

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision on an application made under Section 48(1) of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/21/2687**

**2/2L North George Street, Dundee DD3 7AL  
("the Property")**

**The Parties:-**

**Mrs Taiwo Mene, 26 Lytton Street, Dundee DD2 1EU  
("the Applicant")**

**Grant Property Management Solutions Limited, 14 Coates Crescent, Edinburgh EH3 7AF  
("the Respondent")**

**Tribunal Members:  
Graham Harding (Legal Member)  
Helen Barclay (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 application determined that the Respondent had breached paragraphs 17, 18, 21, 23, 26, 38, 46, 62, 68, 69, 70, 71, 73, 75, 85, 90, 91, 93 and 108 of the Letting Agent Code of Practice and further determined to make a Letting Agent Enforcement Order.

The decision is unanimous

### **Introduction**

In this decision the Housing (Scotland) Act 2014 is referred to as "the 2014 Act"; the Letting Agent Code of Practice is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

The Respondent's duty under section 48(1) of the 2014 Act to comply with the Code arises from the date it came into force namely 31 January 2018.

1. By Application dated 28 October 2021 the Applicant complained to the Tribunal that the Respondent had breached Paragraphs 16, 17, 18, 19, 21, 23, 24, 26, 29(d), 32(k) (l) (m), 38, 46, 62, 67, 68, 69, 70, 71, 73, 75, 85, 89, 90, 91, 93, 94 and 108 of the Code.
2. The Applicant provided the Tribunal with a copy of notification to the Respondent of its failure to comply and evidence of service. The Applicant also provided the Tribunal with photographs, email log and a copy of the tenancy agreement.
3. By Notice of Acceptance dated 7 December 2021 a legal member with delegated powers referred the Application to a Tribunal and a Case Management Discussion (“CMD”) was assigned.
4. The Respondent submitted written representations to the Tribunal by email dated 12 January 2022 and the Applicant both parties submitted further documents at the request of the Tribunal during the CMD.

### **The Case Management Discussion**

5. A CMD was held by teleconference on 7 February 2022. The Applicant attended in person. The Respondent was represented by Ms Diane Simpson and Mr David Farmer.

### **Summary of Submissions**

6. The Tribunal asked the Applicant to provide an outline of her complaint in respect of each alleged breach of the Code and indicated that the Respondent would be given an opportunity to answer the Applicant’s allegations.

#### **Paragraph 16**

7. The Applicant submitted that all the information she had been given about the property had been wrong and that the Respondent was in breach of Scottish Housing Law. The Applicant was unable to provide the Tribunal with any more specific examples of ways in which she considered the Respondents had failed to conduct its business that did not comply with relevant legislation. For the Respondent Mr Farmer submitted that the Respondent did comply with all relevant legislation and that the Applicant’s complaint lacked specification.

#### **Paragraph 17**

8. The Applicant said that the Respondent had not been honest with either herself or the landlord about the condition of the property when she and her family moved in. She explained that by not telling her about the collapse of the kitchen ceiling and the other issues the Respondent had

not been transparent or fair. She said she had been misled. Had she been told in advance of moving in she would have had a choice to make.

9. For the Respondent Ms Simpson said that her colleague had inspected the property the day before the Applicant moved in and had been advised that the leak from the upstairs property had been fixed and that all that was outstanding was the reinstatement of the kitchen ceiling. She accepted that had not been communicated to the Applicant but that she had not been misled.
10. The Applicant said she had reported the problem with the fridge and the other issues on 22 September and it took six or seven days for someone to come to look at the problem. For the Respondent Mr Farmer accepted it had taken too long to respond to the complaint. It had then transpired that there was no gas in the fridge and it needed to be replaced. He explained that the landlord had decided not to have the Respondent order and install a new fridge but that the landlord herself had a fridge that she would provide. This had led to further delay for which the Respondent was not responsible.
11. The Tribunal queried what checks the Respondent carried out prior to marketing the property or prior to a tenant moving in with regards to the condition of items such as the fridge, oven and hob. Ms Simpson advised the Tribunal that the inspector would check that power was going to the item but no check was carried out as to its functionality.
12. The Tribunal queried what check would be made with the electric shower and Ms Simpson advised it would be switched on and said that she had been surprised to hear that it had been spraying out water when turned on by the Applicant on moving in. She had it noted the fault had been reported on 28 September 2021. The Applicant disputed this and said that the fault was first reported on 21 September. She said she had first spoken to Megan and then to Angela and had then kept calling Greg but he did not answer. For the Respondent Mr Farmer apologised for the delay in responding to the Applicant's complaints.
13. The Applicant went on to say that on moving in to the property she had discovered green mould in the hallway and a damp smell. She said she had to clean it off. For the Respondent Mr Farmer again apologised although noted that the Applicant had not submitted any photographs of the mould on the wall. He also advised the Tribunal that there had been issues with "Greg" who was no longer with the company.
14. The Applicant went on to explain that she and her children were asthmatic and the dust from the hole in the kitchen and the damp and mould had affected their health. She also said that when a service engineer had attended at the property to carry out a monthly check of the fire alarm, he had told the Applicant that the hole in the ceiling had been there for over a month. For the Respondent Ms Simpson expressed some surprise at this

and said that she would have expected the service engineer to have reported such an issue back to her.

15. Ms Simpson went on to advise the Tribunal that the property was empty from the end of June 2021 and marketing would have commenced in June with the marketing video being prepared in early July.
16. The Applicant went on to advise the Tribunal that there had been water coming from the wall at the entrance to room 3. She thought it had been coming from the ground up. She said she had tried to open the window but had been unable to do so. For the Respondent Ms Simpson said that she had not been made aware of this issue. She thought it might have been condensation and was not aware of a leak coming from anywhere. She thought that the carpet had looked dry from the inventory photographs. She said she was also unaware of any issues with regards to the window latches being broken.

#### Paragraph 18

17. The Applicant said that the information available on the Respondent's website was not clear. It had not proved easy to contact them to report the issues on moving into the property. She said she had completed an online form but no-one had responded to it and when she had phoned the Edinburgh office, she had been referred to Dundee and there had been significant delays. For the Respondent, Mr Farmer confirmed contact numbers were provided on the company's website but apologised if the Applicant had experienced difficulty. Ms Simpson explained that there was a section of the website called "Meet the Team" which provided each member's name, email address and contact telephone number.

#### Paragraph 19

18. The Applicant submitted that the marketing video produced by the Respondent was either deliberately or negligently misleading as the property was not in the same condition when she moved into it. Ms Simpson explained the since the Covid pandemic empty properties were inspected once per month rather than fortnightly has they had been in the past. She explained that she did not have to hand the date when it had last been inspected prior to the pre-tenancy inspection. It was however accepted that the property was not in the same condition as it was in the video when the Applicant moved in.

#### Paragraph 21

19. Mr Farmer accepted that there had been delays on the part of the Respondent in dealing with the Applicant's concerns regarding the condition of the property.

### Paragraph 23

20. The Applicant submitted that the Respondent's staff had failed to comply with the Code with regards to issues around communication and repairs and even when she moved in there had been no inventory. Mr Farmer accepted that some of the Respondent's staff had failed to comply with the Code for which he apologised and he accepted there had been delay in dealing with the repair issues.

### Paragraph 24

21. The Applicant said that the Respondent had failed to maintain records and did not answer her calls and that staff had not been aware that they had been expected to call her.
22. For the Respondent, Mr Farmer disputed that there had been a failure to keep proper records but accepted that a quote for a new fridge had been sent to the landlord and that this had led to a delay.

### Paragraph 26

23. Mr Farmer confirmed that the Respondent did not have set timescales for responding to tenant's issues displayed on its website but confirmed that there was a duty to respond within a reasonable period and that the Respondent had failed to communicate properly with the Applicant and for that he apologised.

### Paragraphs 29 and 32

24. The Tribunal indicated to the Applicant that as these paragraphs related to the relationship between the Respondent and the landlord, they were not relevant to the Applicant's application. The Applicant accepted that this was the case.

### Paragraph 38

25. The Tribunal queried with Mr Farmer if he thought the marketing video was clear, accurate and not knowingly negligently misleading given the condition of the property when the Applicant moved in. Mr Farmer said that in the circumstances he had to question himself as to whether the steps taken by the Respondent had been procedurally sufficient. The Applicant said that she had asked if a friend could be permitted to view the property in advance of accepting the tenancy but that this had been refused and she had been told that only remote viewings were allowed. The Applicant questioned why this was. For the Respondent Ms Simpson said that whilst initial viewings were done online subsequent face-to-face viewings could be organised and she was unable to explain why this had happened.

Paragraph 46

26. The Tribunal noted from Mr Farmer that it was accepted that the Respondent had failed to advise the Applicant of the collapsed ceiling in the kitchen prior to her moving into the property.

Paragraph 62

27. The Tribunal noted that the tenancy agreement prepared by the Respondent did not at Clause 24 set out the correct periods of notice in accordance with the regulations laid down by the Coronavirus (Scotland) Act 2020. For the Respondent Ms Simpson stated that this had been down to human error and that the Respondent did normally use the correct current form of agreement.

Paragraph 68

28. The Applicant's position was that despite several requests she had not been provided with an inventory when she moved into the property. This was disputed by the Respondent who referred the Tribunal to the documents submitted on the morning of the CMD. The Applicant also referred the Tribunal to the documents submitted by her and claimed that what she had received on 27 September had been other documents but not an inventory. Ms Simpson explained that the inventory had the Applicant's electronic signature and confirmed that the time log submitted would confirm it had been signed by the Applicant.

Paragraph 73

29. Mr Farmer accepted that there had been a failure on the part of the Respondent to comply with some parts of the Code.

Paragraph 75

30. Mr Farmer again accepted there had been failings in this regard.

Paragraph 85

31. Mr Farmer submitted that the Respondent's position had been previously explained. There were systems in place but these could have been performed better.

Paragraph 90

32. The Applicant explained that she and her children were asthmatic. She said that on one occasion on 20 October 2021 she had suffered an asthma attack and an ambulance had been called. She said the paramedic had blamed the attack on the conditions in the property. She said her children had been off school during the first week of October and again she blamed

this on the dust from the hole in the kitchen ceiling and the damp and cold in the property. She spoke of pieces falling from the kitchen ceiling and landing on her husband's head. She spoke of being disturbed by people banging on her door and of signs of drug use on the common stairway. She explained she had asked the Respondent if she could move out of the property immediately but had been told she had to give 28 days' notice. She said that the Respondent lacked empathy for her family's situation. The Applicant went on to say that when she asked the Respondent for a reference to allow her to move house the Respondent did not provide this and she was unable to move.

33. For the Respondent Ms Simpson explained that there was no record of the heating at the property not working. She also pointed out that the Landlord had moved management of the property to another agent with effect from 21 October 2021.

Paragraph 91

34. Mr Farmer confirmed that the Respondent failed to provide the Applicant with any timescales for carrying out the repairs at the property.

Paragraph 92

35. It was agreed that no notice was given to the Applicant as regards access as no repairs were carried out.

Paragraph 93

36. It was accepted by Mr Farmer that there had been a delay in carrying out repairs and that there had been a lack of communication with the Applicant by the Respondent.

Paragraph 94

37. The Applicant said that there had been a call from a contractor regarding the fridge but then she had heard nothing further. She said she had spoken to Angela about it. For the Respondent Mr Farmer again explained the issue had been that the landlord had decided not to order a new fridge but to supply the property with a fridge she had herself and this had led to a delay. There was therefore no fault on the part of a contractor.

Paragraph 108

38. Mr Farmer again accepted that there had been a failure on the part of the Respondent to deal with the Applicant's enquiries and complaints within reasonable timescales.

## General

39. The Tribunal queried whether any cleaners had attended at the property between the end of June and September 2021. Ms Simpson advised the Tribunal that the property would have had a deep clean at the end of June but nothing after that. She thought that if the electric shower had been faulty at that time the cleaner would have noticed it.
40. Ms Simpson confirmed that the damage to the property caused by a leak from the upstairs property would be repaired under a claim on the landlord's insurance policy.
41. Mr Farmer agreed that it would have been preferable if on discovering the hole in the kitchen ceiling prior to the Applicant moving in the tenancy had not gone ahead and the Applicant had found another property.
42. Mr Farmer confirmed that the Respondent had offered to make an extra judicial settlement of payment of £500.00 to the Applicant. The Applicant said she had until she had seen the Respondents submissions been unaware of the offer. Before adjourning to consider what further procedure, if any. Might be required the Tribunal offered to give the parties an opportunity to further discuss settling matters extra-judicially but this offer was declined by Mr Farmer.
43. Following a short adjournment, the Tribunal queried with the Applicant if she would be in a position to lead any medical evidence with regards to the alleged effect the condition the property had on her and her family's health if the Tribunal continued the application to a hearing. After some discussion the Applicant said that she would not. That being the case the Tribunal concluded that it had sufficient information before it to allow it to make a final decision without proceeding to a further hearing.

## Findings in Fact

44. The Respondent acted as Letting Agent for the landlord RSGB Property Ltd until 21 October 2021.
45. The Applicant viewed the property online prior to agreeing with her husband to enter into a Private Residential Tenancy Agreement at a rent of £995.00 per month and a start date of 17 September 2021.
46. The Applicant relied upon the accuracy of the marketing video prepared by or on behalf of the Respondent in reaching a decision to accept the tenancy of the property.
47. The Applicant asked the Respondent if a friend could view the property before she agreed to the tenancy but this was refused.



48. The Respondent did not check if the electric shower, the fridge freezer, the hob, the oven or the heating in the property were in proper working order prior to the Applicant moving in.
49. At some point on a date unknown a water leak from the flat above caused the kitchen ceiling at the property to collapse.
50. The Respondent's property inspector who carried out the pre-check -in inspection on or about 15 September 2021 was aware that the kitchen ceiling had collapsed.
51. The Respondent failed to advise the Applicant of the kitchen ceiling collapse.
52. The Respondent prepared a photographic inventory of the. condition of the property.
53. The Respondent failed to respond within a reasonable time to the Applicant's complaints regarding the condition of the property.
54. The fridge freezer did not work.
55. The hob was broken.
56. The oven was faulty.
57. The electric shower was faulty.
58. The tenancy agreement did not comply with the requirements of the Coronavirus (Scotland) 2020 Act.

**Reasons for Decision.**

59. Mr Farmer quite fairly accepted that there had been failings on the part of the Respondent in dealing with the Applicant's complaints. He accepted that communication between some members of staff and the Applicant was not up to the standard expected. In this regard it was therefore apparent that breaches of Paragraphs 21, 23 26 38, 46, 73, 75, 85, 90, 91 and 108 were to all intents and purposes accepted as breaches by the Respondent.
60. It was also accepted that due to human error the wrong version of the tenancy agreement had been used thus incurring a breach of Paragraph 52.
61. With regards to Paragraph 16 of the Code the Tribunal was of the view that the Applicant had failed to provide sufficient specification as to the way in which the Respondent had failed to conduct its business in compliance with all relevant legislation. The Tribunal did not consider it was sufficient for the Applicant to state that all the information provided

was wrong and accordingly did not find the Respondent to be in breach of this paragraph of the Code.

62. With regards to Paragraph 17 the Tribunal was satisfied from the documents and oral submissions that the Applicant was misled into accepting the tenancy believing the property to be in far better condition than it actually was. It almost beggars belief that the Applicant was not made aware of the appalling state of the kitchen before moving in and given the opportunity to resile from the contract or negotiate a very much reduced rent. The Tribunal was also concerned to note that the Respondent made no effort in advance of the Applicant moving in to the property to ensure that all the white goods and other items such as the electric shower or central heating were in proper working order. It is a requirement of the tenancy that the property meets the repairing standard. The landlord is liable if it does not. As managing agent, the Respondent takes on that responsibility and, in that regard, they have in this instance failed. There was therefore a breach of Paragraph 17.
63. Although it may have been a little difficult for the Applicant to contact the correct people in the Respondent's office, its website does provide quite clear information as to who tenants should contact when they need to report a repair. Therefore, despite its other failings in respect of poor communication the Tribunal concluded that in this regard the Respondent was not in breach of Paragraph 18.
64. With regards to Paragraph 19 the Tribunal found that whilst it was satisfied that the Respondent did not deliberately provide misleading information it did by failing to ensure that all the white goods were in good working order and by failing to inform the Applicant of the damage in the kitchen the Respondent was negligently providing false information and was therefore in breach of this paragraph.
65. The Tribunal was not satisfied from the information provided that it could be said that the Respondent had failed to maintain appropriate records. The fact that the Respondent failed to respond to the Applicant's calls and emails does not in itself indicate a failure to keep records. The Tribunal did not consider the Respondent to be in breach of Paragraph 24.
66. The Tribunal considered the written and oral submissions made by the parties with regards to the inventory, there is no doubt that an inventory was produced but that it was not available at handover. The issue is whether it was at some point agreed and signed by the Applicant. Here the Tribunal has some difficulty. The signature on the document provided by the Respondent and said to be the Applicant's electronic signature bears no resemblance to the Applicant's usual signature as shown on her application. Furthermore, the Applicant said that the email she received on 17 September from Inventory hive did not have any inventory attached. She explained she had only signed to acknowledge receipt of the 5 documents attached to that email. The Tribunal then considered the Time Log provided by the Respondent. Although that seems to show the

inventory being sent on 17 September the log then appears to show the inventory being re-drafted and sent again on 22 September. The inventory itself appears to have been signed by the Applicant on 27 September. The Applicant was adamant she had never signed the Inventory and had repeatedly asked "Greg " to provide her with it. Given the complaints that the Applicant had made about the condition of the property the Tribunal had some difficulty in accepting the Respondent's position that the Applicant would have simply agreed the inventory without comment. Therefore, on balance the Tribunal preferred the Applicants position in this regard and found that the Respondent was in breach of Paragraphs 68 -71 of the Code.

67. Given that no access arrangements were made with the Applicant to carry out repairs to the property the Tribunal was satisfied that the Respondent was not in breach of Paragraph 93 of the Code.

68. The Tribunal was also satisfied that no contractor had carried out inadequate work and no supplier had provided defective goods and therefore the Respondent was not in breach of this section of the Code.

69. Having carefully considered the agreed facts and having taken account of all the written and oral submissions the Tribunal was in no doubt that the Respondent was in breach of numerous paragraphs of the Code. The poor communication and lack of urgency in dealing with the Applicant's concerns and complaints reflect badly on the Respondent. It appeared to the Tribunal that there was a remarkable failure on the part of the Respondent in expecting a tenant to move into a property in the condition the Applicant found it. The Applicant was unable to properly enjoy the full use of the property it may have had an adverse effect on her and her family's health but even if it did not the stress of living in the property with the risk of further pieces of the ceiling collapsing would have been substantial. The Tribunal considers that a financial award should be made to the Applicant to reflect the loss of amenity, the difficult living conditions and the stress experiences by the Applicant as a result of the Respondent's breaches of the Code and considers that a sum of £750.00 is an appropriate amount being somewhat less than one month's rent.

70. The Tribunal's decision was unanimous.

## **Decision**

71. The Tribunal having carefully considered the evidence presented to it at the Case Management Discussion and the written submissions of the parties finds that the Respondents are in breach of paragraphs 17, 18, 21, 23, 26, 38, 46, 62, 68, 69, 70, 71, 73, 75, 85, 90, 91, 93 and 108 of the

Letting Agents Code of Practice and therefore will make a Letting Agent Enforcement Order (LAEO) obliging the Respondent :-

1. To make payment to the Applicant the sum of £750.00.00 within 14 days of the date of service of the LAEO.

## **Appeals**

**A homeowner or property factor 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.**

Graham Harding      Legal Member and Chair

9 February 2022      Date

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Letting Agent Enforcement Order (LAEO): Section 48(7) of the Housing (Scotland) Act 2014 (“The Act”)**  
**Chamber Ref: FTS/HPC/LA/21/2687**

**2/2L North George Street, Dundee DD3 7AL**  
**(“the Property”)**

**The Parties:-**

**Mrs Taiwo Mene, 26 Lytton Street, Dundee DD2 1EU**  
**(“the Applicant”)**

**Grant Property Management Solutions Limited, 14 Coates Crescent, Edinburgh EH3 7AF**  
**(“the Respondent”)**

**Tribunal Members:**  
**Graham Harding (Legal Member)**  
**Helen Barclay (Ordinary Member)**

Whereas in terms of their decision dated 9 February 2022 The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that the Letting Agent has failed to comply with the Letting Agent Code of Practice (“The Code”) and in particular that the Letting Agent has failed to comply with the following aspects of the Code :-

Paragraphs 17, 18, 21, 23, 26, 38, 46, 62, 68, 69, 70, 71, 73, 75, 85, 90, 91, 93 and 108

The Tribunal now requires the Letting Agent to take such steps as are necessary to rectify the failure(s) listed above.

The Tribunal requires the Letting Agent to:-

1. To make payment to the Applicant the sum of £750.00.00as compensation for the loss suffered by the Applicant as a result of the failure to comply with the Code.

The Tribunal order that the payment specified in this Order must be completed within the period of 14 days from the date of service of this Order.

**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.**

**Please note that in terms of section 51(1) of the Act, a Letting Agent who, without reasonable excuse, fails to comply with an LAEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.**

Graham Harding      Legal Member and Chair

9 February 2022      Date