

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Certificate of Compliance with Letting Agent Enforcement Order in terms of S 50 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/19/3401

The Parties:-

Justine Williams, 21 Hunter Hall Place, St Madoes, Perth PH1 7TZ (“the Applicant”)

Pavillion Properties, 86 Bell Street, Dundee, DD1 1HN (“the Letting Agent and Respondent”)

Tribunal Members:-

Petra Hennig McFatridge -	Chairing and Legal Member
Frances Wood -	Ordinary Member (Housing)

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) having determined that the Letting Agent has complied with the Letting Agent Enforcement Order (“LAEO”) dated 7 October 2020, certifies that the Letting Agent has complied with the LAEO.

The tribunal’s decision was unanimous.

Reasons for decision:

The tribunal issued a decision dated 7 October 2020 to the parties by letter dated 13 October 2020. The tribunal found that the letting Agent had failed to comply with Section 7 item 110 and item 112 of the Letting Agent Code of Practice (“the Code”) and issued a LAEO on the same date.

The LAEO required the Letting Agent within 28 days of service of the order to do the following:

1. In terms of Number 110 (“110: You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer to”) provide information to the landlord regarding the Code of Practice and offer them a copy of same in either paper or electronic format and provide evidence to the Tribunal that this has been done.

2. In terms of Number 112 ("112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business. ") provide a copy of the complaints procedure drafted in compliance with the Code of Practice and to be used in all future dealings with their clients to the landlord and evidence to the Tribunal that this has been done.

Evidence that the LAEO had been complied with:

1. Evidence was received that the LAEO has been complied with in that the Letting Agent provided proof in the emails dated 23 November 2020 with various documents attached showing that the clients of the Letting Agency had been informed via a personal letter and information newsletters of the Code of Practice and that the Letting Agent has a specific Complaints Procedure, which again was attached to the email. The Letting Agent apologised for the delay in answering and explained that accessing postal communication had been difficult as he was currently abroad and had requested that all further communication should be sent by email to ensure that this would reach him timeously.
2. The Letting Agent also copied the tribunal into an email to the Applicant sending the complaints procedure and a copy of the Code of Practice. The tribunal accepts that an email regarding the required information was sent by the Letting Agent on 25 November 2020.
3. On 30 November 2020 the Applicant's Representative advised that as far as she was aware the letter to individual clients of 18 December 2018 referred to by the Letting Agent had not been received by the Applicant at that time and the Applicant had not been aware this had been posted to her. The communication from the Applicant's Representative did however make it clear, that the email of the Letting Agent with the letter regarding the Code of Practice and the complaints procedure as attachments had been read by the Applicant's Representative as the letter was explicitly referred to and the Applicant's Representative made further representations about why she had been unhappy with the Letting Agent's conduct.
4. The Letting Agent had been able to show to the tribunal that the required information was to hand and that the required complaints procedure was in place. Given that the Letting Agent was also able to document that information about the Code of Practice had been disseminated to clients in newsletter communication and that he was able to produce this to the tribunal and the relevant documents had been crossed to the Applicant's Representative, the tribunal is satisfied that the shortfall of information leading to the finding of non-compliance with the Letting Agent Code of Practice has now been adequately remedied in this case.
5. On the basis of the evidence before it, the tribunal is satisfied that the Letting Agent has complied with the terms of the LAEO, albeit somewhat late and

mainly through communication to the tribunal rather than to the client directly. He was able to demonstrate that the information about the Code of Practice had been issued in newsletters and a personal client letter. This has now also been passed to the Applicant's Representative. He was able to demonstrate that the written complaints procedure is in place and this has since been forwarded to the Applicant's Representative. The purpose of the LAEO has been fulfilled. Therefore the tribunal issues a certificate of compliance regarding the LAEO for this case.

Rights of Appeals:

In terms of S 46 of the Tribunals (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.

Petra Hennig McFatridge
Chairing and Legal Member
21 January 2021