Lesley A Ward    Legal Member**

**Date**