

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision: Housing (Scotland) Act 2014 Section 48 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26

Chamber Ref: FTS/HPC/LA/20/0234

The Parties:-

Dyala Safi, Flat 116, Elfin Square, Edinburgh, EH11 3BF (“the Applicant”)

Watt Property, Watt House, Suite 2 5A Giles Street, Edinburgh, EH6 6DJ (“the Respondent”)

Tribunal Members:-

Alastair Houston	-	Chairing and Legal Member
Frances Wood	-	Ordinary Member (Housing)

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 whether the Respondent has complied with the Letting Agent Code of Practice (“the Code of Practice”) as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that, in relation to the present Application, the Respondent has complied with the Code of Practice and the Application should be refused.

1. Background

1.1 The present application is an application under section 48 of the Housing (Scotland) Act 2014 (the Act) made to the tribunal by the Applicant. The application was made in terms of section 48 and rule 95 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations (“the Rules”). The Application comprised of the application form and copies of photographs, receipts, a Letting Agent Code of Practice notification letter and emails between the parties.

1.2 By cover of email, the Respondent had lodged a written response to the application, accompanied with copies of the written tenancy contract between the Applicant and landlord, a log of repair works in relation to the Property, invoices and two email reports from tradesmen.

1.3 Due to the Covid 19 lockdown the initial date for the hearing was discharged. A subsequent hearing was arranged for 14 October 2020 to take place by teleconference.

2. Hearing

2.1 The Applicant was personally present and unrepresented at the Hearing. The Respondent was represented by Ms Pauline Smith, Senior Manager who was also accompanied by Ms Angela Watt, the owner and director of the Respondent.

2.2 Given the volume of written representations and documents before it, the Tribunal first canvassed with the parties the format of the Hearing. Parties were in agreement that they may highlight any factual matters they wished to and then make submissions as to whether or not the circumstances of the present application amounted to a breach of the Code of Practice. The parties confirmed that the emails lodged comprised of all written correspondence between them. The Tribunal was to take account of all that was said at the Hearing together with all written material before it.

2.3 The Tribunal firstly heard from the Applicant. She confirmed that her statement was an accurate record of the circumstances of the present application. She confirmed that the tenancy at the Property began on 23 August 2019. She had moved from Leeds to Edinburgh for work as a civil engineer. The tenancy ended on 30 November 2019, when she returned the keys to the Respondent. She had moved out of the Property on 9 November 2019 due an infestation of mice within the Property.

2.4 The Applicant advised that her complaints centered around a lack of maintenance of the Property, with issues arising from the commencement of the tenancy. She highlighted her email of 25 August 2019 to the Respondents detailing the issues that had arisen after taking occupation. She advised that this included a fridge freezer that was not working and a blocked sink. The former had taken ten days to replace. Thereafter, she had reported unsafe floorboards on 10 September 2019 and a reflux of sewerage in the bath on 22 September 2019. The infestation of mice was reported on 7 November 2019.

2.5 The Applicant advised that, in addition to the email correspondence with the Respondent, she had also contacted them by telephone in relation to the infestation of mice. When she had contacted the day after emailing, she had been provided with the contact details for a company involved in pest control. It had been said that an infestation was the tenant's responsibility. The Applicant refuted any suggestion she was responsible for the infestation and advised that, during an inspection of the Property by the Respondent, it had been remarked that she was maintaining the Property to a high standard.

2.6 She had contacted the company whose details she was provided with and this resulted in poison being laid within the Property. She had paid the sum of £40.00 for this service. She had been advised by the person who had attended from the

pest controller that the wall behind the kitchen units contained holes and would be susceptible to mice entering. The mice had entered and damaged her possessions and there was a smell of urine within the Property. The Applicant had required to cover any holes herself. Evidence of old poison laid had been seen. She had asked the person who had attended for a report. This request had been refused and she was surprised that a report had been provided to the Respondent.

2.7 The Applicant also advised that there was a hole in the bathroom ceiling. The loft above contained rubbish and also provided an entry to mice. During the period she was in occupation of the Property she was constantly having to report issues with tradesman requiring to attend and carry out repairs. She had been advised, prior to the tenancy commencing, that the Property was newly refurbished, which did not appear to be the case.

2.8 The Tribunal then afforded an opportunity to the Applicant to advise which of circumstances were relevant to each of the provisions of the Code of Practice she said had been breached. During the course of her submissions, she advised that she believed there to have been breaches of paragraphs 85, 87, 90, 91, 94, 108, 111 and 113 of the Code of Practice. The precise circumstances relied upon by the Applicant are dealt with below in the reasons for the decision. She confirmed that the receipts lodged represented the costs she had incurred as a result of the breaches of the Code of Practice. The deposit had since been returned.

2.9 The Tribunal then heard from Ms Smith. She confirmed that she was a senior manager employed by the Respondent. She was involved with the management of staff and supported the employee responsible for management of the Property. She firstly raised an issue about the provisions of the Code of Practice relied upon by the Applicant. She referred to what appeared to be a second copy of the Letting Agent Code of Practice Notification Letter dated 6 February 2020, accompanying the application, which specified paragraphs 73, 85, 89, 90, 94, 108 and 111 of the Code of Practice. She submitted that the circumstances should only consider these provisions as opposed to those highlighted by the Applicant. The Tribunal advised that she would be given an opportunity to address all the provisions mentioned by the Applicant in writing and orally, under reservation of the Tribunal determining which should be considered in terms of any breach.

2.10 Ms Smith advised that she believed the issues raised by the Applicant in her email of 25 August 2019 should not be held to be relevant as they were all addressed in a timeous fashion. She then went on to address the specific provisions of the Code of Practice with reference to the circumstances of the Application.

2.11 Ms Smith confirmed that the tenancy agreement between the Applicant and landlord was the standard model agreement provided by the Scottish Government in relation to Private Residential Tenancies. It had not been modified in any way in terms of the obligations of the Respondent in respect of repairs. She confirmed that the agreement with the landlord required his consent to all repairs required with the exception of emergency repairs needed to ensure the Property met the repairing standard, up to a value of £150.00.

- 2.12 In relation to paragraph 85 of the Code of Practice, she advised that the Respondent carried out pre-tenancy checks. The Respondent had only assumed management of the Property prior to the Applicant taking occupation and had worked with the landlord to bring the Property up to the required standard. They had kept relevant records of the work done and had appropriate systems for this in place.
- 2.13 In relation to paragraph 87 of the Code of Practice, Ms Smith advised that the Respondent operated an emergency repair telephone service. The Applicant had not contacted this but a voicemail had been received on 8 November 2019 relating to the infestation of mice. This had not been reported as an emergency. She highlighted paragraph 40 of the tenancy agreement imposing a responsibility upon the Applicant to address any infestation within the Property following the first week of any tenancy.
- 2.14 In relation to paragraphs 89, 91 and 94 of the Code of Practice, Ms Smith confirmed that instructions had been taken from the landlord regarding repairs, the intended action had been communicated to the Applicant and she had nothing further to add beyond the written representations lodged.
- 2.15 In relation to paragraphs 108, 111 and 108 of the Code of Practice, Ms Smith highlighted the volume of email correspondence between the parties and refuted any suggestion that the Respondent had attempted to manipulate the Applicant into leaving the property. Rather, allowing her to leave early was offered as a gesture of goodwill. No complaint regarding any contractor or tradesman had been received.
- 2.16 Ms Smith concluded by advising she believed the costs which the Applicant sought repayment of were excessive. She considered the refund of rent and the cost of hotel accommodation to be a duplication. Further, the hotel accommodation receipts appeared to show double or triple rooms booked for a single occupant. The costs incurred as travel were as a result of the Applicant choosing to make those journeys. The tenancy ended on 30 November 2019 and no costs should be considered after that date.
- 2.17 The Applicant was given an opportunity to answer any matters raised. She advised that the costs she had incurred were necessary. She had booked the hotel accommodation available which was required as she had nowhere else to stay in Edinburgh. She had paid rent for a period from 9 November 2019 when she had not occupied the Property for the full month. She had only been able to find an alternative Property to let on 7 December 2019.

3. Findings In Fact

- 3.1 The Applicant entered into a tenancy agreement in respect of the Property which commenced on 23 August 2019 and ended on 30 November 2019.
- 3.2 During this period of let, the Respondent acted as letting agent for the landlord.
- 3.3 The Applicant notified the Respondent of repairing issues by email and telephone throughout the period of let.
- 3.4 On 25 August 2019, the Applicant notified the Respondent of a number of issues with the Property following her taking occupation, including the operation of the fridge freezer and a blockage in the kitchen sink.
- 3.5 On 10 September 2019, the Applicant notified the Respondent of an issue with the floorboards within the Property.
- 3.6 On the 20 October 2019, the Applicant notified the Respondent of an issue with a mirror falling off a door.
- 3.7 On 22 October 2019, the Applicant notified the Respondent of an issue with a blockage in the bath.
- 3.8 On 7 November 2019, the Applicant notified the Respondent of an issue with mice within the Property.
- 3.9 The Applicant did not use the emergency telephone number provided by the Respondent to report any repairs.
- 3.10 The Applicant instructed Aacorn Pest Control to inspect the Property following their details being provided by the Respondent.
- 3.11 The Applicant was responsible for the instruction of Aacorn Pest Control in terms of paragraph 40 of the written tenancy agreement.
- 3.12 The Respondent responded timeously to all reports made by the Applicant.
- 3.13 The Respondent sought consent from the landlord in respect of all repairs necessitated by the reports of the Applicant, in accordance with the agreement between the Respondent and the landlord.
- 3.14 No complaint was made by the Applicant to the Respondent regarding any contractor or tradesmen.

4. Reasons For Decision

- 4.1 Before turning to each of the relevant provisions within the Code of Practice, the Tribunal must first address the issue raised by Ms Smith in terms of the apparent discrepancy between the specific provisions mentioned in the Letting Agent Code

of Practice Notification Letter and those relied upon by the Applicant during the hearing. Given that the same facts are relied upon by the Applicant and the provisions mentioned at the hearing fell within the same sections of the Code of Practice, the Tribunal considers it in the interests of justice to consider whether a breach of any of the provisions highlighted by the Applicant, both orally and in writing, has occurred.

4.2 Paragraph 73 of the Code of Practice is as follows:-

If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

The Tribunal considers that the Respondents have managed the Property in accordance with their agreement with the landlord and the tenancy agreement. Essentially, the Applicant's complaints relate to the number of repairing issues she reported, the standard of the Property and the time taken to rectify any issues. It is clear from the correspondence between the parties that the Respondents notified the Applicant of the requirement upon them to obtain the landlord's consent before instructing any work within the Property. Reference is made to the email from Ms Smith to the Applicant dated 26 August 2019. Furthermore, it is the landlord upon whom repairing obligations lie, both in statute and in contract. Further comment will be made regarding this later.

4.3 Paragraph 85 of the Code of Practice is as follows:-

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.

The Applicant submitted that she did not believe a pre-tenancy check had been carried out given the issues raised with the Property. Furthermore, the issues with the fridge freezer and the floorboards took ten days to remedy. The Tribunal has accepted the records lodged by the Respondent as evidence of the work carried. The Tribunal has also noted the speed at which the Respondents replied to the emails from the Applicant raising issues, with responses generally being made within 24 hours and the need to obtain instruction from the landlord often being highlighted. From the Applicant's email of 25 August, it would appear that many of the issues raised are of a minor cosmetic nature which may not have been apparent during any pre-tenancy check, as indicated in the Respondent's reply although the Tribunal has not given any consideration or made any finding as to whether any issue complained of by the Applicant constituted a breach of the repairing standard.

4.4 Paragraph 87 of the Code of Practice is as follows:-

If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents, if that is part of the service) and for giving contractors access to properties for emergency repairs.

The Tribunal accepted the position of the Respondent that they operated an out-of-hours telephone line for the specific purpose of reporting emergency repairs. This was not challenged by the Applicant.

4.5 Paragraph 89 of the Code of Practice is as follows:-

When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

As stated above, the Respondent clearly articulated the agreement in place with the landlord with the Applicant being advised that consent was being sought for any work. There was no evidence before the Tribunal that this agreement was not being followed.

4.6 Paragraph 90 of the Code of Practice is as follows:-

Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

Paragraph 91 of the Code of Practice is as follows:-

You must inform the tenant of the action you intend to take on the repair and its likely timescale.

Dealing with these two provisions together, the Applicant submitted that the time taken to replace the fridge freezer was neither prompt nor appropriate given its urgency and that timescales given by the Respondent were not adhered to. From the correspondence lodged by the Applicant the Tribunal notes that a contractor instructed to attend to the fridge freezer failed to attend. The Tribunal cannot identify a specific issue raised by the Applicant which was not acknowledged by the Respondent with time scales being provided. The Tribunal does not consider that an issue not being addressed within the initial timescale provided instantly amounts to a breach, particularly if that appears to be as a result of a factor outwith the Respondent's control.

4.7 Paragraph 91 of the Code of Practice is as follows:-

You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.

The Applicant submitted that she had raised the issue of the service provided by Aacorn Pest Control. The Tribunal notes that she was responsible for their

instruction and this would therefore not fall within the responsibility of the Respondent.

4.8 Paragraph 108 of the Code of Practice is as follows:-

You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.

Paragraph 111 of the Code of Practice is as follows:-

You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.

Paragraph 113 of the Code of Practice is as follows:-

The 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.

The Tribunal has considered the above provisions together given that they all relate to communication between the parties. The Applicant had submitted that the Respondent had failed to reply to her enquiries or raising of issues within a reasonable timescale and that responses had not dealt with issues as fully as possible. She submitted that she felt pressured into returning keys when an agreement with regards to compensation or resolution of her complaints could not be reached. Finally, she accepted she had not made a formal complaint about a contractor but she believed that the Respondent had conspired with the contractors and she was not told she could use anybody else. The Tribunal took this to be a particular reference to Aacorn Pest Control. Whilst it is curious they would not provide the Applicant with a report that was later given to the Respondent, the Tribunal accepts that no formal complaint was made to the Respondent and, in any case, they had been instructed by the Applicant. With regards to any potential breach of paragraphs 108 and 111 of the Code of Practice, the Tribunal has accepted the correspondence lodged as indicative of the approach taken by the Respondents. It appears to the Tribunal that all issues raised by the Applicant were acknowledged quickly and in an appropriate manner. Indeed, it is noted by the Tribunal that an email from the Applicant to the Respondent dated 19 September 2019, described the employee of the Respondent responsible for the management of the Property as “amazing”. When the lack of resolution was taken by the Respondent to be a formal complaint, this appears to have been escalated appropriately and responded to.

4.9 As stated above, it appears to the Tribunal that the grievances raised by the Applicant related to the standard of the Property, as perceived by her. In the present application, it is not for the Tribunal to examine whether or not each of these issues represented a breach of any contractual or statutory repairing standard. It is evident that the Applicant raised a significant number of issues and, equally, the Respondent responded to all of these. The Tribunal is of the opinion that the present application is somewhat misconceived in that the Applicant's frustrations appear to be around alleged failures to obtemper obligations that fall upon the landlord. There is no evidence before the Tribunal that the Respondent has failed in their duties under the Code of Practice or their agreement which binds them as agent of the landlord. A separate set of remedies exist for a tenant aggrieved by any potential breach of repairing duties which does not form part of the present application.

In terms of section 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.



Alastair Houston
Legal Member and Chair

Date 22 October 2020