

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Statement of Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 48 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/21/0150**

#### **The Parties:-**

Miss Georgia Buchan, 36 Old Coach Road, The Village, East Kilbride, G74 4DT ("the Applicant")

Ross and Liddell, 60 St Enoch Square, Glasgow, G1 4AW ("the Respondent")

#### **The Tribunal comprised:-**

Mrs Ruth O'Hare	-	Legal Member
Mrs Mary Lyden	-	Ordinary Member

#### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Respondent had failed to comply with paragraphs 18, 62, 97 and 98 of the Letting Agent Code of Practice and determined to make a Letting Agent Enforcement Order.

#### **Background**

- 1 By application dated 18 January 2021 the Applicant sought an order against the Respondent due to an alleged failure to comply with the Letting Agent Code of Practice. In particular the Applicant stated that the Respondent had failed to comply with the following provisions of the Code:-
  - (i) Paragraph 18 of Section 2, in that the Respondent had failed to provide the Applicant with information in a timely and easily accessible way. Despite repeated requests the Respondent had delayed in providing a copy of the tenancy agreement they had entered into with the Applicant's tenant.
  - (ii) Paragraph 62 of Section 4, in that the Respondent had failed to enter the correct monthly rent into the tenancy agreement and collect it. The Respondent had failed to update the tenancy agreement with the revised rent agreed between the parties and therefore a lower rent was collected.
  - (iii) Paragraphs 97 and 98 of Section 6, in that the Respondent had failed to carry out instructions from the Applicant to terminate the tenancy at the end of the 12 month period. The Applicant had instructed the Respondent to terminate the tenancy agreement with an effective date of 19 January 2021. Instead the Respondents had given notice to terminate the tenancy on 19 February 2021.
- 2 In support of the application the Applicant submitted email correspondence between the parties, copy Short Assured Tenancy Agreement, copy Terms of Business dated 29 March 2011 and notification of failure to comply to the Respondent dated 18 January 2021.
- 3 By Notice of Acceptance of Application dated 10 February 2021 the Legal Member with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Hearing was therefore assigned for 12 April 2021, to take place by tele-conference due to the ongoing restrictions imposed by the Covid-19 pandemic.
- 4 By email dated 22 February 2021 the Applicant submitted an email from the Respondent advising that there had been an error in the termination notices served upon her tenant and as a result the process would have to start again. She wished the email to be considered by the Tribunal in its determination of the application.
- 5 On 25 March 2021 the Respondent submitted written representations in response to the application. In particular the Respondent submitted copy Short Assured Tenancy supplemental agreements, email correspondence between the parties, copy Terms of Business and copy Short Assured Tenancy Agreement.

- 6 On 30 March 2021 the Applicant submitted a chronology of events in relation to the end of the tenancy. She confirmed that the tenant had vacated the property on 8 March 2021 and the keys had been returned to her on 24 March 2021. She had been offered a settlement payment from the Respondent on 19 March 2021 of £950 however she wished the hearing to proceed.

### **The Hearing**

- 7 The Hearing took place by teleconference on 12 April 2021. The Applicant Georgia Buchan was in attendance. Ms Ann McMaster appeared on behalf of the Respondent and was accompanied by Claire Monaghan, as a supporter.
- 8 The Tribunal heard evidence from both parties at length which can be summarised as follows:-

#### Section 2, Paragraph 18

- 9 In respect of paragraph 18 of the Code of Practice, the Applicant advised that she had asked the Respondent on five separate occasions for a copy of the latest tenancy agreement and had not been provided with this until she had reached the second stage of the Respondent's complaints process. There was no reason given for why she had not been provided with the agreement and she felt the information had not been made clear and accessible to her.
- 10 Ms McMaster on behalf of the Respondent confirmed that the Applicant had requested a copy of her lease agreement and terms of business. The Respondent's staff had not been working in the office at the time due to the Covid-19 pandemic and this had caused delays in providing the documentation. Ms McMaster also thought there had been some confusion as to what document she was seeking. Ms McMaster apologised profusely for the fact that the Applicant had not received a copy within a reasonable amount of time.

#### Section 4, Paragraph 62

- 11 In respect of paragraph 62, the Applicant advised that she had received an email on 11 November 2019 from an employee of the Respondent Jenna Shearer advising that the tenant wished to extend her lease and had agreed that the rent would be increased to £475 per month. However the rent increase had not taken effect due to an administrative error by the Respondent. She had raised the issue with the Respondent and was told that she would receive her money back, being the shortfall between the previous rent of £450 and the revised rent of £475 over a thirteen month period. She wanted to ensure that the Respondent now has procedures in place to mitigate against a similar situation in future. On 29 March 2021 the Respondent had made payment of the sum of £313.82 to the Applicant, being the reimbursement of rent £356.45, less her management fee of £42.77. In response to questions from the Tribunal the Applicant advised that she had not noticed the shortfall in rent as she

wasn't paying attention to the tenancy when she was working in London. It was only when she took a closer look when making plans to return to the property that it had come to light.

- 12 Ms McMaster explained that the Respondent had written to the Applicant's tenant in 2019 when the lease was due to expire. The tenant had confirmed she wished to extend her lease and an increased rent of £475 was agreed. However this wasn't inputted into the Respondent's system and the supplementary tenancy agreement didn't reflect the new rent as a result. The Respondent didn't become aware of this until the Applicant raised it during the complaints process. The Respondent had reimbursed the Applicant for the shortfall in rent. In response to questions from the Tribunal Ms McMaster explained that new procedures had now been put in place. Before a supplementary tenancy agreement is sent out, two staff members have to sign off on it. All correspondence is therefore double checked before any lease agreements or similar documentation are issued. There are also regular team meetings where these issues can be raised and discussed. The Respondent manages around 320 properties, mainly in the Glasgow area, and had been acting as a letting agent for some time. This was the first time they had appeared before the Tribunal in respect of compliance with the Code of Practice and they did not take it lightly.

#### Section 6, Paragraphs 97 and 98

- 13 The Applicant explained that she had emailed the Respondent on or around 20 September 2020 to advise that she wished to terminate her tenant's lease at the end date of 19 January 2021 so that she could return to live in the property. On 9 November 2020 the Applicant had emailed the Respondent asking if the required notices had been served, but was subsequently advised that there had been a change in legislation and the tenant would require three months notice. Accordingly the tenancy would not terminate until 19 February 2021. The Applicant found the whole situation to be confusing. She thought she had given the Respondent ample time to serve the notices which they could have done in October. On 22 February 2021 the Respondent emailed the Applicant to advise that the notices were in fact invalid and the process would require to start again. At that point the Applicant advised the Respondent not to do anything further. She outlined the steps she had taken to get her property back, including liaising with the Council's homeless teams to explain her situation. This had culminated in the tenant having obtained alternative accommodation and vacating the property on 8 March 2021.
- 14 The Applicant had sought compensation from the Respondent for the inconvenience and expense of finding alternative accommodation and also a waiver of management fees for a three month period. The Applicant advised that she was originally going to stay with a friend but subsequently moved in with her parents. However she could only stay there for a short period. She made payment of £450 to them to cover bills and expenses. The Respondent

had initially refused her request for compensation, however subsequently had offered her an ex gratia payment of £500 by email on 22 December 2020 without agreement or acceptance of liability. This had increased to £950 by email dated 23 March 2021 however by that point the Applicant wished to take forward the Tribunal proceedings to obtain assurance that the Respondent would put procedures in place to stop similar errors from happening again. The Applicant had particular concerns in this regard as the Respondent was also the property factor for her building.

- 15 Ms McMaster explained that she agreed with the Applicant's position regarding the notices. The Applicant had been in touch and had instructed the Respondent to take steps to repossess the property on 19 January 2021. The staff member who had served the notices had understood that the coronavirus legislation had changed and that only two months notice was required. Ms McMaster explained that she had spoken to the Applicant to see if the Respondent could offer her alternative accommodation pending repossession of the property. In response to questions from the Tribunal Ms McMaster confirmed that procedures had changed now with the requirement for documents to be double checked and signed off by two staff members. The Respondent receives notifications from a lawyer of any updates to legislation which are forwarded to staff and discussed at team meetings so that everyone understands what is required.
- 16 For the avoidance of doubt the above is a summary of the relevant evidence obtained at the hearing and is not an exhaustive account. Both parties were given the opportunity to make concluding statements before the Tribunal brought the hearing to a close and determined to issue its decision in writing.

## **Relevant Legislation**

1. The relevant legislation is section 48 of the Housing (Scotland) Act 2014:-

### ***“48 Applications to First-tier Tribunal to enforce code of practice***

*(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.*

*(2) A relevant letting agent is—*

*(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,*

*(b) in relation to an application by a landlord, a letting agent appointed by the landlord,*

*(c) in relation to an application by the Scottish Ministers, any letting agent.*

*(3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.*

*(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.*

*(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.*

*(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.*

*(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a "letting agent enforcement order") require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.*

*(8) A letting agent enforcement order—*

*(a) must specify the period within which each step must be taken,*

*(b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.*

*(9) References in this section to—*

*(a) a tenant include—*

*(i) a person who has entered into an agreement to let a house, and*

*(ii) a former tenant,*

*(b) a landlord include a former landlord."*

2. The relevant sections of the Code the Applicant seeks to rely upon are as follows:-

*(i) Paragraph 18 - You must provide information in a clear and easily accessible way.*

*(ii) Paragraph 62 - If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the landlord; type; length of tenancy where it is a short assured tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on taking care of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number.*

*(iii) Paragraph 97 - The correct procedure for ending a tenancy depends on such factors as the type of tenancy and the reason it is ending. But in all circumstances you must comply with relevant tenancy law and ensure you follow appropriate legal procedures when seeking to end a tenancy.*

- (iv) *Paragraph 98 - You must have clear written procedures in place for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information.*

## **Findings in Fact and Law**

- 17 The Applicant engaged the Respondent to manage the property at Flat 1/2, 64 Skirving Street, Glasgow, G41 3AJ ("the Property") in accordance with the Respondent's Terms of Business dated 29 March 2011.
- 18 On 11 November 2019 the Applicant agreed with the Respondent to extend the tenancy of the Property for a period of twelve months, with a rent increase from £450 to £475 per month.
- 19 The Respondent failed to update the tenancy agreement with the revised rental and the contractual rent therefore remained at £450.
- 20 On 21<sup>st</sup> September 2020 the Applicant instructed the Respondent to terminate the tenancy of the Property with an effective date of 19 January 2021.
- 21 The Respondent failed to properly implement the Applicant's instruction and served notices on the tenant of the property which sought to terminate the tenancy as at 19 February 2021.
- 22 On 22 February 2021 the Respondent contacted the Applicant to advise that the notices served upon the tenant of the Property could not be relied upon due to an error with the content.
- 23 The Respondent failed to follow the correct legal procedures to terminate the tenancy of the Property.
- 24 Despite repeated requests the Respondent delayed in providing a copy of the supplemental short assured tenancy agreement for the property to the Applicant in a timeous manner.
- 25 The Respondent failed to include relevant information in the supplemental short assured tenancy agreement for the property, being the correct contractual rent.
- 26 The Respondent did not have clear written procedures in place for managing the end of a tenancy, including serving of appropriate legal notices and giving the landlord all relevant information.

- 27 The Respondent has therefore failed to comply with paragraphs 18, 62, 97 and 98 of the Letting Agent Code of Practice.

### **Reasons for Decision**

- 28 The Tribunal carefully considered the evidence from both parties in its determination of the matter, both in terms of their written representations and verbal submissions at the Hearing. Both the Applicant and Ms McMaster were credible in their account of events and it was noted that the substantive facts in the case were agreed.
- 29 The Tribunal concluded that the Respondent had failed to comply with the Letting Agent Code of Practice in this case, namely paragraphs 18, 62, 97 and 98. The allegations made by the Applicant in this regard were not disputed by the Respondent and Ms McMaster had expressed regret throughout the hearing about the errors that had been made during their management of the Applicant's tenancy.
- 30 Accordingly, having concluded that there was a failure to comply, the Tribunal considered whether to make a letting agent enforcement order and what actions, if any, were required in order to rectify the breach.
- 31 The Tribunal was of the view that a compensatory payment was justified in light of the inconvenience suffered by the Applicant, who had been unable to return to her property due to the Respondent's error in the service of the repossession notices. It was fortunate that the tenant had found alternative accommodation relatively swiftly, otherwise the Applicant would have found herself back at the start of the repossession process, facing a number of months before she could return to the property. The Respondent's conduct in that regard fell far below that expected of a professional letting agent, with knowledge of eviction processes being a fundamental part of their role. The Tribunal did note however that the Respondent had been candid in their errors and clearly regretted the position they had found themselves in as a result.
- 32 The Tribunal therefore considered that a payment of £450 would be appropriate as compensation for the stress and inconvenience, as well as the additional costs, incurred by the Applicant in having to source alternative accommodation. Further, the Tribunal considered that the Applicant was entitled to return of the management fee, at the rate of £54 per month, for the period January to February 2021 and £42.77 for the management fee deducted from the rent reimbursed on 29 March 2021, on the basis that the standard of service provided by the Respondent in the latter months of the arrangement fell far below what was expected of a professional letting agent.
- 33 Furthermore, whilst Ms McMaster had outlined the new procedures that had been put in place for tenancy documentation in order to mitigate such errors from happening again in future, the Tribunal would wish to see clear written



procedures for managing the end of a tenancy, as well as for preparing tenancy agreements, including supplementary agreements, in order to satisfy itself that the Respondent has taken appropriate action to rectify these issues.

- 34 As an observation, the Tribunal would suggest the Respondent may wish to consider providing copies of tenancy documentation, including supplementary tenancy agreements, to landlords as a matter of course, to ensure full transparency and avoid the need for landlords to chase said documentation if required.

## **Decision**

- 35 Having found the Respondent to be in breach of the Letting Agent Code of Conduct as aforementioned the Tribunal determined to make a letting agent enforcement order under Section 48(7) of the Housing (Scotland) Act 2014 in the following terms:-

- (i) In respect of the breach of sections 62, 97 and 98, the Respondent must provide clear written procedures, outlining the process for managing the end of a tenancy and for preparing tenancy agreements; and
- (ii) In respect of the breach of sections 18, 62, 97 and 98, the Respondent must make payment to the Applicant by way of compensation in the sum of £600.77.

- 36 The decision of the Tribunal was unanimous.

**A landlord, tenant or third party applicant 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.**

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.