

First-tier  
Tribunal for  
Scotland

(Housing and Property Chamber)

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

Chamber Ref; FTS/HPC/LA/20/2303

Re; Property at 12 Castlehill, Cupar, Fife, KY15 4HA (“the Property”)

Parties;

Mr. Faheem Parkar, 12 Castlehill, Cupar, Fife, KY15 4HA (“the Applicant”)

Rollos Law LLP, 67 Crossgate, Cupar, Fife, KY15 5AS (“the Respondent”)

Tribunal Members;

Yvonne McKenna (Legal Member)

Helen Barclay (Ordinary Member)

### DECISION

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

- (a) determine that the Respondent has failed to comply with the following standards, namely Paragraphs 26,45,86,108,110,112 and 113 of the Letting Agents Code of Practice (“the Code”) under section 46 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and the Letting Agent Code of Practice (Scotland) Regulations 2016 (the Regulations).
- (b) having found the Respondent has failed to comply with the Code, the Tribunal must issue a Letting Agent Enforcement Order (“LAEO”) as required by the Code.

**(c) The Respondent require to pay the Applicant compensation of £300 (THREE HUNDRED POUNDS) Sterling for the loss and inconvenience caused by the collective breaches of the Code, in terms of section 48 of the 2014 Act.**

**(d)The Tribunal order that the steps and payment within the LAEO must be carried out and completed by the Respondent within the period of 30 days from the date of service of this Decision and the LAEO.**

## **BACKGROUND**

1. On 30<sup>th</sup> October 2020 the Applicant lodged an application with the Tribunal seeking to enforce the Code against the Respondent.

2. In his application the Applicant alleged breaches of paragraphs 16,17,18,19,20,21,22,23,24,25,26,27,28,31,45,46,53,73,74,75,79,82,83,84,85,86,87,88,89,90,91,92,93,94,95,96,97,98,99,100,107,108,109,110,111,112,113,114,115,116,127,128 and 129 of the Code.

3. He alleged that he had suffered inconvenience and distress.

4. The Applicant served a Letting Agent Code of Practice Notification Letter on the Respondent by e-mail on 16<sup>th</sup> October 2020.

5. The Applicant has been aggrieved regarding water ingress at the Property as a result of a leak emanating from his neighbouring property at 10 Castlehill, Cupar. He reported the problem initially by e-mail on 30<sup>th</sup> August 2020. The repairs were finally completed on 18<sup>th</sup> December 2020, 111 days later.

5. The Applicant had also lodged another 2 applications to the Tribunal regarding the Property. One was under the repairing standard obligations of a landlord FTS/HPC/RP/20/2112 which was subsequently withdrawn by him. The other was a Rule 111 civil proceedings case against the Landlord under Tribunal reference FTS/HPC/CV/20/2173. This case had been decided on 11<sup>th</sup> February 2021 when an abatement of rent was ordered by the Tribunal in favour of the Applicant in the sum of £380. Neither party intend to appeal against this decision.

6. On 10<sup>th</sup> December 2020 in response to queries from the Tribunal the Applicant re-issued his Letting Agents Code of Practice Notification Letter. In this amended letter he alleged breaches of the following regulations of the Code. 17, 21 ,22,25,26,28,31,45,46,73,75,79,82,86,89,90,91,93,94,107,108,110,112 and 113.

7. On 30<sup>th</sup> December 2020 the Application was accepted by the Tribunal and the Notice of Acceptance of the Application was issued and a Hearing date allocated.

8. Prior to the Hearing both parties lodged written submissions and documentation including various e-mails exchanged between them.

### **THE HEARING 5<sup>TH</sup> MARCH 2021**

9. The Hearing took place by teleconference in view of the complications caused by the COVID-19 pandemic. The Tribunal members and the participants dialled in from separate locations. The Applicant was present. The Respondent was represented by Ms. Alice Hegarty Trainee Solicitor and was accompanied by two witnesses Ms. Suzanne Belmonte and Mr. Joe Douglas who are both Property Letting Administrators working for the Respondent.

10. The Legal Member explained the procedure that the Hearing would follow. It was suggested that as a matter of practicality that what the Tribunal proposed was for the Applicant to go through each separate alleged breach of the Code and then the Respondent would be invited to answer each breach individually rather than hearing the Applicant's whole case and then from the Respondents in answer. This course of action was agreed to by both parties. After each alleged breach it was explained that there would be an opportunity for the Tribunal to ask questions and for each party to have an opportunity to ask any questions of the opposing side and any witnesses who had given evidence in support of that alleged breach.

11. The Tribunal then proceeded to go through the various complaints of the Applicant. We required a break during the proceedings in order that the Respondent could produce to us the written complaints procedure and written repairs procedure. In addition, a copy of the Lease was lodged at our request.

12.

### **Section 2**

#### **SECTION 2 *Section 2: Overarching standards of practice***

**17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).**

In respect of this matter the Applicant stated that there had been a number of e-mails sent between himself and the Respondent. He maintained that he had not received responses from the Respondent in an open and transparent way and that his questions had not been answered. He asked on 7 occasions why a plumber had not been called out to the Property between 30<sup>th</sup> August 2020 and 25<sup>th</sup> September 2020. He said that the responses he did receive were evasive.

13. The Applicant was asked if he accepted that any delay in having the repair to the leak at the Property was not due to the Respondent. He said that he accepted that the Tribunal had already ruled in the civil action raised by him that as a Finding in Fact the Respondent took all reasonable steps to remedy the water ingress and carry out repairs as soon as reasonably practicable. His concern was the method of communication to him and the Respondent's delay in communicating matters to him.

14. The Respondent took evidence from Ms. Belmonte. She refuted that any of her communication had not been open and honest. She said that she had dealt with the Applicant as is her standard practice. She said that in relation to the delays in engaging a plumber that the property adjoining the Property was managed by factors, "Abbey Forth", and that all repairs and communication had to be dealt with by the Factors. She said that she had kept the Applicant apprised and updated throughout and that she could not instruct a repair on an adjoining property that the Respondent does not manage.

**15. 21. You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.**

In respect of this matter the Applicant said that his repairs were not carried out in a timely way. He notified the Respondent of a leak at the Property on 30<sup>th</sup> August 2020, and it was not until 3<sup>rd</sup> December 2020 that the matter was rectified.

Ms. Belmonte said that she kept the Applicant updated throughout in a timely fashion. There was a brief period of a week when she was on annual leave during early October 2020 when there was a delay in responding to the Applicant. The procedure for response over that period was that a response would be sent stating that she was out of the office and contact details were on the website for the various departments.

**16. 22. You must not unlawfully discriminate against a landlord, tenant or prospective tenant on the basis of their age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation.**

The Applicant said that according to the Respondent's website and in the tenancy agreement they undertake to help tenants to feel settled in and to fix any repairs quickly. His experience has been that they do not. He stated that he does not feel that he has been treated fairly and on a speculative basis he wonders if his race and ethnicity have been the reason. He accepted that he had no concrete evidence of that. He said that he is an Asian man and is of the view that he has been treated differently to others and does not know what the reason for that is. He has queried whether this is because he is an Asian/Indian living in Scotland.

Ms. Belmonte stated that she had not dealt with the Applicant in a way that could be described as discriminatory. She did not treat him differently at all in any way. Mr Douglas completely agreed that at no point had the Applicant been discriminated against and there was nothing in any of the written or verbal exchanges to show that the Respondent had been.

**17. 25. You must ensure you handle all private information sensitively and in line with legal requirements.**

The Applicant said that the Respondent had included reference to information about his neighbours in communications he had received from them. He said that in an e-

mail dated 16<sup>th</sup> October 2020 he had asked what was being done by the Respondent to protect his data and had not received a response.

He said that he does not intend to take any further action regarding this matter to the Information Commissioner as a breach of data issue as the Respondent said that they had the consent of the Applicant's neighbour.

Ms Belmonte said that on 1<sup>st</sup> September 2020 the Applicant's neighbour Mr. Roberts came into the office of the Respondent and provided his contact details and gave his consent for these to be used by the Respondent. She said that contact details were kept on file for as long as they needed to be accessed.

**18. 26. You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.**

The Applicant said that he had sent a formal complaint to the Respondent on 16<sup>th</sup> October 2020, and he did not receive a detailed response until 60 days after this communication was submitted when he received a reply from Mr. David Harley. The Applicant said that he remained unsatisfied with the position and that a complaint has been made to the SLCC. The SLCC have stipulated that he will require to await the outcome of this Tribunal process before the matter can be further investigated by them.

He was asked why he remained unsatisfied with the Respondent's response. He said that essentially, he had asked them to confirm that they had received proper customer service training along with training in data protection. He had been told by Mr. David Harley that his input was not required. He had asked for an apology and had been told that no apology was required. He had asked for compensation and had been told that the Respondent had not done anything wrong.

Ms. Belmonte said that there was not an unsatisfactory long period of delay in the Respondent replying to the Applicant's complaint. She said that in response to the e-mail of complaint from the Applicant dated 16<sup>th</sup> October 2020 that the complaints Partner with the Respondent had replied on 15<sup>th</sup> December 2020 and had apologised for any delay and had fully responded in detail to the complaints. The Applicant she said remained dissatisfied with the Respondent's position that the Respondent did not accept that they were blameworthy

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

The Applicant said that he had received an e-mail from Ms Suzanne Belmonte on 22<sup>nd</sup> September 2020 in which she called him aggressive. He said that it was his

experience that when he asked legitimate questions that he needed to be assertive and to ask the same question again if it was being ignored. He said that he needed to reduce the quantity of his e-mails as it was being suggested that he was bordering on aggression.

In response the Respondent referred to the chain of emails that had been produced by both sides and that there was entirely nothing contained therein which could be described as unprofessional or aggressive in any way.

Ms. Belmonte said that there was nothing unusual or different in these emails from the way she communicated with other tenants. She said that there was nothing in her correspondence which was aggressive in any way.

## **20. SECTION 3 Engaging landlords**

### **Terms of business**

**31. If you know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, you must not act on their behalf. In these circumstances, you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations.**

The Applicant said that he remained of the view that 3 and a half months to repair the leak was not a timely response in his opinion. It was pointed out to the Applicant that this section of the Code is about Landlord engagement. He accepted that this complaint under this section may therefore be irrelevant.

21.

## **SECTION 4 Lettings**

### **Giving correct information to prospective tenants**

**45. You must make prospective tenants aware of the Code and give them a copy on request, this may be provided electronically.**

The Applicant said that he did not receive a copy of the Code from the Respondent when he moved in. He said that he needed to find the Code himself. He did not recall at any stage being made aware of the Code by the Respondent and his evidence was that he was not made so aware. He said that on 16<sup>th</sup> October 2020 he asked for a copy of the Respondent's complaints procedure and did not receive this. He was not aware from the Code about what was supposed to happen when he made a complaint. He said that there was no mention of this in his Lease.

Ms Belmonte said that copies of the Code are available in the Respondent's office. She said that it was not mentioned in the Lease for the Property. She was asked if she mentioned the Code to the Applicant when he was a prospective tenant. She said that she could not specifically recall having done so as this was in 2019. She said that it would have been her standard practice to do so verbally.

**22. 46. You must not knowingly omit relevant information or evade questions from prospective tenants relating to the letting of the property in line with consumer protection legislation.**

The Applicant said that he asked 7 times over a number of weeks why a plumber was not instructed. He also referred to an e-mail sent by him to Jacqui Gordon on 11<sup>th</sup> February 2021 requesting information about his deposit and rent arrears and to which as at the date of the Hearing he had received no response.

The Tribunal informed the Applicant that this e-mail had not been lodged in advance of the Hearing and that we were not prepared to allow this to be submitted as a late production today

The Tribunal pointed out that this section of the Code was aimed at prospective tenants. The Applicant accepted that there were no questions that were evaded regarding queries at the beginning of the tenancy

23.

## **SECTION 5**

### ***Management and maintenance***

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

**75. Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.**

### **Rent collection**

**79. In managing any rent arrears, you must be able to demonstrate you have taken all reasonable steps to recover any unpaid rent owed to the landlord (see also section 8).**

The Applicant withdrew his complaints under paragraphs 73, 75 and 79 at the Hearing as he accepted that these had been dealt with already as part of his civil case.

## **24. Property access and visits**

**82. You must give the tenant reasonable notice of your intention to visit the property and the reason for this. Section 184 of the Housing (Scotland) Act 2006 specifies that at least 24 hours' notice must be given 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.**

The Applicant referred to a specific e-mail received from Mr. Joe Douglas dated 15<sup>th</sup> October 2020 at 4.59pm. This e-mail stated

“Good Afternoon Mr Parkar, I hope you are doing well. I’m just e-mailing you to keep you updated on proceedings as Suzanne is currently on annual leave.

The Landlord Mr. Thomas has chased up Abbey Forth and unfortunately is still waiting on a quote from the joiners, we have been chasing the company up as well. I appreciate that this situation is frustrating for both involved parties.

To my understanding I have been informed that you are currently vacant from the property, can you confirm if this is still the case? As myself and Mr. Thomas would like to come to the property tomorrow at 2 PM to investigate if any further damage has happened to the property over time due to the issue. Please advise if this does not suit. Kind Regards Joe Douglas”

The tenancy provides that 48 hours' notice is required. The Applicant said that he was only here being afforded less than 24 hours' notice. In the circumstances he reminded the Respondent of the timescales set out in the tenancy agreement.

In response to questions from Ms Hegarty the Applicant said that he thought that it was urgent. However, as the Respondent was not being timely to him, he said that he would follow the rules of the tenancy agreement. He said that this request was made when he had moved out of the Property for a period. He said that he would have made himself present however due to the strained relations between the parties. He agreed that although the tenancy agreement allows for 48 hours' notice to be given that this period could be worked around. He accepted that he was being asked for this consent.

25.

## **Carrying out repairs and maintenance**

**86. You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required, if you provide this service directly**



**on the landlord's behalf. Your procedure should include target timescales for carrying out routine and emergency repairs.**

Ms Hegarty accepted that the Respondent provided the service of repairs and maintenance on the Landlord's behalf. She referred to the tenancy agreement which states; -

“Repair Timetable

The Tenant undertakes to notify the Landlord as soon as reasonably practicable of the need for any repair or emergency. The Landlord is responsible to carry out necessary repairs as soon as is reasonably practicable after having been notified of the need to do so.

The Tenant must allow the Landlord reasonable access to the Let Property to enable the Landlord to fulfil their duties under the repairing standard (see the clause on Access for Repairs.)”

The Applicant said that apart from some vague comments on the Repairing Standard that repairs would be carried out in a reasonable period of time that no specific time scales were mentioned. He did not think that the vague comment about “Reasonably practicable” was sufficient.

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

The Applicant said that he wished to reiterate the points that he had made regarding paragraph 86.

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

Again, the Applicant relied on what he had said about paragraph 86 of the Code. He also said that the first date that work commenced at the Property was 3<sup>rd</sup> December 2020 which was over 3 months after he had reported the fault.

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

The Applicant said that he had asked on several occasions when the repair would be effected. All he was told was that the Respondent could not provide a timescale as they were not sure at that moment in time.

**. 29. 93. If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible**

The Applicant had nothing further to add and relied on what he had said in support of paragraph 90 and 91.

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

The Applicant said that he would have liked to have been given further information regarding the Respondent chasing up the Factors.

Miss Belmonte said that updates were provided to the Applicant as soon as they were received from the Factors and that she would communicate any information from the Factor to the Applicant as soon as she received this. She said that she was chasing the Factor every couple of days. She referred to the timescale log on this evidenced in the e-mails exchanged between the parties .

Ms Hegarty said that in relation to the repairs that this was dealt with under the the Applicant's Lease for the Property as previously referred to.

### **31. SECTION 7 *Communications and resolving complaints***

#### **Communications**

**107. You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act.**

The Applicant withdrew this alleged breach of the Code on the day of the Hearing.

**32. 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.**

The Applicant again relied on the fact that he had asked on over 7 occasions why a plumber was not being called out to the Property. In addition, he said that it was not a reasonable timescale for him to have made a detailed complaint on 16<sup>th</sup> October 2020 to the Respondent and for this only to be responded to in full on 15<sup>th</sup> December 2020. He said that most complaints procedures cite 28 days or a month for a response to be provided and the time taken here was inordinately long.

He said that it could be seen from the chain of e-mails produced by him that he was originally told that Heather Davidson would be dealing with his complaint. His original complaint had been e-mailed to Ms. Belmonte and he had copied in all the Respondent's partners. He heard nothing and asked every week for an update about his complaint. He said that someone had got back to him within the first 30 days. He said that he had spoken to Mr Joe Douglas to make sure the complaint had been received. He was told by Mr. Douglas that someone would get back to him. When he asked who was dealing with it, he was told that Heather Davidson had the complaint. He does not know what she did with the complaint for over a month. Eventually he had received the response from Mr. David Harley the Complaints Partner on 15<sup>th</sup> December 2020.

Ms. Belmonte said that all e-mails had been answered promptly. She said that the e-mail from Mr. Harley the Complaints Partner did deal with all the Applicant's complaint and referred to the delay. She said that she was of the view that the time taken for the response was reasonable.

**33. 110. You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.**

The Applicant said that he had not been made of the Code either as a prospective or as a current tenant by the Respondent.

Ms. Belmonte said that it was her usual practice to verbally inform tenants.

### **Complaints resolution**

**34. 112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.**

The Respondent had been asked by the Tribunal during the Hearing where the Letting Agent written complaints procedure could be found. Ms Hegarty initially said that this could be found on the Respondent's website under the Respondent's Terms of Business for private clients. She accepted that this was a convoluted procedure to be able to find this and it was not referred to on their website under Letting Agents. She accepted these General Terms of Business were for the private clients of the Respondent. The Landlord is a client of the Respondent. The Applicant is not a private

client of the Respondent. She said that new tenants were given a pack including a document entitled “Notes for New Tenants”. This document states.

#### “Problems/ Complaints

All Problems or complaints should be reported to our Property Letting Department immediately.”

35. The Applicant said that from what he had seen from the documents provided to the Tribunal there was no specific timescales for dealing with a complaint. He said that he had requested a copy of the complaints procedure on 16<sup>th</sup> October 2020 and that he had been advised of paragraphs 9.2 and 9.3 of the Terms of Business on 15<sup>th</sup> December 2020.

36. After the break in the Hearing for lunch Ms Hegarty returned to the Hearing and said that it had only just come to light that a, “Tenants Complaints Procedure” was approved in November 2019 and had not been implemented and it had not been uploaded onto the Respondent’s computer system. She said that a full investigation was ongoing as to why this had happened and why this had not been issued to the Applicant . She said that there had been no wilful disregard of the rules by the Respondent.

She produced this document to the Hearing and said that this was being sent out to all new tenants with immediate effect. She accepted that this was only with effect from 2pm that day. It was also noted that this procedure had an inaccurate address for the Housing and Property Tribunal and contained their old address.

37. This complaint procedure states that the complaint will be acknowledged within 5 working days and an initial response provided within 10 working days and an outcome within 21 working days. It also contains a right of review to Mr. Harley with the initial complaint to be submitted to Ms Heather Davidson Practice Manager.

38. The Applicant said that to produce this today was unsatisfactory and that had this been put in place for him he may not have needed to apply to the Tribunal.

39. Ms. Belmonte said that she has been on the “Letwell Course” (a programme specifically for Scottish letting professionals taking full account of the Scottish government regulation of letting agents and associated training requirements.) A further 6 members of staff in her office have also been through this course.

**40. 113. The procedure must also set out how you will handle complaints against contractors and third parties; any recourse to the complaints**

**procedures of a professional or membership body you belong to; whether you provide access to alternative dispute resolution services; if you are also subject to another regulatory body (for example the Scottish Legal Complaints Commission); and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure.**

The Applicant said that he was not sure that the Respondent's complaints procedure had any information regarding the Factors and The Respondent dealing with a Factor as this clearly caused a delay in his case. Apart from that fact he again referred to the fact that it had taken the Respondent 60 days to respond to his complaint.

Ms. Belmonte said that apart from the company who carried out the actual repair work at the Property (Middlemass Designs) that there were no third parties involved.

### **Submissions for the Applicant**

41. The Applicant referred to the fact that his complaint was not replied to in a reasonable period and that the whole process had caused him stress and bother.

He asked the Tribunal to take account of the e-mails that he had lodged where it was clear he was dealing with a number of different members of staff in the Respondent's office. He also asked the Tribunal to take account of the fact that the Respondent acknowledged he was not provided with the Letting Agents Complaints procedure and that the Terms of Business for private clients were difficult to find and navigate through their website.

He invited the Tribunal to take account of the fact that he has had a difficult experience and sought a written apology and compensation.

### **Submissions for the Respondent**

42. Ms Hegarty said that the Respondent is not liable to compensate or to apologise to the Applicant. She maintained that the Applicant's complaint was dealt with in a timely manner and that the Applicant was kept updated regarding all repairs and delays in a manner consistent with their usual practice. At no stage had the Respondent been unprofessional.

43. She said that the fact that the full tenants' complaints handling procedure in November 2019 was not uploaded onto the Respondent's computer system was not a wilful disregard and was due to a breakdown in communication in the Respondent's Letting Department.

44. She asked the Tribunal to accept that all prospective tenants were verbally informed of the Code. She said that the e-mail forwarded by the Respondent's Mr. David Harley of 15<sup>th</sup> December 2020 to the Applicant answered all his questions and that at no point had the Respondent been in any way aggressive or unprofessional.

#### **45. Findings in fact**

- (i) The Letting Agents Code of Practice came into force on 31<sup>st</sup> January 2018.
- (ii) The Applicant was a tenant of the Property in terms of a tenancy agreement entered into with a start date of 25<sup>th</sup> July 2019.
- (iii) The Landlord of the Property was Mr. Frank Thomas, 16 Edenbank Road, Cupar, Fife, KY15 4HE
- (iv) The Respondent was the Letting Agent specified in the tenancy agreement.
- (v) As part of their work the Respondent enters into written tenancy agreements.
- (vi) The rent payable was £695 per calendar month.
- (vii) There was water ingress into the Property as a result of a leak emanating from the neighbouring property at 10 Castlehill, Cupar.
- (viii) The Applicant reported the problem by e-mail on 30<sup>th</sup> August 2020 to the Respondent.
- (ix) The Respondent took all reasonable steps to remedy the water ingress and carry out repairs as soon as reasonably practicable.
- (x) A previous civil action raised by the Applicant to the Tribunal determined under Chamber Reference FTS/HPC/CV/20/2173 found him entitled to an order for payment by way of an abatement of rent of £380.
- (xi) The Respondent did not fully respond to the complaints made by the Applicant in writing until 15<sup>th</sup> December 2020 which was a period of 60 calendar days
- (xii) The Respondent was under a duty to comply with The Letting Agent Code of Practice (Scotland) Regulations 2016 from 31<sup>st</sup> January 2018.
- (xiii) The written complaints procedure provided by the Respondent to the Applicant in the document "Notes for New Tenants" does not comply with the Code.
- (xiv) The Complaints Procedure found on the Respondents website under terms of business for private clients is not applicable to the Applicant as he is not a private client of the Respondent.

(xv)The written repairs procedure provided by the Respondent as detailed in the tenancy agreement does not comply with the Code.

(xvi)The Respondent has breached paragraphs 26,45,86,108,110,112 and 113 of the Code.

(xvii)The Applicant has suffered stress and inconvenience as a result of not being provided with a comprehensive written repairs procedure and a written complaints procedure.

### **Reasons for the Decision**

46. In reaching its decision the Tribunal carefully considered the evidence of the Applicant and the evidence of the Respondent's witnesses together with the written representations and documents.

47. The Tribunal was also referred to its previous decision in the civil action raised by the Applicant which was determined on 11<sup>th</sup> February 2021 and which states *inter alia*;

"50. The Tribunal was satisfied that on being made aware of the problem the Respondent's agents took prompt steps to try to identify the problem by contacting a timber specialist and on being advised that the issue appeared to be coming from the neighbouring property contacted the Factor responsible for the block.

51. The Factor took some time to investigate whether the problem lay with the roof before concluding it did indeed lie with the property next door.

52. The Tribunal has considered whether any blame can be apportioned to the Respondent's agents for any delay that occurred and has concluded that there cannot."

48. The Tribunal proceeded to deal with each suggested breach in turn and considered them as follows

**17 No Breach of the Code.** The Tribunal having considered the e-mails referred to by both parties and lodged as productions by each side that the Respondent has been honest open transparent and fair in their dealings with the Applicant.

**21 No Breach of the Code.** The Tribunal accept that the Respondent provided services using reasonable care and skill and in a timely way.

**22 No Breach of the Code.** The Applicant himself stated that he had nothing concrete to show the Tribunal and this was more of a perception he had. We do not accept there was any breach here and this suggested breach is a speculative one

**25 No Breach of the Code.** The Respondent led evidence which was not disputed by the Applicant that his neighbour had provided consent to his details being shared to resolve the problem of the leak.

**26 Breach of the Code.** The written agreement provided to the Applicant did not contain any timescales. The period of 60 days for the Respondent to respond to the Applicant's complaint was too long. There was no structure in place. The Applicant was unaware throughout each stage of his complaint who was actually dealing with his complaint. It certainly appeared from the e-mails supplied that this has been misleading for the Applicant

**28 No Breach of the Code.** Having perused all the e-mails exchanged between the parties the Tribunal does not accept that there is any communication from the Respondent which is abusive intimidating or threatening.

**31 No Breach of the Code.** This section of the Code is in relation to engaging landlords and is not applicable to the Applicant.

**45 Breach of the Code.** The Tribunal did not find Ms. Belmonte convincing in this aspect of her evidence. She could not recall making the Applicant aware of the Code as a prospective tenant. We accepted the Applicant's position that he had not been made aware of it. It appears to the Tribunal that had he been made aware of the Code he would have been able to refer to this in his many communications with the Respondent. Likewise, it is surprising that there is no mention of the Code in the Respondent's e-mails to the Applicant.

**46 No Breach of Code.** This paragraph of the Code is in relation to omitting information or evading questions from prospective tenants. We did not find that this was the case here and there was no evidence this was the case when the Applicant was a prospective tenant.

**73,75,79. No Breach- Withdrawn by Applicant at the Hearing**

**82 No Breach of the Code.** The Respondent was attempting to have what was considered to be an urgent repair carried out as expeditiously as possible. A date within a 24 hours' notice was suggested as a result for a visit to the Property. When the Respondent refused this as he had not been afforded 48 hours' notice another date was selected for the visit.

**86 Breach of the Code** The Tribunal were not provided with the written procedures and processes for tenants and landlords to notify the Respondent of any repairs and maintenance. In the Lease there is no reference to target timescales as provided for by the Code



**89 No Breach of the Code** – This paragraph of the Code is in relation to managing repairs in line with an agreement with the Landlord and is not applicable to the Applicant.

**90 No Breach of the Code** – The Tribunal accept that the repairs were carried out promptly and appropriately.

**91 No Breach of the Code** – The Tribunal accept the Respondent's position that the Applicant was kept apprised and informed throughout the repair process. We can also see this from the e-mails that have been produced to us.

**93 No Breach of the Code** For the reasons specified in relation to the suggested breach of paragraph 91 above.

**94 No Breach of the Code**- This suggested breach is not applicable and relates to remedying defects in inadequate work or services provided by contractors/ suppliers and is not relevant to the Applicants position.

**108 Breach of the Code** – The complaint was not responded to within a reasonable timescale. The Applicant was not kept informed throughout the process about who was handling his complaint. The procedure has been misleading for the Applicant.

**110 Breach of the Code** – For the reasons that the Tribunal have already given in relation to the Breach of Paragraph 45 of the Code the Tribunal do not accept that the Applicant has been made aware of the Code by the Respondent.

**112 Breach of the Code**- The complaints procedure provided to the Applicant is not compliant with the Code. It does not state the series of steps that a complaint may go through, with reasonable timescales. The Tribunal does not accept that the general terms of business for private clients contained on the Respondent's website are applicable to tenants such as the Applicant. They are not private clients of the Respondent.

**113 Breach of the Code** – There is no mention of how contractors and third-party complaints will be dealt with, whether there is access to alternative dispute resolution and reference to the Housing and Property Chamber.

The Tribunal accepted that the Applicant had suffered a degree of inconvenience and distress and a loss of time in not being provided with focussed complaints procedure and a detailed repairs procedure as specified in the Code. The Tribunal accepted that the Applicant gave his evidence in a straightforward focussed way in respect of the difficulties he encountered. He was credible and reliable in relation to this in his

evidence to us. The Tribunal accordingly award the sum of £300 (THREE HUNDRED POUNDS) compensation to reflect the difficulties he has experienced with these written procedures not being made available to him. The Tribunal also order that an apology be provided to him within a period of 30 days intimation of this decision and the LAEO.

The Decision of the Tribunal was unanimous.

### **Right of Appeal**

**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.**

Yvonne McKenna    Legal Member and Chair

Dated 18<sup>th</sup> March 2020