



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 48 of the Housing (Scotland) Act 2014 ('The Act').

Chamber Ref:FTS/HPC/LA/20/2087

33 Greenside Row Edinburgh, EH1 3AJ ('the Property')

The Parties:

Brandon Falconer residing at 33 Greenside Row Edinburgh, EH1 3AJ ('the Applicant and Tenant)

Braemore, 32 Charlotte Square, Edinburgh, EH2 4ET ('the Letting Agent')

Committee members:

Jacqui Taylor (Chairperson) and Frances Wood (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Letting Agent has not failed to comply with sections 80,81,82,90,91 and 108 of the Code of Conduct.

The decision is unanimous.

Background

1. The Applicant is Tenant of the Property in terms of a private residential tenancy of the property 33 Greenside Row, Edinburgh, EH1 3AJ.
2. The Respondent is the Letting Agent appointed by the Landlords, Dr Allan Brown and Mrs Elizabeth Brown, to manage the letting of the Property,
3. Bondsave Ltd trading as Braemore are registered letting agents.
4. By application dated 29th September 2020 the Applicant applied to the Tribunal for a determination that the Letting Agent had failed to comply with the following sections of the Letting Agent Code of Conduct ('The Code'):

Section 5: Management and Maintenance

Sections 80, 81, 82, 90 and 91

- Section 7: Communications and Resolving Complaints

Section 109

5. The Applicant had notified the Respondent of the alleged breaches of the Code of Conduct by email dated 4 September 2020.

6. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 20th October 2020 he intimated that he had decided to refer the application (which application paperwork comprises documents received on 29 September 2020) to a Tribunal.

7. An oral hearing by conference call took place in respect of the application on 15th December 2020.

The Applicant attended on his own behalf.

The Respondent did not attend and was not represented. The Respondent had not provided any written representations

The Respondent had been notified of the hearing by a letter from the Tribunal Administration dated 27 October 2020. The letter had been sent by recorded delivery post and had been signed for on 30th November 2020. The Tribunal were satisfied that the requirements of Tribunal rule 24(1) had been complied with and proceeded with the hearing.

The details of the application and the Applicant's written and oral representations are as follows:

Preliminary details

Mr Falconer explained that the original tenants of the property were Becky Hamilton, Ryan Leahy and Sam Shaw. He first became a tenant of the property on 18th December 2018. He had replaced Sam Shaw. He did not sign a new lease but he seems to recall signing a changeover form. On 28th August 2020 Sam Shaw was replaced with Jake Wallace and a fresh Private Residential Tenancy was signed commencing 28th August 2020. The current tenants are the Applicant (Brendon Falconer), Becky Hamilton and Jake Wallace.

Mr Falconer explained that he pays rent to the Respondent and he also reports repairs to them using their on line repairs form.

Section 5: Management and Maintenance

Section 80: If you hold keys to the properties you let, you must ensure they are kept secure and maintain detailed records of their use by staff and authorised third parties – for instance, by keeping keys separate from property

information and holding a record of the date the keys were used, who they were issued to and when they were returned.

Applicant's Written Complaint

On the 6th of January 2020 the Applicant had discovered a set of keys which had been left behind by a worker who had been instructed by Braemore to repair a broken fire alarm over a month prior. He had never been notified by Braemore that these keys had been lost nor did Braemore give any indication that they were aware they were lost until he notified them of this fact. In a phone call to Braemore's property manager, Fergus Walker, the Applicant was informed that the records for keys are checked on a monthly basis, and while he considers that that is far too long a period to determine if keys are being returned properly, there was obviously a breakdown in that system somewhere as those keys had been missing for at least a month without any person at Braemore noticing.

Applicant's oral representations

Mr Falconer explained that on 6th January 2020 he found a set of keys on top of the wardrobe in Ryan's bedroom. A contractor employed by Braemore had previously repaired the smoke alarm in Ryan's room and he believed that the contractor had left the keys on top of the wardrobe. He accepted that it was possible that the keys might not have been the Letting Agent's keys. He had not asked the previous tenant if the keys he had found could have been their keys. He did not know how many keys Braemore had for the property. He advised that Braemore had gained access to the property after 6th January 2020.

The Tribunal's Decision

The Tribunal were unable to make a determination as to whether or not paragraph 80 of the Code of Conduct had been breached by the Respondent as there was no clear evidence as to whether the keys that the Applicant had found on the wardrobe were the keys that had been held by the Respondent.

81. You must take reasonable steps to ensure keys are only given to suitably authorised people.

Applicant's Written Complaint

The Applicant had informed Braemore over the phone that he was uncomfortable with the way the keys to the Property were given to workers. The keys that were lost had been given to a worker who did not have permission to access the Property without the Applicant being there. Furthermore, several workers have entered the Property without the Applicant's permission or prior written or verbal notice.

Applicant's oral representations

Mr Falconer explained that when you complete the Letting Agent's online form intimating repairs you have to indicate whether or not you give authority for the Property to be accessed without the tenants being present. His complaint is in relation to the time the Letting Agent's contractor gained access to the Property to repair the smoke alarm. He believes that it was either Becky or Ryan who had completed the on line repair form. He does not have a copy of the completed form and cannot verify which box regarding access was ticked. He also advised that when the Letting Agent's contractor turned up at the Property one of the Tenants was in the Property and gave them access. He thinks that they did not authorize the Letting Agent's contractor to use the key to gain access to the Property.

The Tribunal's Decision

The Tribunal were unable to make a determination as to whether or not paragraph 81 of the Code of Conduct had been breached by the Respondent as there was no clear evidence as to whether access had been authorized or not.

82. You must give the tenant reasonable notice of your intention to visit the property and the reason for this. At least 24 hours' notice must be given, or 48 hours' notice where the tenancy is a private residential tenancy, unless the situation is urgent or you consider that giving such notice would defeat the object of the entry. You must ensure the tenant is present when entering the property and visit at reasonable times of the day unless otherwise agreed with the tenant.

Applicant's Written Complaint

On August 31st 2020 a worker claiming to be from Braemore entered the Property using a set of keys. Nobody living there had been informed that this person was coming either in writing or verbally. This was a breach of Clause 22.1 of the tenancy agreement "The tenant must allow reasonable access to the Let Property for an authorised purpose where the Tenant has been given at least 48 hours' notice'. The Applicant been told that Braemore contacted a prior tenant to arrange access but that tenant had not been resident since August 28th 2020.

Applicant's oral representations

Mr Falconer explained that on 31st August 2020 a contractor employed by the Letting Agent entered the property using the Letting agent's keys. He was attending the Property to carry out the Gas Safety Test and PAT test. Becky Hamilton was in the Property at the time and she told the contractor to leave. The contractor had sent Ryan (the previous tenant) a text to say that access was required. He accepted that the text could have been sent to Ryan before 28th August 2020 whist Ryan was still a tenant of the Property. Ryan had been named as the lead tenant on the previous lease.

The Tribunal's Decision

The Tribunal were unable to make a determination as to whether or not paragraph 82 of the Code of Conduct had been breached by the Respondent as there was no clear evidence as to whether or not Ryan had been a tenant of the Property when he had been sent a text requesting access.

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

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

Applicant's Written Complaint

There are several repairs and maintenance issues which have been raised and either ignored, delayed, or remain incomplete with no indication by Braemore of when they will be done. These include a leak in the bathroom which was initially raised on the 8th of October 2019 and which has only had a temporary fix which by that point had already damaged the property; mice issues which have never been addressed which were raised on 22nd of November 2019; the seal to the front door needing to be replaced and mould in the bathroom which was raised on the 16th of December 2019.

Applicant's oral representations

Mr Falconer explained that he had reported a number of repairs to the Respondent that had not been completed.

On 22nd November 2019 he used Braemore's online system to report that there were mice in the Property.

On 15th December 2019 he also used Braemore's online system to report that there was mould on the bathroom ceiling and a leak in the bathroom.

The leak had been repaired on 20th May 2020 after he threatened to withhold rent. However, the presence of mice in the property and the mould on the bathroom ceiling have never been actioned or repaired.

On 25th February 2020 he had reported that a repair was required to the front door as it was not operating properly and he needed to exert force to open it. The contractors attended the Property to carry out the repair and they had removed the insulation that had been around the door. At the time they had indicated that they would put in a job request for the insulation to be replaced. This work has still to be completed. He had not submitted a further repair request in respect of the door.

He explained that when he completed the online repair forms he received an automatic email response which explained the response timescales which depended on the category of repair. The automatic email response also clarified that the remedial work may be subject to the approval by the Landlords and the availability of qualified contractors. He explained that he had not submitted a separate Repairing Standard application to the Tribunal and he was not aware of what repairs the Letting agent could instruct without reference to the Landlord.

On 28th May 2020 the Letting agent had arranged for the tiles in the bathroom to be resealed. The Letting agent had advised him that they intended to install a wet wall and there had been further emails sent, asking for updates. There had been no reply from the Letting Agent and this further work had not proceeded. When asked whether the drip from the bathroom ceiling remained a problem, the applicant said it was occasional.

The Tribunal Decision.

The Tribunal were unable to make a determination as to whether or not paragraph 90 of the Code of Conduct had been breached by the Respondent as there was no clear evidence of the Respondents' written procedures or the level of repairs that could be completed without the sanction of the Landlord.

The Tribunal determined that the Respondent had not breached section 91 of the Code of Conduct as the email response that the Tenant had received when he had completed the online repair forms detailed the Respondent's response times and the fact that remedial work may be subject to the approval by the Landlords and the availability of qualified contractors.

108. 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.

109. You must provide landlords and tenants with your contact details including a current telephone number.

Applicant's Written Complaint

Paragraph 109 violation: Repairs and complaints are often ignored and we repeatedly have to chase up issues several times both over the phone and in writing. An email was sent on the 8th of October 2019 about the bathroom leak which was ignored. The issue was then raised through their repairs system by us on the 16th of December. On the 6th of January he sent an email inquiring about the status of this repair and was told it was being chased up, he sent a follow up email on the 23rd of January which was ignored. On the 20th of May he discovered a crack was forming on the living room ceiling and, due the urgency of the repair and lack of communication from Braemore, he threatened by email to withhold rent if it was not

attended to. A worker on behalf of Braemore was sent out the next day and performed a temporary fix but he was told over the phone on the 27th of May that there would be further works done to fully repair the damage caused. As of the 2nd of July he has received no further correspondence on this matter despite repeated requests for updates.

Applicant's oral representations

The Applicant advised that whilst he had stated in the application form that the Respondent had breached paragraph 109 of the Code he had made an error and his complaint is under paragraph 108 of the Code. He asked the Tribunal for permission to amend the application to replace reference to paragraph 109 with paragraph 108 of the Code. He pointed out that his email to the Respondent dated 1st September 2020 and the detail of his complaint, that formed part of his application, both explained that his complaint was in relation to failure to respond to enquiries and complaints within reasonable timescales.

He advised the Tribunal of the detail of a number of emails that he had sent to the Respondent and which he had not received a response to. He accepted that he had not intimated these particular emails to the Respondent. They had not been detailed in his application and the emails had not been produced to the Tribunal.

The Tribunal's Decision

The Tribunal agreed to amend the application such that reference to a breach of paragraph 109 of the Code of Conduct was replaced with paragraph 108 of the Code of Conduct as the detail of the application that had been intimated to the Respondent had it referred to the fact that his complaint was in relation to failure to respond to enquiries and complaints within reasonable timescales.

However, the Tribunal determined that they were unable to make a determination as to whether or not paragraph 108 of the Code of Conduct had been breached by the Respondent as the particular emails referred to by the Applicant in his oral representations had not been intimated to the Respondent and had not been produced to the Tribunal.

In all of the circumstances narrated above, the Tribunal finds that the Respondent has not failed in its duty under section 48 of the 2014 Act, to comply with Sections 80, 81, 82, 90, 91 and 108 of the Code of Conduct.

Appeals

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.

SignedDate 20th December 2020

Chairperson