

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2014 (“the Act”) Section 48

The First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the regulations”)

Chamber Ref: FTS/HPC/LA/20/1643

Property: 342/1F3 Morningside Road, Edinburgh, Midlothian, EH10 4QL (“the property”)

The Parties: -

Mr Damon Main, 342/1F3 Morningside Road, Edinburgh, Midlothian, EH10 4QL (“the tenant”)

Drummond Miller LLP, Glenorchy House, 20 Union Street, Edinburgh, EH1 3LR (“the letting agent”)

Tribunal Members: - Simone Sweeney (Legal Member) Helen Barclay (Ordinary Member)

Decision of the Tribunal Chamber

The Tribunal unanimously determined that there has been no failure by the letting agent to comply with the terms of section 7, part 111 of the Letting Agent Code of Practice (“the Code”).

Background

1. By application dated 4th July 2020, the tenant applied to the Tribunal for a determination on whether the letting agent had failed to comply with section 7, part 111 of the Code imposed by section 46 of the Act.

2. Section 7, part 111 of the Code provides,

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

3. Specifically the tenant alleged that on two separate occasions, 29th January and 3rd April 2020, the letting agent had failed to comply with section 7, part 111 in their communications with him.

4. In respect of the earlier date, the tenant alleged that an officer for the letting agent had communicated with him a way which he found,

“intimidating, constructive and based upon false malicious allegations which left me in a state of distress and fear.”

5. On the later date the tenant alleged that the letting agent had,

“informed another occupant of the property to tell me to “stay away from the property” until the end of the government lock-down. This threat was Ms Duncan acting upon false allegations that I had somehow or was breaching Scottish lockdown-completely false and never looked into anyway.”

6. Added to his application, the tenant had provided written confirmation that he had intimated to the letting agent that an application had been submitted to the Tribunal. That communication was in the form of a copy email. Although not dated, it was attached to the electronic application form and provided a time, “14:43 (11 minutes ago)”. The Tribunal assumed that it was intimated on the same date as the application.

7. By a minute of decision, a legal member of the Tribunal with delegated powers of the President of the Chamber, referred the application to a Tribunal for determination.

8. A hearing, conducted by telephone, was assigned to take place on 30th October 2020.

9. On 30th October 2020, a hearing proceeded on the telephone. Reference is made to the direction of the Tribunal of that date. Following issue of that direction both parties returned further submissions to the Tribunal. The information ordered by the Tribunal was submitted by the letting agent.
10. At the hearing the tenant was in attendance. Representing the letting agent was solicitor, Miss Stratford.

Evidence of the tenant

11. The Tribunal focused on each of the incidents separately. It was explained that the property was a House of Multiple Occupancy (“HMO”). In his evidence the tenant submitted that he had resided at the property since 2007 and had lived there happily and without issue throughout that time. There were usually 4 tenants residing at the property at any time. At the time of each of the incidents in 2020 there were 4 residents at the property including the tenant.

Email of 29th January 2020

12. In relation to the incident on 29th January 2020, the tenant explained that he had received an email from an officer of the letting agent identified as, Ms Rutter. A copy of that email was before the Tribunal. It had been lodged by the letting agent as “*vouching*” for its written representations by email of 30th September 2020.
13. The email had been sent to the tenant on 29th January 2020 at 13:58. Insofar as relevant, it read,

“We have to remind you of the terms of your contract in particular condition 40 of your lease as noted below, as we have received a serious complaint that you are breaching (sic) these conditions. We respectfully request that you cease this behaviour with immediate effect as otherwise this may affect your future tenancy. We have advised your landlord of the situation.”

14. Sections 40 (i) and (ii) of the tenancy agreement between the tenant and his landlord followed within the email. They provided,

“Respect for Others

(i) The tenant agrees not to cause (nor allow other occupiers, guests or visitors to the accommodation to cause) nuisance, annoyance or disturbance to neighbours, or to the landlord, his agents or employees either in the accommodation or in the locality of the accommodation.

ii. The tenant undertakes not to commit or allow members of his/her household or persons visiting the accommodation to commit any form of harassment on the grounds of race, colour, religion, sexual orientation, disability or age which may interfere with peace and comfort or, or cause offence to, any other neighbours or members of their household either in their accommodation or in the locality of the accommodation.”

15. The tenant emphasised that he was not alleging that this communication was *“abusive”* in terms of section 7, part 111. Rather he found the communication threatening, alarming and confusing. He explained that it was received by him, *“out of the blue.”* There had been nothing prior to this email to suggest that anyone was complaining about him. Neither had the tenant any idea of the nature of the alleged complaint. This email was silent on that. Any communications from the letting agent before or after this email provided no further light on what he was alleged to have done or not done. Even now, months later, he remained in the dark as to how he was alleged to have breached his tenancy agreement.
16. The tenant explained that he felt upset, confused and alarmed on receipt of the email. He felt fear that his home was under threat for reasons which were unknown to him. He described the email to be, *“intimidating.”* Immediately he telephoned the letting agent. He spoke with Anne Marie Duncan, a colleague of Ms Rutter. He enquired what the complaint against him was but Ms Duncan refused to provide him with any detail.
17. The tenant submitted that he no longer resided at the property. He had received a Notice to Quit in June 2020. The ground for eviction on the Notice was that the lease was at a natural end. On receipt of the Notice the tenant had sought advice from

Shelter and found alternative accommodation. This was the only Notice of this type he had ever received since he had come to live at the property in 2007.

18. The tenant submitted that the email breached section 7, part 111 of the Code for two reasons; (i) the lack of specification of the nature of the complaint against him and (ii) use of the phrase, *"We respectfully request that you cease this behaviour with immediate effect as otherwise this may affect your future tenancy."* The tenant submitted that this phrase was threatening when considered against the lack of specification of the allegations against him.
19. The tenant submitted that he had made a complaint to the letting agent on the same date. It was submitted that the complaint was in respect of two matters; the nature and tone of the email of 29th January 2020; and an allegation that the letting agent had shared the tenant's personal information with another resident at the property.
20. It was alleged that the tenant had received text messages from another resident at the property. These messages were sent at unsociable hours and the tenant insisted that he had not shared his telephone number with the sender. Rather he alleged that the letting agent had shared his personal telephone number with another resident without the tenant's consent. Reference was made to a letter which the tenant had received from the letting agent dated, 3rd February 2020. Again this had been produced to the Tribunal by the letting agent's solicitor.

Communication on 3rd April 2020

21. With regards to the incident on 3rd April 2020, the tenant explained the background to the offending communication. At the beginning of April 2020, the tenant was contacted by staff at Aberdeen Royal Infirmary advising that his elderly father had been admitted to hospital with Coronavirus. The tenant's father resides alone. Understandably the tenant required to visit Aberdeen to take care of his father on his release from hospital.
22. In light of the lockdown restrictions in place across Scotland at that time, the tenant made enquiries with Police Scotland to check if travel from Edinburgh to Aberdeen was permitted in the circumstances. The tenant was assured that travelling to

Aberdeen for his purposes was acceptable as was returning to Edinburgh once his father's health had improved.

23. The tenant submitted that he intended to be away from the property for only a short period. He had booked Bed and Breakfast accommodation for 5 days. The tenant had provided to Police Scotland the address at which he intended to reside in Aberdeen. Moreover he informed the other residents within the property of his travel plans and the reasons for them.
24. The tenant submitted that during his stay in Aberdeen he received, "*aggressive email communications*" from the letting agent officers (namely Anne Marie Duncan and Jillian Rutter) enquiring where he was; whether he had shared his travel plans with his flat mates and; whether he had, "*cleared his movements*" with his flat mates.
25. Moreover the tenant alleged that these officers were in communication with the other residents at the property about his whereabouts. He alleged that the letting agent's officers had advised the residents that the tenant was breaching lockdown rules.
26. On 3rd April 2020 the tenant alleged that he received an email from another occupant, identified as, Ms Sofia Thuru. Within the email, Ms Thuru advised that the letting agent had contacted the other residents to advise that the tenant was breaching lockdown. Moreover the email from Ms Thuru advised that the letting agent had warned that the tenant should now,

"Stay away from the property at 342/3 Morningside Road until lockdown is over or the police would be called."

27. The tenant submitted that he was, "*flabbergasted*" to receive the email. He did not consider his movements to have anything to do with the letting agents. The allegation was inaccurate. There had been no breach of lockdown rules on his part. The timing of the email, at a time of personal distress and concern around his father's health aggravated the upset felt by the tenant.
28. The tenant alleged that the letting agent's message passed on through Ms Thuru's email was, "*highly threatening*." The tenant specified that this was a threat to his

home. He had nowhere else to reside. On receipt of the email he felt he was facing homelessness. The warning from the letting agent was, in the tenant's opinion,

"intimidatory, wrong, based on false accusation as well as threatening behaviour that was very unwelcome at a time of crisis."

29. The email from Ms Thuru was not before the Tribunal. The tenant thought that he might still have it but provided no undertaking to produce the email.
30. The Tribunal chair enquired if the letting agent had contacted the tenant directly about him leaving the property to travel to Aberdeen. The tenant referred to emails which he alleged to have received from Anne Marie Duncan about his movements. The tenant did not make these emails available to the Tribunal notwithstanding the Tribunal chair explaining the importance of this evidence given that this second allegation by him was denied by the property factor.
31. There was no evidence produced in support of the allegation that Ms Duncan and Ms Rutter had been communicating with the other residents that the tenant was breaching lockdown rules.
32. The tenant concluded that he found these communications intimidating and confusing. He did not consider his movements to have anything to do with the letting agent. Even if he had been accountable to the letting agent for his movements, there had been nothing unlawful about his actions.
33. At conclusion of this evidence the tenant advised the Tribunal that work commitments required him to leave the hearing. A brief adjournment was offered to allow the tenant time to deal with any urgent matters. The tenant refused the offer. He confirmed that he was content for the remainder of the hearing to continue in his absence.

Letting agent's response to MSP

34. From the papers before the Tribunal the remaining parts of the tenant's complaint concerned (i) an allegation that the letting agent had provided inaccurate and false information in writing to the tenant's MSP and (ii) that the letting agent's failure to

- investigate any of the complaints made against him had been used by the letting agent to influence the landlord to bring about an end to his tenancy at the property.
35. Within his written submissions, the tenant had explained that he had sought legal advice in June 2020 after receiving a Notice to Quit. On the advice of his solicitor he had raised a complaint with his MSP in June 2020 about the conduct of the letting agent in bringing about an end to his tenancy.
36. A copy of the email from the tenant to his MSP (Daniel Johnson) dated 16th July 2020 was made available to the Tribunal.
37. Within that email, the tenant referred to,

“the unhappiness of one of your constituents as to an unfair eviction notice as of 15th June....”

38. Further, within the email the tenant stated that,

“After consultation with a legal rep (Shelter Scotland) it would appear that they are acting with the law as to the eviction notice although my complaints about harassment were completely ignored and dismissed by Drummond Miller as false.”

39. The MSP had contacted the letting agent on behalf of his constituent on 17th July 2020 inviting the letting agent to respond to allegations of “intimidation” towards the tenant.
40. A written response had been issued to the MSP by an officer of the letting agent, namely Ian Hartley. Within the written response Mr Hartley had made false representations. The relevant communication was not before the Tribunal. However it was lodged by the solicitor for the letting agent in response to a direction dated 30th October 2020.
41. The communication from Mr Hartley was an email dated 21st July 2020. Insofar as is relevant the email provided,

“We act as a lettings agency and therefore act under instruction from our client the Landlord. The Landlord wished to terminate Mr Main’s lease and we have simply followed the law and issued the requisite notice. We have taken account of the current

restrictions and rather than issuing the contractual notice of 2 months we have allowed Mr Main 6 months to find a suitable alternative. The Landlord has also agreed to a high degree of flexibility in terms of allowing Mr Main to leave earlier if he can find something sooner without financial penalty. In terms of Mr Main's examples of intimidation I would comment as follows: ...Accusations via others for me to stay away from the property during lockdown on 3rd April and until lockdown is over (which left me in a state of real anxiety and fear). The communication to which we believe Mr Main refers are emails from his fellow tenants. As previously stated we stopped send (sic) emails at Mr Main's request. All tenants freely exchange their personal contact details. We were not party to any of this communication. We believe the concerns were around Mr Main's breach of the Scottish Government restriction on lockdown. We did advise his fellow residents that he did have a legal right to return to the residence on his return...Our role is to manage the property and we are the first point of contact for all tenants. Allegations of anti-social behaviour were received and in accordance with our duty to our client these were passed on to the Landlord. We then took instruction from the Landlord, our client."

42. In written submissions dated 3rd November 2020 lodged by the tenant in response to the direction of 30th October, the tenant disputed the terms of Mr Hartley's response. Rather than advise other residents that the tenant had a legal right to return to the property, the tenant alleged that,

"At no time did Anne Marie Duncan or anyone from Drummond Miller tell me I had a legal right...to come back to the property. Instead I was informed, via other occupants, to stay away and that Drummond Miller were in agreement with this or the police would be called."

43. Moreover the tenant took issue with Mr Hartley's email where it read,

"Allegations of anti-social behaviour were received and in accordance with our duty to our client these were passed on to the Landlord. We then took instruction from the Landlord, our client."

44. In his written submissions of 3rd November 2020, the tenant wrote,

“Its rather alarming that a ‘complaint’ about me was never investigated; a process never advised or instigated, and I was never given transparency whatsoever...yet my landlord Matson Properties was ‘engaged’ and I was invited to leave the property...Moreover, it would appear an entirely false complaint about me ‘breaching lockdown’ was received and this matter was discussed with occupants...but never with me...”

45. The tenant alleged that the letting agent had,

“engaged the landlord...about me on the basis of a complaint that I...know absolutely nothing about...”

and that this had impacted on the decision of the landlord to bring about an end to his tenancy in June 2020.

Evidence of the letting agent

Email of 29th January 2020

46. In response, Miss Stratford denied the allegation that the letting agent had breached section 7, part 111 of the Code on two occasions.

47. In relation to the content of the email of 29th January 2020, Miss Stratford denied that the content of the email was, *“abusive, intimidating or threatening”* in terms of section 7, part 111 of the Code.

48. Miss Stratford explained the background to the email. She submitted that her clients received complaints from other residents at the property about the conduct of the tenant.

49. Specific reference was made to the second sentence of the email which read,

“We respectfully request that you cease this behaviour with immediate effect as otherwise this may affect your future tenancy.”

50. Miss Stratford denied that there was anything within this sentence which could be deemed to be, "*threatening*." Rather it was factual. A breach of the tenancy agreement by a tenant could potentially affect his tenancy. Miss Stratford insisted that the email drew to the tenant's attention the particular sections of the tenancy agreement which her clients say were being breached by the tenant, specifically section 40, subsections (i) and (ii).
51. Miss Stratford admitted that she was unaware of the nature of the complaint made about the tenant. She claimed to not have access to this information nor had made such enquiries of her clients. Miss Stratford accepted that the email of 29th January 2020 was silent on the allegations against the tenant. Miss Stratford was unable to advise the Tribunal on what efforts her clients had made, if any, to investigate whether there was any merit to the allegation. Miss Stratford submitted that the email doesn't say one way or the other whether her clients accepted the allegations being made against the tenant. Miss Stratford invited the Tribunal to take the view that there was no evidence that her clients accepted the complaint being made against the tenant. Miss Stratford indicated that the residents complaining about the tenant had wished to remain anonymous.
52. Miss Stratford accepted that the tenant was offered no specification in this email as to what he was supposed to have done or failed to do. Further Miss Stratford conceded that this was not best practice and, "*in an ideal world, more specification would have been better*." However Miss Stratford invited the Tribunal to find that the lack of specification did not make the communication, "*abusive, intimidating or threatening*." Therefore the Tribunal should not find the content of the email to be a breach of section 7, part 111.
53. Miss Stratford also asked the Tribunal to find that the tone of the email could not be found to be, "*abusive, intimidating or threatening*" if the tenant was not behaving in a way which breached the terms of section 40 of the tenancy agreement. If the tenant was confident that his conduct at the tenancy was not a breach of section 40, then there was no threat to his tenancy.
54. The solicitor highlighted that there was nothing in the email of 29th January 2020 which suggested that the tenant was being asked to leave the tenancy.

55. Finally, in respect of this communication, Miss Stratford invited the Tribunal to accept that the words of section 7, part 111, “*abusive, intimidating or threatening*” should be interpreted as falling within their ordinary meaning. To that end, there was no breach of the section by the letting agent in the content of this email.

Communication of 3rd April 2020

56. In respect of the communications in April 2020, Miss Stratford had limited information with which she could assist the Tribunal. An undertaking was provided by her to produce emails from April 2020 which Miss Stratford considered relevant to her clients’ position and to which she was without access at the hearing. Reference is made to the terms of the Tribunal’s direction of 30th October 2020.

57. Miss Stratford denied that the letting agent had advised another resident at the property to tell the tenant to stay away from the property until the end of lockdown.

58. Miss Stratford submitted that the letting agent received communications from other residents at the property at the beginning of April 2020. They advised the letting agent that the tenant had left the property to travel to another area.

59. The letting agent’s position was that advice had been tendered to the other residents. That advice had been that in terms of the lease and the letting agents’ obligations, the letting agent was without any authority to tell the tenant to return to the property or, alternatively, that the tenant was not allowed to return.

60. Under cover of email of 3rd November 2020, the letting agent’s solicitor produced copy emails between the parties from 3rd to 6th April 2020 together with written submissions.

Emails between 3rd to 6th April 2020

Letting agent’s response to MSP

61. An email dated 3rd April 2020 was intimation to the letting agent from the tenant that he was away from the tenancy, explaining where he was and why and his intention to return to the tenancy. Within the email the tenant enquired,

“If you could accordingly (in respect of the above police advice) enlighten me to my rights please...”

62. The response (of the same date) from the letting agent read,

“ We do not have any other guidelines for you to follow other than what the Scottish Government issue as guidelines regarding COVID-19.”

63. The letting agent provided another email sent to the tenant by the letting agent’s officer, Anne-Marie Duncan, on 6th April 2020. That email read,

“Have you advised your fellow tenants of these plans?”

64. Within the written submissions accompanying these emails, the solicitor for the letting agent provided,

“The Tribunal has asked for further information as regards the correspondence between the Applicant and the Respondents around 3-6th April 2020. It is submitted to the Tribunal that it is clear at no time was the Applicant told not to return to the property.”

65. Finally it was denied by the letting agent that any inaccurate or false information had been provided to the tenant’s MSP. Miss Stratford’s written submissions of 3rd November 2020 provided,

“It is submitted that in no way did Mr Hartley state, as has been suggested by the Applicant, that the Applicant breached the lockdown regulations. Rather, what is written is by Mr Hartley is that, “We believe the other tenants concerns were around Mr Main’s breach of the Scottish Government restriction on lockdown.” It is submitted that this was not Mr Hartley stating that the applicant had breached the lockdown, but rather that the other tenants had concerns.”

Findings in fact

66. The Tribunal finds that the following facts have been established:-

67. That the tenant resided at the property between 2007 and 2020.
68. That the letting agent facilitates and manages tenancy arrangements between the tenant and the landlord.
69. That the letting agent sent an email to the tenant on 29th January 2020 in connection with the tenancy.
70. That the email intimated to the tenant that the letting agent had received a complaint that the tenant was breaching section 40 of his tenancy agreement with the landlord.
71. That the email provided no specification of the complaint nor identified by whom the complaint had been raised with the letting agent.
72. That the tenant made enquiries with the letting agent for details of the complaint.
73. That the letting agent has never provided to the tenant details of the complaint against him notwithstanding his enquiries.
74. That the tenant remains unaware of what behaviour on his part led to the complaint.
75. That the tenant received a Notice to Quit in June 2020.
76. That the Notice identified that the tenancy had come to an end as the ground for the tenancy being brought to an end.
77. That the Notice was served on the tenant by the letting agent on the instruction of the landlord.
78. That section 7 of the Code sets out, *inter alia*, the obligations incumbent upon a letting agent in their communications with landlords and tenants.
79. That section 7, part 111 of the Code prohibits the letting agent from communicating with landlords or tenants in any way which is abusive, intimidating or threatening.
80. That the tenant found the terms and tone of the email of 29th January 2020 threatening and intimidating.
81. That the tenant did not find the terms and tone of the email of 29th January 2020 to be abusive.
82. That, within the email of 29th January 2020, the tenant specified as intimidating and threatening the sentence which read, "*We respectfully request that you cease this behaviour with immediate effect as otherwise this may affect your future tenancy.*"

83. The tenant found this sentence intimidating and threatening in the context that the letting agents were suggesting his home was jeopardised for behaviour which was not disclosed to him.
84. That the email of 29th January 2020 sets out the fact that a failure to cease behaviour which contravenes section 40 of the tenancy agreement *may* affect the future of the tenancy.
85. That the email of 29th January 2020 does not suggest that the tenant should leave the tenancy.
86. That the email of 29th January 2020 confirms that the letting agent made the landlord aware of the complaint.
87. That there is nothing contained within the email of 29th January 2020 to suggest that the letting agent accepted or refused the complaint received.
88. That the tenant left the property in early April 2020 to provide care to his elderly father in Aberdeen.
89. That the tenant made all necessary enquiries with the relevant authorities ahead of his travels.
90. That Police Scotland provided assurance to the tenant that his travel plans were not in breach of lockdown rules in force in Scotland in early April 2020.
91. That the tenant intended to be away from the property for only a short period.
92. That the tenant shared his travel plans with the other residents at the property.
93. That the letting agent was aware that the tenant was away from the property in early April 2020.
94. That the letting agent was aware of why the tenant required to travel to Aberdeen in early April 2020.
95. That there was no breach of the lockdown rules in force in Scotland in April 2020 by the tenant.
96. That within the emails between the parties between 3rd and 6th April 2020 the letting agent did not intimate to the tenant that he should stay away from the property until the end of the lockdown period.
97. That the tenant contacted his MSP to complain about the conduct of the letting agent in July 2020.

98. That the MSP contacted the letting agent on behalf of the tenant and received a reply from Ian Hartley, an officer of the letting agent by email of 21st July 2020.
99. That, within the reply, Mr Hartley responded to specific allegations of intimidation made by the tenant.

Reasons for decision

100. The email of 29th January 2020 from the letting agent intimated to the tenant that a complaint had been received about his behaviour at the property. The email referred to section 40 of the tenancy agreement which sets out the obligations on a tenant to show respect to others and not to demonstrate anti-social behaviour. It was reasonable for the tenant to infer from the email that the complaint concerned an allegation of anti-social behaviour or failure respect others at the tenancy.
101. The complainer was not identified in the email. The email provided no specification of what the tenant was alleged to have done or failed to do. Yet the email made a request of the tenant to "*cease this behaviour with immediate effect.*" It is entirely reasonable for the tenant to have felt distressed and upset by this email. It is entirely reasonable that he should have sought detail of the complaint. It is entirely reasonable for the tenant to have expected specification from the letting agent of the behaviour particularly when the letting agent was requesting that the behaviour stop with immediate effect.
102. The upset and distress felt by the tenant on reading the email would have been heightened by the suggestion that the unspecified behaviour, "*may affect your future tenancy.*" The tenant had lived at the property since 2007 without issue. To have received this email without warning after 13 years would have been alarming. The tenant remains in the dark about the complaint against him despite requesting same from the letting agent. The letting agent's solicitor had no information on the detail of the complaint. The tenant claims that there was no investigation of the allegation against him. It is understandable that the tenant would have felt upset by the lack of transparency and the suddenness of the email. The tenant believes that the letting agent accepted the allegations of others without investigating the complaint against him fully and fairly. The tenant's feelings would have been more acutely felt when

he received a Notice bringing about an end to his tenancy only 2 months later. It is understandable that he believes there is a connection between this complaint to the letting agent and his tenancy at the property coming to an end. There is no evidence to support this proposition, however.

103. The letting agent is an established business of many years standing. It prides itself on being a professional and responsible letting agent. This is submitted by Mr Hartley in his email to the tenant's MSP.
104. The email to the tenant of 29th January 2020 was neither professional nor responsible. It did not leave the reader with an understanding of the nature of the complaint being made against him. The lack of specification is at best, poor practice. The letting agent is part of a long established firm of solicitors which can provide legal advice immediately. Miss Stratford conceded that greater specification would have been better. It was open to the letting agent to seek the advice of a solicitor on the content of the email prior to it being sent to the tenant. The content of the email would create distress to any recipient in the context of its unexpected arrival and the events which unfolded in the months, thereafter.
105. However poor practice on the part of the letting agent does not equate to a breach of section 7, part 111 of the Code.
106. Miss Stratford invited the Tribunal to interpret the words, "*abusive, intimidating or threatening*" within their ordinary meaning.
107. Against this, the tenant was asked to specify what he found, "*intimidating*" by the email of 29th January 2020. His response was that he believed that the letting agent was threatening his home at that time and requesting that he leave the property.
108. The email of 29th January is worded in a way which is wholly lacking in specification and fair notice to the tenant. It is abrupt and unprofessional. It is unsurprising that it caused upset and confusion. However, in assessing whether it meets a description as being "*threatening*" as was alleged by the tenant, we must apply that words as per its ordinary meaning. We find that when we do, this letter falls short of such a description being accurate.
109. There is nothing within the email of 29th January 2020 which indicates that the letting agent was threatening the tenant's home. Neither is there anything within the

email which confirms that the letting agent accepts the complaint. Rather the email indicates that should the offending behaviour not cease, there “*may*” be consequences for the “*future tenancy.*” The email may not have been pleasant for the tenant to read and the manner in which it is constructed is regrettable. However the email simply sets out (albeit in a poorly worded manner) the fact that a breach of the tenancy conditions carries consequences.

110. For these reasons the Tribunal finds no breach of section 7, part 111 of the Code in respect of the letting agent’s email of 29th January 2020.
111. Within the emails before the Tribunal from 3rd to 6th April 2020, there is no evidence that the letting agent warned the tenant that he must stay away from the property until the end of the lockdown period.
112. The evidence of the tenant was that this warning was intimated to him by another resident, Ms Sopie Thuru. The tenant submitted that he received an email from Ms Thuru on 3rd April 2020. Ms Thuru indicated that the letting agent had told her that the tenant was in breach of lockdown rules and that he was to stay away from the property until the end of lockdown. This email was never made available to the Tribunal. Even it were accepted that such a warning was, “*abusive, intimidating or threatening,*” the warning was given to the tenant by Ms Thuru. There is no evidence that it came from the letting agent.
113. In the absence of any evidence to the contrary, the Tribunal finds no breach of section 7, part 111 in respect of communications by the letting agent on 3rd April 2020.
114. The Tribunal finds no evidence that the letting agent had provided inaccurate and false information to the tenant’s MSP. The letting agent responded to the MSP in an email dated 29th January 2020 from Mr Hartley. The letting agent responded to specific allegations brought by the tenant including that the letting agent had told him to stay away from the property in April 2020. Mr Hartley made reference to “*concerns*” of other residents at this time, “*around Mr Main’s breach of the Scottish Government restriction on lockdown.*”

115. The Tribunal is satisfied that Mr Hartley was not himself making an allegation that the tenant had breached lockdown rules. Rather he was conveying what he understood to be the view of the tenant's flatmates.

116. There was no evidence before the Tribunal to uphold the tenant's allegation that the complaint had been used by the letting agent to influence the landlord to bring about an end to his tenancy at the property. Within the email of 29th January 2020 the letting agent confirmed to the tenant that the landlord had been advised of a complaint having been made against the tenant. In the email of 21st July 2020 to the tenant's MSP, the letting agent confirmed that "*allegations*" of anti-social behaviour were passed onto the landlord. Even if it were accepted that the landlord had been influenced by the allegations, the Notice, served on the tenant in June 2020, did not specify anti-social behaviour as a ground for bringing the tenancy to an end.

Decision

117. For the reasons provided, the Tribunal determines that the letting agent has not failed to comply with section 7, part 111 of the Code.

Appeals

118. 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 within 30 days of the date the decision was sent to them.

