



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/LA/21/1040

Parties:

Ms Nkechi Adeboye, 0/2 18 Melrose Gardens, Glasgow, G20 6RA (“the Applicant”)

Mr Paul Knowles, The Only Way is HMO, 5 Princes Terrace, Glasgow, G12 9JW (“the Letting Agent”)

Tribunal Members:

Shirley Evans (Legal Member and Chair) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has failed to comply with paragraphs 17, 18, 53 and 67 of the Letting Agent Code of Practice under Section 46 of the Housing (Scotland) Act 2014 and issues a Letting Agent Enforcement Order.

Background

1. This is an Application dated 30 April 2021 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for a determination that the Respondent as a Letting Agent has failed to comply with the Letting Agent Code of Practice brought in terms of Rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Regulations”) and under Section 48 of the Housing (Scotland) Act 2014.

2. The Applicant had lodged copies of emails with the Respondent in support of her application including an email of 22 March 2021 in which she set out her complaint to the Respondent specifying the breaches of the Code prior to raising the application as well as copies of two Private Residential Tenancy Agreements relating to a room in Flat 2/1, 13 Woodlands Drive, Glasgow, G4 9EQ ("the Property"). The Respondent provided a written response to the Application on 17 June 2021. Both parties also lodged various emails and copy text messages between them in response to a Notice of Direction issued by the Tribunal.
3. The Tribunal proceeded with a Case Management Discussion on 20 July 2021. The Applicant was in attendance and represented herself. The Respondent was also in attendance and represented himself.
4. The Application alleged the Respondent had breached paragraphs 17, 18, 19, 38, 46, 53 and 67 of the Letting Agents Code of Practice ("the Code") as contained within the Letting Agent Code of Practice (Scotland) Regulations 2016. The Application contained a full explanation setting out the reasons why the Applicant was of the opinion the Respondent had not complied with the Code. The Applicant also sought £268.96 for Air BnB accommodation.
5. The Applicant had two main issues with the way the Respondent had dealt with her. These related to alleged breaches under Section 2 of the Code (Overarching standards of practice) and specifically in relation to paragraphs 17, 18 and 19. Her other complaint related to alleged breaches of paragraphs 38, 46, 53 and 67 under Section 4 of the Code (Lettings).
6. Dealing with her main complaint under Section 2 of the Code, the Applicant explained that she had viewed the Property at the beginning of August 2020 and was keen to take the room which she understood would be vacated by the current tenant, Adam, at the end of August 2020. The Respondent has sent her a Private Residential Tenancy Agreement for the Property on 4 August 2020 with a start date shown as 1 September 2020 ("the PRT"). She paid the tenancy deposit of £650 on 9 August 2020. There was some email correspondence between the parties about the possibility of the Applicant storing some of her belongings in the Property and that whilst she understood Adam was due to leave by the end of August and that her own personal circumstances allowed a degree of flexibility with regard to a move in date up to 5 September 2020, her complaint was that the Respondent did not keep her informed of the possibility he may not move out and that she was left with the impression she would still be able to move in by 5 September at the latest.

7. With reference to email correspondence between parties on 25 August 2020, which was the date by which she was due to pay advance rent, she felt the Respondent had not been as open and honest about the fact that Adam may not be able to move then. She felt the Respondent had avoided her emails and calls and had not provided details of the account into which she had to pay the advanced rent on 25 August 2020 as required under the PRT.
8. She explained that on the day she was meant to move into the Property on 1 September 2020 she was still under the impression that may happen. She referred to emails lodged which showed that the Respondent in response to her email of 1 September 2020 had informed her he was still waiting to hear from Adam and would get back to her later that day. That did not happen although they had a conversation on 2 September 2020. She had also had a conversation with the Respondent's father which she found rude and odd. It was not until 3 September 2020, after she had emailed the Respondent again, that he told her that Adam was still in the Property, that he had taken advice from the Scottish Association of Landlords ("SAL") and that there was nothing legally the Respondent could do to expedite his removal. She felt let down that she had only been given 36 hours' notice to try to get alternative accommodation and did not find it acceptable that the Respondent had suggested she present as homeless. She felt that the Respondent had implied up to that point on 3 September 2020 that there was still a possibility she could move in before 5 September. She stated she had perhaps been naïve to think so. However the Respondent had not managed her expectations that that was unlikely to happen and had not told her that she could not move in until very late in the day. He had not given her the full picture. She managed with some difficulty due to the pandemic to source an Air BnB at the cost of £268.96 as shown in the receipt lodged where she was able to stay. She felt frustrated by the whole experience. Despite this, she still wanted to move into the Property. The Respondent sent a second PRT on 10 September 2020 with a new start date of 13 September 2020 when she moved in. She clarified she had no issues with the way in which the Respondent had corresponded with her after 4 September 2020 when it was clear she would not be moving into the Property on 5 September.
9. The Applicant's other concern during the tenancy was that the Respondent did not always give 24 hours' notice when arranging viewings. Whilst she accepted that at times she and the other tenants did accept less than 24 hours' notice she explained that she was not always comfortable with this. She also explained that other tenants might respond acceptance before she had read her emails. She had drafted an email to explain this to the Respondent, but had never sent it to him. Due to the lack of notice, she would

sometimes pick up his emails requesting access with very little notice. As an example, with regard to one email dated 29 October 2020 sent by the Respondent at 1.19 pm he had requested access at 6pm that evening. Although she had agreed to access on occasions she felt it was disrespectful of him to ask at such short notice in the first place and had never encountered that before in any other let property. She referred to emails dated 2 and 14 December 2020 where less than 24 hours' notice had been requested by the Respondent.

10. The facts were largely undisputed by the Respondent as set out in the correspondence between parties lodged by both parties. He explained that he felt he had been clear and upfront with the Applicant that Adam was still the tenant, although Adam had given notice that he would leave the Property at the end of August. He was therefore very much led by Adam's actions. It was on that basis he sent the PRT to the Applicant on 4 August 2020 with a start date of 1 September 2020.
11. The Respondent explained the whole position with Adam not being able to move out was equally disappointing for him as he was very well aware the Applicant was keen on the room. It was a very nice Property and although he had been able to offer alternatives to the Applicant where the tenant had already vacated, she had not wanted to view anything else. When he had received her emails on 25 August 2020 asking about key collection and the payment of rent he felt it was "vulgar" to be talking about rent when in the background he wanted to get everything clarified and sorted with Adam. He apologised for the situation and explained that he had not intentionally meant to put the Applicant into the position she had found herself in. He explained to the Tribunal the Applicant had never mentioned compensation to him previously. He had hoped that they would be able move on and start afresh with a new beginning when the new PRT with a start date of 13 September 2020 went ahead. The Respondent expressed sadness and regret that things had reached the point that they had. He felt that he did communicate with the Applicant and had kept her informed when there was a development and felt it was unjust to say that there was a lack of communication. He had taken all precautions and advice from SAL to manage the unforeseen circumstances of Adam not being able to move. He had visited Adam personally to find out what was happening and explained that at any point leading up to the move, the Applicant could have chosen to go elsewhere. As soon as he knew that Adam could not move out he emailed the Applicant. Both he and the Applicant wanted the same thing and his actions were not deliberate on his part. On hindsight he could have been more definitive in his responses to the Applicant. He was aware that some letting agents would not advertise a room until it was vacant. It was not until after she moved out of the Property in the

subsequent correspondence did she raise her discontent in a formal manner with him as shown in the correspondence. The whole circumstances were unfortunate and again he apologised to the Applicant.

12. With regard to the Applicant's complaint that he did not always give 24 hours' notice the Respondent pointed to email correspondence that at times the Applicant and other tenants allowed access on less than 24 hours' notice. That could not be a breach if an agreement regarding access had been made on less than 24 hours' notice. The Respondent felt that he could not act on a complaint or a concern if the Applicant had not advised him that she was not comfortable with him doing so.

Findings in Fact

13. The Respondent was the Letting Agent for the Property at Flat 2/1, 13 Woodlands Drive, Glasgow, G4 9EQ from August 2020 – March 2021.
14. The Applicant viewed the Property on or about 3-4 August 2020. The room she viewed was still tenanted. The tenant had given notice that he would vacate the room at the end of August 2020. The Applicant was aware of that. The Applicant advised the Respondent she wanted to take the room.
15. The Respondent sent the Applicant a PRT on 4 August 2020 with a start date of 1 September 2020. In accordance with the PRT the Applicant paid a deposit of £650 on 9 August 2020.
16. On 25 August 2020 the Applicant enquired about key collection and about an advanced payment of rent due on 25 August 2020. The Respondent replied by email on 25 August 2020 and on 26 August 2020 that the tenant was hoping to secure his new tenancy very shortly and that he could organise the rent payment.
17. On 1 September 2020 the Applicant again emailed the Respondent to enquire about key collection and rent payment. The Respondent replied that he was waiting to hear back from the tenant.
18. On 2 September 2020 the parties discussed the situation. The Applicant was under the impression that she would be able to move in before 5 September 2020.
19. On 3 September 2020 the Respondent advised the Applicant the tenant could not vacate the room and that she could not move into the Property by 5

September. 2020. The Respondent offered to pay the deposit back to the Applicant.

20. The Applicant moved into Air BnB accommodation from 5-12 September 2020 at a cost of £268.96.
21. The Respondent sent the Applicant a new PRT on 10 September 2020 with a start date of 13 September 2020. The Applicant moved into the Property on that date.
22. The Respondent on occasions would give less than 24 hours' notice to the Applicant that access to the Property was requested. On occasions the Applicant granted access on less than 24 hours' notice.

Statement of Reasons

23. The Tribunal having considered the evidence of both parties and the productions before the Tribunal considered that the Respondent was not in breach of paragraphs 19, 38 and 46 of the Code. There was no evidence before the Tribunal to substantiate the alleged breaches under these paragraphs.
24. With regard to paragraph 19, the Tribunal accepted the Respondent's evidence that he had not intentionally meant to put the Applicant into the position she had found herself in. There was no evidence that he had acted negligently. Similarly there was no evidence before the Tribunal about the content of or complaint about the advertising or marketing of the Property. Whilst the Applicant felt the Respondent had avoided her emails and calls the Tribunal felt on balance the Respondent had acted not evaded her.
25. The Tribunal felt the Respondent could have been far clearer with the Applicant at a far earlier stage that there was an issue with the tenant not being able to vacate by 5 September which was the date he knew the Applicant had to move in by. It was clear from his evidence that he was aware that there was a possibility that the tenant could not move out on time. He did not want to disclose this "background information" until he had clarified matters with the tenant. However that said, the Tribunal was of the opinion that read as a whole, particularly when there had been no correspondence between parties from 26 August -1 September that his failure to alert the Applicant to the possibility that there may be an issue was problematic. He did not keep the Applicant advised that there was an unfortunate situation unfolding over which he had no control. The Respondent at this time should

have been aware that the Applicant was anxious about her own predicament as was demonstrated in her emails between 1 -3 September 2020. He was aware she had some flexibility up to 5 September 2020. Despite that he did not keep her decisively and fully informed. He was the professional in this situation and could have managed the situation better. Whilst the Tribunal accepted the Respondent was correct in seeking advice from SAL the Tribunal was of the opinion that he should have done so sooner, even if on the basis that there was a possibility Adam would not be able to move, rather than waiting until he had confirmation that Adam definitely could not move out as planned. His failure to do so left the Applicant in a difficult predicament. The Tribunal was of the opinion that had the Respondent been more pro-active and open sooner as to what was happening in the background with Adam he may have been able to manage the Applicant's expectations and avoid the situation he now found himself in. The Tribunal accepted that the Respondent was truly sorry for the situation and was genuine in his apology to her.

26. The Tribunal accepted the evidence from the Applicant that on occasions the Respondent had not given 24 hours' notice for access. The Tribunal accepted the evidence of both parties that there were occasions when the Applicant and her flat mates accepted less notice. As a Letting Agent the Respondent should not be starting off at a point where he is not complying with the legislative requirement to give 24 hours' notice. It is a different matter altogether to say that there was an agreement between parties for less notice when inadequate notice was given in the first place as opposed to a situation where adequate and proper notice has been given but parties are happy to proceed on less notice. It was unacceptable for the Respondent to place the Applicant in a potentially invidious position by simply saying she could refuse access. It is for the Respondent to ensure that adequate notice is always given, particularly in the current pandemic where understandably a tenant may be a bit more sensitive about others coming into their home. The Tribunal accepted the Respondent's evidence that he would never take entry if e.g., a tenant had changed their mind. There was no suggestion by the Applicant that this had ever happened.
27. The Tribunal having considered the evidence of both parties and the productions before the Tribunal considered that the Respondent was in breach of paragraphs 17, 18, 53 and 67 of the Code.
28. The Applicant asked the Tribunal to award her the cost of her Air BnB accommodation. In all the circumstances, the Tribunal awards the Applicant £135 by way of compensation for the inconvenience of having to source alternative accommodation at short notice taking into account the fact that she would otherwise have had to pay rent regardless.

Decision

29. The Tribunal determined the Respondent has failed to comply with paragraphs 17, 18, 53 and 67 of the Letting Agent Code of Practice and makes a Letting Agent Enforcement Order. The decision of the Tribunal was unanimous.

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.

20 July 2021

Legal Chair

Date