



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/22/3417**

**Re: Property at 2 Silver Birch Gardens, Glasgow, G51 4EE (“the Property”)**

**Parties:**

**Mr Muhammad Amjad residing at 48 Roundhouse Circle, Renfrew, PA4 8FL (“the Applicant”), represented by Mr Waleed Amjad also residing at 48 Roundhouse Circle, Renfrew, PA4 8FL**

**Saqsa Real Estate Limited, 3 Wyvis Place, Newton Mearns, Glasgow, G77 5FP trading as Safe Lettings (“the Respondent”)**

**Tribunal Members:**

**Ewan Miller (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having made such enquiries as it saw fit for the purposes of determining the Applicant’s application to the Tribunal, determined that the Respondent had breached Paragraphs 21, 37A, 120,124 & 125 of the Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code”) and determined to make a Letting Agent Enforcement Order as undernoted.**

**The decision was unanimous**

**Background & Reasoning**

1. The Applicant was the landlord of the Property.
2. He had employed the Respondent as his letting agent.
3. The Respondent had let the Property from 22 June 2020 to an Mrs Emily Attah at £900 pcm.

4. On 1 April 2022 the rental had been increased to £1080 pcm.
5. Mrs Attah left the Property on 7 August 2022 and the lease terminated.
6. The Applicant alleged that they were due the following sums from the Respondent that had been paid by the tenant Mrs Attah in rent to the Respondent but never passed on to the Applicant:-

22/2/2022 – 21/03/2022	£900
22/03/2022 – 31/03/2022	£290
01/05/2022 – 31/07/2022	£3240
01/08/2022 – 07/08/2022	£244
<u>Total</u>	<u>£4674</u>

The sums above are net of the Respondent's commission that they were entitled to charge.

7. The Applicant also alleged that they had required to pay £265 to have the Property cleaned as the tenant had not left it in an acceptable condition. The Applicant alleged he had tried to liaise with the Respondent to have this sum deducted from the tenant's deposit but nothing had been forthcoming from the Respondent.
8. The Applicant had tried to engage with the Respondent on resolving matters but from mid August 2022 onwards there was no response from the Respondent.
9. The Applicant served a notification letter on the Respondent by recorded delivery on 30 August 2022 alleging breaches of Paragraphs 21, 37A, 101, 108, 120,124 and 125 of the Code. The Applicant received no response.
10. 14 September 2022 the Applicant applied to the Tribunal seeking a determination in relation to the alleged breaches of the said paragraphs of the Code.
11. A hearing took place on 23 January 2023 at 10am before Ewan Miller (Legal Member) and Mr Gerard Darroch (Ordinary Member). Mr Waleed Amjad, the Applicant's son, appeared for the Applicant. No party appeared for the Respondent.
12. The Tribunal was satisfied that service had been validly carried notifying the Respondent of the hearing at both the trading address of the Respondent and its Registered Office. Accordingly the Tribunal was satisfied it was appropriate to make a decision.
13. The Tribunal first considered Paragraph 21 of the Code. This requires a letting agent to carry out the services to landlords or tenants using reasonable care and skill and in a timely way.

The Applicant submitted that the Respondent had never denied that they had received the rent monies from the tenant. The Applicant had emailed the Respondent on 7 August 2022 setting out the rent that had not been paid by the Respondent. The Respondent replied via email on 18 August 2022 acknowledging that the sums were due. The reason for the non-payment was given as the company account had been frozen until the company Letting Agent Registration Number had been updated. It also stated that the director of the respondent was going to take a personal loan to allow payment to the Applicant.

The Applicant also produced an invoice from a cleaning company for £265. There was no response from the Respondent or explanation as to the position relating to the deposit and whether this cost could be deducted from the tenant's deposit and paid to the Applicant.

The Tribunal considered the position in relation to this paragraph of the Code. A fundamental part of a letting agent's duties is to ingather rent and pay it, less any justified deductions or commissions, to the landlord.

In this instance there was clear evidence from the Applicant setting out the sums due. There was an acknowledgement in the email of 18 August 2022 from the Respondent that the sums were due to the Applicant but had not been paid. The Applicant confirmed the position had not changed since that email. There was no evidence to the contrary from the Respondent.

Accordingly, the Tribunal was satisfied, on the balance of the probabilities, that the Respondent had ingathered rent due to the Applicant and had retained it themselves. The Tribunal also found, in the absence of any evidence to the contrary, that the Respondent had failed to deduct the cleaning charge from the tenant's deposit and send this sum to the Applicant

This could not be said to be the Respondent acting with reasonable skill and care and therefore the Tribunal found there had been a breach of Paragraph 21 of the Code.

14. Paragraph 37A of the Code requires a letting agent when an agreement ends with a landlord, inter alia, to give them written confirmation setting out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to the landlord and the letting agent must return any funds due to the landlord automatically at the point of settlement.

The Tribunal considered this Paragraph. For the reasons set out in Paragraph 13, it was apparent that the appropriate correspondence had not been issued to the Applicant nor had funds been settled. Accordingly the Tribunal found there to be a breach of Paragraph 37A as well.

15. Paragraph 101 of the Code relates to check out procedures that a letting agent must carry out with a tenant at the end of a lease. The Applicant had not provided any evidence in relation to this Paragraph and accepted that whilst it

was possible that matters had not been carried out in accordance with the Code there was no evidence. The Tribunal therefore made no determination in relation to this Paragraph.

16. Paragraph 108 relates to a letting agents compliance with its claim handling procedures. In advance of the hearing, the Applicant had indicated to the Tribunal that he did not intend to pursue this aspect of the complaint and accordingly the Tribunal make no finding in this regard.
17. Paragraphs 120, 124 & 125 of the Code all relate to the handing of money by a letting agent on behalf of a landlord. Paragraph 120 requires the letting agent to be able to account immediately for all money held on behalf of clients. Paragraph 124 requires client's money to be available to them on request and is given without delay or penalty. Paragraph 125 requires payment of client money as soon as there is no longer any need to retain that money.

For the reasons set out in Paragraph 13 above, it was apparent that the Respondent had failed in relation to all 3 paragraphs of the Code. They had admitted having received the money and it being due but were unable to account for it or make payment of it both before and after termination of the agreement with the Applicant.

Accordingly the tribunal determined that there had been a breach by the Respondent of Paragraphs 120,124 and 125 of the Code by the Respondent.

18. The Tribunal considered the position arising as a result of the various breaches of the Code set out above. The Tribunal was concerned at the clear failure by the Respondent to account to the Applicant over a prolonged period of time of a significant amount of money. The excuse given about the Respondent's bank account being frozen because of a letting agent registration number update was not believable and seemed to the Tribunal to simply be designed to delay and obfuscate the non-payment of the monies. The conduct went beyond a civil matter and may merit the Applicant making a report to the police.
19. The Tribunal enquired of the Applicant what remedy was sought by them. The Applicant simply wished to receive the monies they felt were due and to leave matters at that. Accordingly, the Applicant sought payment of £4939 being the rental sums due together with the amount paid for cleaning. The Tribunal was content to grant a Letting Agent Enforcement Order for payment of these sums to the Applicant by the Respondent on the basis this was the loss suffered by the Applicant due to the failures of the Respondent.

## **Decision**

**Accordingly the Tribunal determined there had been a breach of Paragraphs 21, 37A, 120, 124 and 125 of the Code and resolved to make a LAEO obliging the Respondent to make payment to the Applicant of the sum of £4939 within 30 days of the date of service of the LAEO**

### **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.**



**31 March 2023**

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**Legal Member/Chair**

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**Date**