



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(6) of the Housing (Scotland) Act 2014 and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (“the Procedure Rules”) Rule 95

Chamber Ref: FTS/HPC/LA/20/2507

Re: Property at 2/3 Langton Road, Edinburgh, EH9 3BN (“the Property”)

Parties:

Charles Wilson 342/9 Gilmerton Road, Edinburgh, EH17 7PU (“the Applicant”)

Northwood, 13 Comely Bank Road, Edinburgh, EH4 1DR (“the Respondent”)

Tribunal Members: Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision: (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent had not failed to comply with paragraphs 47, 85 and 120 of the Letting Agent Code of Practice under Section 46 of the Housing (Scotland) Act 2014; and therefore, no letting agent enforcement order should be made.

Background

1. On 2 December 2020 the Applicant lodged an application with the Tribunal seeking to enforce the Letting Agent Code of Practice against Northwood, 13 Comely Bank Road, Edinburgh, EH4 1DR.
2. In his application the Applicant alleged breaches of paragraphs 47, 85 and 120 of the Letting Agent Code of Practice.

3. In summary he alleged that the letting agent had :-

- a. Para 47 (lettings) after applying to rent the property at the advertised amount (£725 pcm) the letting agent told the applicant by phone that the first month's rent would be increased by £150 to £875 for October 2018 due to a low credit score; he submitted that additional charges are illegal according to the Scottish Government website.
- b. Para 120 (handling landlords and tenants' money and insurance arrangements) Requests for written reasons for the increase in the first month's rent had been ignored.
- c. Para 85 (management and maintenance) during the tenancy the applicant contacted the letting agent about several maintenance issues including, nails sticking out of the living room floorboards; no temperatures on oven dial; and internal doors not closing properly, communications were ignored or responded to with a dismissive attitude.

4. The Applicant therefore sought,

- a. £150 repaid in relation to the first month's rent of October 2018;
- b. £757.40 to be returned from the deposit which had been retained by the letting agent due to rent arrears. The applicant had refused to pay rent until the maintenance issues had been resolved; the applicant had moved out of the property because of the disagreement over these matters.

5. The Applicant had submitted the following documents with his application,

- a. tenancy agreement
- b. Email communication thread showing (i) request for information about additional rent; (ii) response from letting agent; (iii) second request for information
- c. Emails with photographic images of maintenance issues; together with response from letting agent
- d. Email with request to resolve issues; together with response from letting agent.

- e. Letter from applicant to letting agent notifying them of the complaint dated 1 January 2021
- 6. On 2 March 2021 the Tribunal made a Direction to parties, seeking from the respondent a copy of their Repairs procedure; Rent collection and handling procedure; and Communications procedure. The Respondent had complied? with the Direction.

Hearing

- 7. Both parties appeared at the hearing. Mr Stuart Miller and Mr Hugh Logan appeared for the respondent.
- 8. The Applicant had to be contacted by the tribunal clerk on the morning of the hearing, as he did not immediately attend. He attended the hearing before it commenced and advised that he was working that day on a new business venture; and that he would not be able to take part in the hearing. He advised that he had not been aware that he had to attend the hearing, he assumed that the matter would be decided on papers submitted. After some discussion with the applicant, he asked that the hearing be adjourned to another day. He advised that he was setting up a new business and had to be available during that day to attend to any emergency matter that arose. He advised that he did however consider that he had submitted all appropriate information to allow the tribunal to proceed to determine the matter. The respondent objected to the hearing being adjourned. They advised that they had both marked time out of their diaries and it would be time consuming and costly to have to reschedule the hearing. They were concerned that having listened to the applicant he may not attend any future hearing. They considered that all the necessary papers were before the tribunal to allow it to determine the matter and asked that the hearing proceed.
- 9. The tribunal refused to adjourn the hearing. They noted that the applicant had not intended to attend the hearing in the first place; he had had notice of the hearing and he had decided to prioritise his new business venture over the hearing. He considered that he had submitted all relevant papers. The tribunal decided that the

reason for the adjournment in relation to his new business was not a sufficient reason to grant the adjournment. On balance we considered that in accordance with the tribunal rules, we would be able to proceed to deal with the matter justly and without undue delay.

10. Paragraph 47: You must comply with all relevant legislation on the charging of fees and premiums or making loans to tenants and prospective tenants in the private rented sector.

11. The applicant had submitted his tenancy agreement. It showed what was to be paid for the first month's rent and rent thereafter. It showed that the tenancy started on 5 October 2018. The rent was shown to be £875 for the first month and £725 per calendar month thereafter. We had regard to the emails between the parties about the first month's rent dated 5 August, 11 September and 10, 11 and 25 November all 2020.

12. The respondent advised that the first month's rent was £150 more than subsequent months, this was set out in the tenancy agreement which showed that the tenancy started on 5 October 2018. The rent was shown to be £725 per calendar month.

13. In the application the applicant advised that he wrote to the letting agent enquiring why he and another tenant had to pay £875 instead of £725. It appears that the deposit was also £300 more than the sum set out in the tenancy agreement. The applicant advised that he understood that these sums were illegal charges and he asked that these sums be returned to him.

14. The respondent advised that the increased first month's rent was nothing to do with a low credit score. The property was a popular property; and easy to rent, where such circumstances exist it is a "landlords' market"; a letting agent will undertake a number of viewings for the same property, and in deciding who will get the property, prospective tenants often offer to pay more than has been advertised to secure the property. They advised that it was not uncommon for 10/20 people to come and view a popular property. When things were buoyant in Aberdeen for example properties were secured on an "offers over" basis. The increased first month's rent

was agreed when the applicant viewed the property and before the entry date. As can be seen the rent is set out in the tenancy agreement, it had been a joint tenancy and both tenants had offered the increased first month's rent to secure the property.

15. The respondent advised that it is not uncommon for tenants to offer a higher figure than the advertised rent; he advised that in the current climate due to the covid-19 pandemic, matters have swung the other way, and it is now the case that tenants will offer less than the advertised rate to secure a property. It is a case of market forces working. Tenancy agreements are not entered into at viewing, they are negotiated after the viewing. They disputed that these were premiums which had been added on.
16. With reference to the low credit score, the respondent advised that it was correct that the applicant had received a low credit score, however the outcome of that was that a further sum was requested as part of the deposit. These facts were reflected in correspondence sent to the applicant on 11 September and 11 November 2020 when they had emailed advising that they could see no illegal charges; and that the rental agreed was £825 for the first month and £725 thereafter. They also advised that the deposit was £1025.
17. The respondent advised that the issue of the increased rent was agreed before entry. There were two tenants in the property. It had never been raised as an issue with the applicant until the summer of 2020, around the end of July. It became obvious at that time that the applicant was having problems meeting the rental payments. Due to covid the landlord had agreed to reduce the rent for several months, the reduced rent period was coming to an end at the end of July 2020. The respondent asked the applicant if he wanted the respondent to approach the landlord and seek a further rent reduction period, they understood that he had sought advice from Living Rent (Scotland), and it was after this that they received a complaint from him.
18. The applicant's flatmate then gave notice that he was leaving and shortly after the applicant gave notice to leave.

19. The respondent advised that they considered that they had complied with all legislation on fees and premiums.
20. Paragraph 120: Handling landlords and tenant's money and insurance arrangements; You must be able to account immediately to them for all money held on behalf of clients.
21. In answering this question, the respondent submitted that they considered they had accounted for the money that they held on behalf of clients. When the applicant had written to them in August and November 2020, they had written to him to provide information and a response to his complaints, in their letters of 11 September, 11 and 26 November 2020.
22. The respondent advised that it was at the start of August 2002 that the applicant had sent them a complaint; they responded in their email of 11 September.
23. Paragraphs 47 and 120 were linked and on 3 separate occasions they had advised the applicant that the first month's rent was a rental payment and did not include a fee.
24. Paragraph 85: Carrying out repairs and maintenance; 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.
25. The applicant advised that during the tenancy he had contacted the letting agent about several maintenance issues, including nails sticking out of the floorboards; no temperatures on oven dial; and doors not closing properly inside the property. Communications were ignored or responded to with a dismissive attitude.
26. The respondent advised that there had been some issues raised during the covid-19 pandemic about maintenance matters, however they had not been raised until

there had been an issue with the applicant not paying his rent. The maintenance issues had been raised in the applicant's letter of 5 August 2020; the respondent had got permission from the landlord to deal with the matters; this included a new chair that had been obtained for the applicant. A contractor had been instructed for other maintenance issues however the contractor had not attended at the property. He advised that staff were scattered and working at home, and the running of the business had not been quite as good as they should have been; and the contractor not going out was not picked up by the letting agent; however, they also noted that the issues were not raised again by the applicant.

27. The respondent advised that he had instructed that the fan and floorboards be looked at. There had however been nothing notified to the letting agent about maintenance issues until 5 August. He advised that the maintenance issues were brought up on the back of a rent reduction negotiation. The applicant had asked for a 50% rent reduction, the owner advised that she could only afford to offer 30%. The owner had provided the discount to both tenants. The discount period had come to an end. The applicant did not ask for it to be extended, but at that point he put his letter of complaint in.
28. When the applicant left the property, he did not advise that he was leaving the property due to the maintenance issues.
29. The respondent advised that the property had been inspected in May 2019 and the floorboards had been highlighted then, he had been advised to nail in the floorboards himself he had not raised the issue again until August 2020. All other issues noted in May 2019 were carried out and addressed.
30. The applicant did not write to the letting agents to advise that he was withholding rent due to maintenance issues. The first that they had learned about the maintenance issues being linked to the applicant's leaving was when the application to the First Tier Tribunal was made. They considered that the applicant had left the property at the same time as the other tenant, as he could not afford the property, his income had dropped due to the covid-19 pandemic.

31. The deposit of £757. The respondent understood that this was claimed by the landlord and was released through the deposit scheme; they did not believe that the applicant had challenged this claim. The deposit had been returned on 7 December. The sum claimed from the deposit was all for outstanding rent arrears. The rent arrears started to accrue when the covid-19 pandemic started.
32. The applicant had moved out on 15 November 2020; he had handed in his notice in late October 2020. He had asked if he could leave at the same time as the other tenant and although this was less than the 28 days' notice this was agreed.
33. In terms of each of the alleged breaches, the respondent submitted that they did have appropriate controls in place. None of the maintenance issues were emergencies and the government guidance on covid was that they were only to deal with emergency issues. They submitted that they have procedures in place, and they follow them. They also submitted that while the maintenance matters notified in August 2020 had not been chased up, they were not emergency issues. They submitted that they had on one occasion sent someone out and they were not able to enter the property as one of them had been isolating. They believed that in spite of covid they had run a tight ship even though all the staff were scattered all over.
34. The respondent look after between 600/700 properties. When covid restrictions were put in place, they had complied with the new rules, set up remote working and set up rotas to organise contractors; pressure on staff was high.
35. They advised that since the letting agent code of practice had come into force this was the first time that they had had a case lodged against them.

Findings in Fact

36. The tribunal found the following facts to be established:-

- a. That the applicant was a tenant of the property 2/3 Langton Road, Edinburgh.
- b. The tenancy agreement commenced on 5 October 2018
- c. That the tenancy agreement detailed that rent was £875 for the first month and £725 thereafter.
- d. That the letting agents named in the tenancy agreement were Northwood Residential Lettings.
- e. That the respondent was acting as letting agents for the property which had been leased to the applicant.
- f. That the applicant wrote to the letting agents on 5 August 2020, raising issues regarding the first month's rent; maintenance issues including the the lack of temperature markings on the oven controls, nails in floorboards; and ill fitting inner doors.
- g. That the letting agent had sent an email on 11 September responding to the issues raised in the letter of 5 August 2020.
- h. That the applicant sent an email about illegal charges to the respondent on 10 November 2020.
- i. That the respondent replied to the applicant's email of 10 November on 11 November 2020.

Reasons for Decision

37. The tribunal found that the respondent's representatives came across as credible in their evidence. It is clear that the Respondent was acting in its capacity as the applicant's letting agent in the period after January 2018 and therefore the Letting Agent Code of Practice applies to the respondent in this matter.

38. Considering each alleged breach in turn, the Tribunal made the following findings:-

39. With regard to paragraph 47 we find that there has been no breach of this paragraph. We noted the terms of the tenancy agreement which had been entered into between the parties and we considered that the applicant must have agreed to pay a higher first month's rent before the tenancy commenced. The tenancy agreement was signed on 3 September 2018. The tenancy commenced on 5

October 2018. It was not until 5 August 2020 that the applicant had raised any concerns about the first month's rent, nearly two years later.

40. While we note that the applicant indicated that this additional rent was imposed upon him we preferred on balance the explanation of the respondent's representatives and we found them credible in their evidence. They advised that at the time of the property being rented out, it was a popular property, it was a landlord's market and rents were negotiated. We accepted this explanation. The respondent advised that this is common practice and advertised rent can be agreed up or down depending on the market. It appeared that the applicant had not raised the issue for two years and it corresponded to a time when he had struggled to continue to meet rental payments.
41. We note that the respondent confirmed that there had been concerns due to the applicant's low credit rating however, the respondent explained that this increased risk was addressed by agreeing to seek a higher deposit from the applicant. Their position was confirmed in their correspondence to the applicant explaining this.
42. We note that para 47 refers to fees and premiums. We did not consider that a fee or premium had been sought, given that it was a rental payment obtained, and this was referred to in the tenancy agreement. Section 90 of the Rent (Scotland) Act 1984 defines "premium" as any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge, we did not find that the first month's rent fell within this definition.
43. Accordingly, we did not find that there had been a breach of this paragraph.
44. In relation to Paragraph 120 we agree that in this application it is linked to the issues raised in paragraph 47, we found there to be evidence of the complaints and emails made by the applicant being responded to by the respondent. We considered that they responded in a reasonable timescale. We considered that they set out an explanation of matters in their correspondence. Accordingly, we do not find any breach of this paragraph by the letting agent.

45. With regard to paragraph 85 we did not find that there had been any breach of the code. The respondent appeared to be credible in terms of their explanation. They also appeared to have been reasonable in the approach they took to repairs. We note that there had been earlier inspections to the property. In the matters referred to in the application these had been notified by the applicant in August 2020. The response of 11 September 2020 deals with the issues and advises that someone will be out to look at the maintenance issues. The applicant however left the property shortly thereafter handing in his notice in October 2020.
46. In terms of the 5 August 2020 issues, we note that the respondent advised that they had instructed a contractor to attend the property, however for some reason the visit had not taken place. The respondent advised that their system had fallen down on this occasion. They had not checked that the visit had taken place, however they note that the applicant had also not chased up the matter. They accepted that there had been a failure in the contractor not attending, however they submitted that they believed that the failure had occurred due to the additional pressures of running the business during the covid crisis.
47. We noted that they are a letting agent who advised that they were managing over 600 properties; and they were managing all of these properties during the covid-19 crisis. We also noted that this was the first time they have received a complaint against them which had been taken to the First Tier tribunal. We consider that the covid pandemic has placed additional pressures on many aspects of life including businesses. We note that they had corresponded with the applicant about these matters; and they had instructed a contractor; and they had organised a new chair. While failure in procedures are unfortunate and could constitute a breach, we considered in this case, it was not sufficient in itself to constitute a breach of paragraph 85. We did not therefore find that there had been a breach of this paragraph.
48. In determining the appropriate order to make in this case, we do not consider that it would be appropriate to make any order.

Decision

Complaint not upheld.

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.

12 April 2021

Melanie Barbour Legal Member

Date