



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 (Act) and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No.328)) (Rules)

Chamber Ref: FTS/HPC/LA/19/3338

Re: Property at 1/2 82 Dumbarton Road, Glasgow, G11 6NX

Parties:

Ms Laura Fryer, 1/2 80 Firhill Road, Glasgow, G20 7AL (Applicant)

Central Letting Services, 737 Pollokshaws Road, Glasgow, G41 2AA (Respondent)

Tribunal Members:

Alan Strain (Legal Member) and Mary Lyden (Housing Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has not complied with paragraphs 18, 21, 26, 28, 85-86, and 90-94 of the Code of Practice for Letting Agents (Code) as required by the Act and issues a Letting Agent Enforcement Order (LAEO).

Background

This was an application under section 48 of the Act and Rule 95 alleging various breaches of the Code of Practice for Letting Agents and seeking to enforce the Code against the Respondent.

The Tribunal had regard to the following documents:

1. Application received 17 October 2019;
2. Written Representations from the Applicant contained within the Application along with emails and photographs;
3. Hearing Notification Letter to the Respondent dated 27 July 2020 along with Royal Mail signed delivery receipt dated 28 July 2020;
4. Notice of Direction;

5. Respondent's response to Direction which included Terms of Engagement with the Landlord, Private Residential Tenancy Agreement (**PRTA**) with the Applicant, Complaints Procedure and Communications Procedure dated 28 February 2020;
6. Email notification to the Parties from the Tribunal Administration dated 16 September 2020.

Hearing

The Applicant participated and was not represented. The Respondent did not participate and was not represented.

The Tribunal were satisfied that service of notification of the Hearing had been made by the Tribunal Administration on the Respondent under reference to the signed for delivery receipt dated 28 July 2020 from Royal Mail. The signature on the receipt was "Yamin" which was the surname of the Respondent's principal Mr Akmin Yamin.. The Respondent accordingly had notice that the Tribunal could proceed and determine matters in absence if it considered that it had sufficient information to do so and the procedure was fair.

The Tribunal decided that it was fair and reasonable to proceed in the circumstances.

The Tribunal set out the procedure to be followed at the outset and identified the documents and productions that would be referred to.

The Applicant asserted a breach of paragraphs 17-19, 21, 26, 28, 88, 90-92, 93, 94 and 108 of the Code.

The Tribunal then heard evidence from the Applicant specifically with regard to the allegations against the Respondent. The Applicant's evidence was (in the main) contained within the detailed written submission which accompanied her application.

Having heard the Applicant's oral and written evidence the Tribunal made the following findings in fact:

1. The Applicant entered into the PRTA in respect of the Property commencing 15 December 2018;
2. The Respondent was to fully manage the Property on the landlord's behalf;
3. At the commencement of the PRTA the Applicant was told that bathroom repairs would be carried out before she fully moved in. The Applicant accepted this position on the basis that she was returning to Canada over the festive period and the works would be completed before her return;
4. The Applicant emailed the Respondent for an update on 20 December 2018 and received no response until she received an email of 3 January 2019 advising that the landlord waited confirmation from her insurance before instructing the works;
5. The Applicant was not given a Check-in inventory despite having asked multiple times;

6. The Applicant was told by the Respondent to be available on 4 February 2019 for a contractor to attend and fix blinds. The contractor did not attend until the following day;
7. The Applicant informed the Respondent of damage to her Property by painting contractors towards the end of January 2019;
8. Seema from the Respondent attended an inspection on 3 February 2019 and told the Applicant that the damage to her property wasn't that bad;
9. The Applicant had to buy replacement bedding and canvas storage bag which had been damaged. She copied the bill to the Respondent for onward transmission to the landlord to pay. She never received any response from the Respondent;
10. Mr Yamin attended the Property on 29 March 2019 and was asked by the Applicant when she might receive a response. Mr Yamin informed her he would look into it and send her a response within a week. To date she has heard nothing further;
11. The painting contractors removed a curtain rod. The Applicant informed the Respondent she wished to keep it and was told by Seema that she didn't need it and it was never replaced;
12. On 9 February 2019 the Applicant notified the Respondent that the bottom of the bath had cracked. A contractor attended a few days later and put a sticker on it. The Applicant required to shower with the bath in its cracked state;
13. The Applicant was told the bathroom repairs would be carried out in February. She was told that she would receive a rent reduction by the Respondent as the bedroom and bathroom would not be available to her. She was told by Mr Yamin that she could continue to live in the Property without the bedroom and bathroom. The Applicant had no option but to move into temporary accommodation and stayed in a guest house for the duration of the works at a cost of £952 (incl VAT) ;
14. After 9 days the toilet was reinstalled, and the Applicant moved back into the Property to save costs of alternate accommodation. The bedroom was dirty and unusable, the shower did not work for 2 days. The work was supposed to have finished by March 13 but did not. The Applicant was forced to live with piles of supplies the contractor had left in the Property as confirmed in the photographs produced by her;
15. On 13 March 2019 Mr Yamin emailed the Applicant asking to inspect the Property on 14 March. The Applicant refused consent for him to do so. Mr Yamin attended the Property and carried out an inspection on 14 March without the Applicant's consent. The Respondent admits this in an email to the Applicant of 15 March 2019;
16. On 19 March 2019 the hot water tank in the Property started to leak. The Applicant reported this to the Respondent that day. The Respondent inspected the hot water tank on 22 March 2019 and informed the Applicant that it had to be replaced. The Applicant was then told that Mr Yamin needed to inspect the hot water tank again on 29 March 2019. The new hot water tank was installed on 15 April 2019. From 19 March 2019 to 15 April 2019 the Applicant was without hot water;
17. The bathroom works were not completed until April 2019;
18. In March 2019 the Applicant discovered the Property had mice. She reported this to the Respondent who informed her (Shenaz) to contact the Council. The Applicant contacted the Council on 30 March. The Council inspected the

Property and advised the Applicant to have the mice holes filled in. The Applicant contacted the Respondent by email on 1 April detailing the advice and received no response. The Applicant emailed again on 8 April and still has not received a response.

19. The Applicant sent a detailed letter of complaint to the Respondent by email of 26 April 2019. She sent a reminder on 3 May 2019 and was informed by the Respondent by email of 8 May 2019 that they had not received it. She resent the complaint the same day and received an acknowledgement the same date to the effect that the Respondent would respond within 15 working days. No response was received so the Applicant wrote further reminders by emails dated 13 and 21 June 2019. To date no response has been received.
20. The Respondent's Complaints Procedure provides that complaints will be investigated, and a Formal Written Outcome will be issued within 15 working days of acknowledgement of a complaint;
21. On or around 30 May 2019 the Applicant noticed a water leak from the flat above. She reported this to the Respondent. She went away for a week to find the bathroom ceiling covered in water stains. She called the agency and they sent someone out. She asked that the mould that had formed be dealt with as she suffered from asthma. She followed this up by emails of 13, 15 and 24 June 2019 as the water leak was getting worse and she was not being told when repairs would be carried out. She included photographs.
22. The Applicant received a response from the Respondent by email of 24 June 2019 stating that they had been in touch with the agents for the flat above and will get back.
23. No work was completed on the ceiling other than wiping mould away.
24. The Applicant gave notice to leave on 31 June 2019 for 31 July 2019 by email. In that email she sought confirmation as to how much rent she would be due and sought a reduction in rent due to the Respondent's failings. She received a response by mail of 3 July which told her rent could not be withheld and the works complained of had been carried out. The Applicant emailed again on 4 July explaining that she had not been able to use the Property, her complaints had gone unanswered and that she intended to withhold rent. She received a response by email of 5 July stating her email had been forwarded and would be responded to.
25. The Applicant received a call from Shenaz on 5 July 2019 in which she was rude, aggressive and reduced the Applicant to tears. Shenaz told the Applicant that the issues with the Property were "fine" and she was overreacting. The Applicant asked for an explanation as to why 50% of July's rent was being claimed and why her complaints had not been responded to. Shenaz told her that Mr Yamin always dealt with complaints.
26. The Applicant has expended considerable time and energy in dealing with issues of the flat. This has impacted on her personally and occasioned distress and inconvenience. It has impacted on her studies. Her grades have suffered. She has been unable to use the Property to study or to its full extent.

Having considered the evidence and made the above findings the Tribunal decided:

(a) Paragraph 17 of the Code

This paragraph requires a letting agent to be open, honest, transparent and fair in dealings with tenants. The Applicant complains that the Respondent failed to notify her the bathroom works were not completed in December 2018.

Whilst the Tribunal accept that the Respondent has failed to communicate with the Applicant this does not constitute a breach of Paragraph 17.

(b) Paragraph 18 of the Code

This paragraph requires a letting agent to provide information in a clear and accessible way.

The Tribunal considered that the Respondent had breached paragraph 18 in that they had failed to provide the Applicant with information about the progress and conduct of repairs. This covered the bathroom repairs, the mice, the water leak and mold, and the hot water tank.

(c) Paragraph 19 of the Code

This paragraph requires a letting agent not to provide information that is deliberately or negligently misleading or false.

The Applicant complains that she was told work would be completed when it was not.

Whilst the Tribunal accept that the Respondent has failed to communicate with the Applicant this does not constitute a breach of Paragraph 19. The Tribunal does not consider that there was evidence of deliberate or negligent provision of information.

(d) Paragraphs 21 and 26 of the Code

These paragraphs require Letting Agents to carry out services provided in a reasonable and timely way; and to respond to enquiries and complaints within reasonable timescales and in line with written agreement.

The Tribunal considered that the Respondent had breached paragraph 21 in that they had not carried out their service with regard to repairs in a reasonable or timely way. The failure to respond within reasonable timeframes and effectively to the Applicant's many emails seeking updates on the various repairs and compensation for her damaged property was significant in this respect.

There were considerable delays in responding to the Applicant's emails. Her email complaint of 26 April 2019 still remains unanswered. The Respondent has a written complaints policy which requires responses within 15 working days. The Respondent has breached its own written policy and failed to respond within a reasonable timescale. The Respondent has accordingly breached paragraph 26.

(e) Paragraph 28 of the Code

This paragraph requires a Letting Agent not to communicate in a way that is abusive, intimidating or threatening.

The conversation with Shenaz on 5 July was rude and aggressive. As such the Tribunal found that this paragraph had been breached.

(f) Paragraph 88 of the Code

This paragraph requires a Letting Agent to give clear information about who will manage repairs and provide relevant contact details.

The Respondent had clearly provided this information, so the Tribunal found this paragraph had not been breached.

(g) Paragraph 90 of the Code

This paragraph requires a Letting Agent to deal with repairs promptly and appropriately.

It was evident from the correspondence and sequence of events that none of the necessary and urgent repairs were carried out promptly and appropriately. The bathroom repairs were not completed until April 2019.

From 19 March 2019 to 15 April 2019 the Applicant was without hot water.

The Applicant had to chase the Respondent over 2 months to have the leak investigated and repaired and the mold removed.

The Tribunal found that this paragraph had been breached.

(h) Paragraph 91 of the Code

This paragraph requires the Letting Agent to inform the tenant of the action intended to be taken on the repair and its likely timescale.

With regard to the bathroom repairs which were supposed to have been completed over the festive period 2019/19, the hot water tank, leak, mold and mice the Respondent has singularly failed to keep the Applicant informed as required. The Applicant repeatedly chased the Respondent for action and for this information.

The Tribunal found that this paragraph had been breached.

(i) Paragraph 92 of the Code

This paragraph requires the Letting Agent to give the tenant reasonable notice of when access is required for repairs.

Mr Yamin entered the Property on 14 March 2019. The Applicant refused consent for him to do so. Mr Yamin attended the Property and carried out an inspection

on 14 March without the Applicant's consent. The Respondent admits this in an email to the Applicant of 15 March 2019.

The Tribunal found that this paragraph had been breached.

(j) Paragraph 93 of the Code

This paragraph requires the Respondent to inform the landlord, tenants or both as appropriate about any delay in carrying out repair and maintenance work and to inform them of the reason for the delay as soon as possible.

The Respondent had failed to respond within reasonable timeframes and effectively to the tenant's many emails seeking updates on the various repair issues, and failed to reply to her email complaint of 26 April 2019.

The Tribunal found that his paragraph had been breached.

(k) Paragraph 94 of the Code

This paragraph requires the Respondent to pursue any contractor to remedy any defects in any inadequate works or services.

The Applicant had informed the Respondent of the damage to her property by the contractors who carried out the bathroom works. The Respondent failed to pursue this for the Applicant.

The Tribunal found that this paragraph had been breached.

(l) Paragraph 108 of the Code

This paragraph requires the Respondent to respond to complaints and enquiries within a reasonable timescale.

The Tribunal considered that the Respondent had breached this paragraph in that they had not responded to the Applicant's many complaints and enquiries in a reasonable or timely way. The failure to respond within reasonable timeframes and effectively to the Applicant's many emails seeking updates on the various repairs and compensation for her damaged property was significant in this respect.

There were considerable delays in responding to the Applicant's emails. Her email complaint of 26 April 2019 still remains unanswered. The Respondent has a written complaints policy which requires responses within 15 working days. The Respondent has breached its own written policy and failed to respond within a reasonable timescale.

The Tribunal found that this paragraph had been breached.

(m) Remedy

Having determined the breaches of the Code by the Respondent the Tribunal considered the impact this had on the Applicant

The Tribunal considered and found that the Applicant had suffered anxiety, distress and inconvenience as a consequence of the unlawful entry to the Property on 14 March 2019, the failure of the Respondent to communicate with her, to progress repairs in a timely fashion, to respond to her enquires and complaint, to keep her updated and the abuse she received from Shenaz.

Her studies had been disrupted and her use of the Property severely curtailed.

Whilst the Tribunal noted that the Applicant wished rent abatement and recovery of costs of alternative accommodation from the Respondent as a remedy, the Tribunal considered that these were remedies more appropriately directed against the Landlord in respect of the failure to provide the Applicant with a habitable Property. The Respondent as Letting Agents were not responsible for this.

The Respondent, as Letting Agents, were responsible for their breaches of the Code of Practice and the anxiety, distress and inconvenience suffered by the Applicant as a consequence of that.

The Tribunal considered that a fair, proportionate and just amount of compensation in respect of their multiple breaches of the Code would be the sum of £2,000.

The Tribunal made the following Letting Agent Enforcement Order:

- 1. The Respondent shall within 21 days lodge with the Tribunal and copy to the Applicant:**
 - (a) Written Procedures and processes confirming appropriate systems and controls are in place to ensure repairs and maintenance obligations are done to an appropriate standard within relevant timescales; and**
 - (b) Written Procedures and processes for tenants to notify any repairs and maintenance and target timescales.**
- 2. The Respondent shall pay the sum of £2,000 by way of compensation to the Applicant within 21 days.**

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.

2 October 2020

Legal Member/Chair

Date
