

Housing and Property Chamber

First-tier Tribunal for Scotland



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/19/3682

The Parties:-

Mrs Kathleen Wattie, 23 Rosewell Park, Aberdeen, AB15 6HT ("the Applicant")

Stonehouse Property, Osbourne House, 27-30 Carden Place, Aberdeen, AB10 1UP ("the Respondent")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mrs Jane Heppenstall	-	Ordinary Member

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') unanimously determined that the Respondent had failed to comply with paragraphs 90, 91, 112 and 113 of the Letting Agent Code of Practice and determined to make a Letting Agent Enforcement Order.

Background

2. By application dated 18 November 2019, the Applicant sought a letting agent enforcement order against the Respondent due to alleged breaches of the Letting Agent Code of Conduct ("the Code of Conduct"). Following a request for further information from the Tribunal the Applicant confirmed the sections of the Code which she alleged the Respondent had breached together with prior notification to the Respondent.
3. By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President confirmed that there were no grounds upon which to reject the application and fixed a Hearing in the matter which was scheduled for 5 March 2020.
4. The Hearing took place on 5 March 2020. The Applicant was present and accompanied by her husband Bryan Wattie. The Respondent was represented by Aileen Merchant and Lauren Cowling. As a preliminary issue, the Respondents intimated that they had sent a written response to the

Tribunal on 11 February 2020 which was prior to the deadline for submission. The Tribunal noted that its members had not had sight of this, nor had the Applicant. The Respondents produced a cover email to evidence this, which noted that the email had been sent to the Tribunal's administration address. Following enquiries, the Tribunal determined to adjourn the Hearing to give the Applicant the opportunity to consider the representations from the Respondents and to put forward any further written representations in response.

5. Following the Hearing, the Applicant submitted further written representations dated 10 March 2020 and 9 October 2020. The Respondent submitted further written representations by email dated 17 March 2020.
6. A further Hearing was scheduled for 21st October 2020 and took place by tele-conference due to restrictions imposed as a result of the Covid-19 pandemic.

The Hearing

7. The Hearing took place on 21st October 2020. Mr Bryan Wattie represented the Applicant and gave evidence on her behalf. Ms Lauren Cowling represented the Respondent and gave evidence on their behalf. Each party was given the opportunity to challenge the evidence of the other.
8. As a preliminary matter, the Tribunal did not take into account any matters relating to a separate application for repossession of the Applicant's tenancy which involved the same parties and did not permit submissions to be made on this case which had been determined separately by a differently constituted Tribunal in advance of the Hearing.
9. The evidence from the parties in respect of the alleged breaches of the Code of Conduct is summarised below, in line with the heads of claim listed in the application. For the avoidance of doubt, this is not an exhaustive account of parties verbal submissions at the hearing, but a summary of those points relevant to the Tribunal's determination of the matter.
10. **Paragraph 16 - You must conduct your business in a way that complies with all relevant legislation.**
11. Mr Wattie explained that Mrs Aileen Merchant had stated that the tenancy documents held, including the inventory and all other documents, were useless bits of paper. The tenancy documents had been forged and Mr and Mrs Wattie had reported this to Police.
12. Ms Cowling explained that the tenancy agreement held on file was the original and had not been doctored or forged in any way. Mrs Merchant had not made the comments stated.
13. **Paragraph 17 - You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).**

14. Mr Wattie explained that shortly after taking up the tenancy in 2014 he and Mrs Wattie discovered that the landlord had left items in the loft of the property. After some communication with the Respondent's office, they were advised that the landlord would come and clear the loft. However that was not his intention. He had attended the property and removed only a few items. Mrs Merchant had not been upfront with them about the landlord's intentions and should have been honest about the items in the loft prior to the start of the tenancy. Mr Wattie explained that it had taken four years to get the loft cleared. The Respondent was aware of this and should have sorted out for him. It was their problem. Mr Wattie wanted compensation for having to pay rent for a property which could only be partially used.

15. Ms Cowling explained that the Respondent had attempted to negotiate with the landlord and the tenant to arrange access however communications had broken down. The landlord had therefore advised them that he would speak to Mr and Mrs Wattie directly and deal with it himself.

16. **Paragraph 19 – You must not provide information that is deliberately or negligently misleading or false.**

Paragraph 23 – You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property.

Paragraph 26 – You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement

Paragraph 38 – Your advertising and marketing must be clear, accurate and not knowingly or negligently misleading

17. Mr Wattie stated that when they attended the property to go through inventory and lease with the letting manager Stewart Carnie there had been a pine table. However the day after when they returned to the property this had been replaced with a glass table and four plastic chairs and the garage had been stripped of its contents. He and Mrs Wattie had not been consulted on any of this. Furthermore the Respondent's contractors had entered the property without their consent and keys for the property had been lying in a furniture shop. Mr Wattie was also aware that the secure lock for the front door of the property had been removed and the burglar alarm disabled by the Respondent.

18. Mr Wattie cited another situation in January 2020 where a contractor were coming to do PAT testing and had said to him that they were going to access the property with keys if he didn't allow access. He confirmed that the contractor had not ultimately accessed the property but he believed they had a strong intent to do so. He wanted to come into the property when the Applicant and Mr Wattie were not there.

19. Mr Wattie explained that a contractor who had attended the property knew all about the issues he and Mrs Wattie were having with the Respondent.
20. Ms Cowling explained that Stewart Carnie was no longer working with the Respondent. She couldn't comment on the situation with the table and chairs at the commencement of the tenancy. Ms Cowling advised that if works are required at a property, a works order is raised and a contractor will be provided with access arrangements. Some tenants will have agreed to provide keys, or the contractor may speak to the tenant directly to arrange access. Ms Cowling explained that due to the concerns the Applicant and Mr Wattie had expressed, their keys had been held in a key lock since 2015. Access to the key lock was restricted to senior staff and would not be released unless there was written confirmation that the Applicant had agreed to this. Ms Cowling explained that the keys and security access had been passed to her two years ago and she had held it ever since. She has never released the keys to any contractor. With regard to the situation Mr Wattie had referred to in January 2020, the contractor had offered to use the keys without knowing the situation, as he had believed this would make it easier for the Applicant. However it was noted the Applicant did not agree to this, therefore the keys were not released.

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

Paragraph 60 - You must ensure you handle all private information sensitively and in line with legal requirements such as the law relating to data protection.

22. Mr Wattie explained that contact details had been released to British Gas by the landlord without the Applicant's consent. This had followed a gas leak at the property. The Applicant had expressly stated that she did not want her details released. The Respondent must have given the landlord Mr Wattie's contact details.
23. Ms Cowling explained she wasn't aware of the landlord having released the Applicant's contact details. She did know that the Applicant had stated that she didn't wish her details to be released.
24. Mr Wattie explained that there had been a gas leak at the property in June 2018, he and the Applicant were almost gassed to death. They had woken to the strong smell of gas and contacted SNG immediately. SNG had arrived within half an hour to seal the property. The Applicant had then called the Respondent twice and were ignored. Following questions from the Tribunal, Mr Wattie confirmed that the Respondent had in fact advised that the property was covered by a contract with British Gas and the Applicant could contact them directly. British Gas had then been in touch to advise they would arrive before lunchtime. They did so and blocked off the gas supply. It transpired that a new boiler was required. The landlord had been in touch and said that he would arrange this and would not be using the Respondent to carry out the works.

25. Ms Cowling explained that they had been made aware of the leak and had contacted the landlord. The landlord had advised that he would deal with the boiler replacement and the works himself. Ms Cowling advised that the property was fully managed, and the Respondent would therefore be able to arrange repairs. However the landlord would undertake works himself, which he had done so on this occasion.
26. **Paragraph 28 - You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.**
27. Mr Wattie explained that Mrs Merchant had threatened to block emails from the Applicant and had changed the electricity supply at the property without advising them. He also made reference to emails Mrs Merchant had sent which he considered were bullying and intimidating and cited contractors accessing the property without the Applicant's consent as further proof of intimidating conduct. At one point Mr Wattie referred to physical abuse by contractors but upon questioning from the Tribunal confirmed that this wasn't the case and that it was mental abuse he was referring to.
28. Ms Cowling explained that the electricity transfer had been carried out as the tenancy was noted as due to terminate on their system. The Respondent regretted the error and had advised the supplier to transfer it back to the Applicant's provider. The Respondent denied any allegations of abusive and threatening behaviour. Mr Wattie had been advised that staff would only correspond with him by email due to his unacceptable conduct. The Respondent was within their rights to do this, in order to protect their staff.
29. **Paragraph 45 – You must make prospective tenants aware of the Code and give them a copy on request, this may be provided electronically.**
- Paragraph 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**
30. Mr Wattie stated that the Applicant had not been given a copy of the Code. Further, the Respondent's previous property manager had told them that any emails sent to the Respondent would be binned. No instructions or information were provided to the Applicant at the commencement of the tenancy.
31. Ms Cowling explained that the tenancy commenced in 2014, prior to the Code of Practice coming into force therefore it would not have been possible to provide the Applicant with a copy. Ms Cowling disputed that a member of staff would have referred to emails being binned. If such comments were made, the said staff member would be disciplined. It was more likely that the staff member had said to email her directly as opposed to other members of staff as she would have been their point of contact.

32. **Paragraph 64 - At the start of the tenancy, you must give the tenant a copy of the tenancy agreement along with any other relevant statutory documents.**

Paragraph 65 - You must inform the landlord of the statutory requirements on tenancy deposits under the Housing (Scotland) Act 2006 and the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Paragraph 66 - If you lodge tenancy deposits on a landlord's behalf, you must ensure compliance with the legislation.

Paragraph 67 - If there is delay in handing over the property to the tenant on the agreed date, you must inform them of this and explain why as soon as possible.

Paragraph 68 - If you are responsible for managing the check-in process, you must produce an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example marks on walls, carpets other fixtures) unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct.

Paragraph 69 - If the tenant is not present for the making of the inventory, you should ask them to check it and to raise, in writing, any changes or additions within a specific reasonable timescale. Once agreed, the inventory should be signed and returned.

Paragraph 70 - You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant does not, you must inform them, in writing, that you will nevertheless regard it as correct.

Paragraph 71 - You must provide the tenant with a signed copy of the inventory for their records.

Paragraph 72 - If the tenant asks in writing for the landlord's name and address, you must tell them free of charge within 21 days.

33. Mr Wattie raised issues with the tenancy deposit which he stated should be returned to him. The tenancy documents provided were fraudulent. He made reference to repossession notices served as part of separate proceedings. Mr Wattie advised that he had requested the landlords' address from the Respondent but had not been provided with it. The Tribunal referred Mr Wattie to his written representations in which he had stated it was the Respondent's details that had been refused. In response Mr Wattie maintained that it was the landlords details that had been refused.
34. Ms Cowling advised that the tenancy deposit was held with the Letting Protection Service Scotland. There were no fraudulent documents. She

couldn't comment the Applicant's request for the landlord's details having been refused and she had understood from the written representations that it was the Respondent's details Mr Wattie had referred to.

35. **Paragraph 80 – If you hold keys to the properties you let, you must ensure they are kept secure and maintain detailed records of their use by staff and authorised third parties – for instance, by keeping keys separate from property information and holding a record of the date the keys were used, who they were issued to and when they were returned.**

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

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

36. The Tribunal noted the evidence summarised at paragraph 18 to 20 above which was also relevant to these points. Mr Wattie reiterated that despite the Respondent assuring him that keys would not be released, he had still received an email from a contractor advising that they would access the property. The Respondent needed to make it clear that keys wouldn't be issued. Mr Wattie referred to a text message having been sent by Lomond Ventures, the Respondent's own property division which stated that they were going to pick up keys. This had given the impression that they were going to gain access to the property with the keys.
37. Ms Cowling stated again that the Respondent's staff were aware that the Applicant's keys were not to be used by contractors and were kept securely. She could not stop a contractor offering to collect keys, they may not know the full background as to why keys can't be released. She explained that Lomond Aberdeen Property Services were the Respondent's inhouse maintenance department who have since been disbanded. They would have sent an automated text which would have referred to keys however this was always subject to alternative arrangements having been made. The Applicant could disregard this text. This was clarified to them in writing.
38. **Paragraph 85 - If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing; annual gas safety inspections; Legionella risk assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.**

Paragraph 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.

Paragraph 87 - If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents, if that is part of the service) and for giving contractors access to properties for emergency repairs.

39. Mr Wattie explained that no gas safety check had been carried out before the tenancy commenced. They had to wait three weeks. A contractor had come out but had not carried out a proper check in his view. No servicing had been carried out and they had received no documentation. Mr Wattie further advised that the electrical installation certificate had not been done properly. The contractor had sat in the kitchen and not moved. He had asked the Applicant to check things for him. There were issues with sockets and the hob which had not been addressed. There were also bathroom lights that required to be replaced. Mr Wattie had spoken to the landlord in 2016 who had said that he would get the Respondent to sort it all out. Following questions Mr Wattie confirmed that he had reported it to the landlord as opposed to the Respondent.
40. With regard to PAT testing, Mr Wattie stated that this had not been carried out by a competent contractor. The contractor had simply stuck stickers on items without checking them and forgot items. Mr Wattie stated that the contractor had been verbally abusive. Mr Wattie had brought this up with the landlord at the time. The landlord had said he would sort it out with the Respondent.
41. With regard to legionella, Mr Wattie outlined an issue with the tap which had been reported to landlord but he had refused to replace it. Ms Lisa Campbell a member of the Respondent's staff had also instructed the Applicant that hot water would be required for the legionella test however this wasn't the case and the hot water tank had to be drained as a result. Mr Wattie confirmed the test was carried out, either in 2016 or 2017.
42. Mr Wattie summarised a history of repairs which had been reported but either not completed or completed after some significant delay. In particular he cited issues with a toilet which had resulted in a flood in the bathroom, a broken toilet seat, sofa and bathroom flooring. He explained that it had taken a change in personnel within the Respondent's firm to get some of these repairs carried out.
43. Mr Wattie then explained that back in 2016 Ms Lisa Campbell had been in touch to advise that the landlord wanted to install smoke and heat detectors at the property. The Applicant was unable to allow access for that due to Mr Wattie having been released from hospital around that time. It was agreed that it would happen at a later date however the landlord had changed his

mind. The Applicant repeatedly brought up the issue however Ms Campbell had said the landlord wouldn't pay for it. Mr Wattie had spoken to the landlord himself who confirmed that he didn't think the works were necessary. The Applicant had then received a letter at the start of the year saying that the landlord had agreed the smoke and heat detectors could be installed when the gas safety check was carried out. Previous attempts by the Applicant to get this work done had been ignored by the Respondent.

44. Mr Wattie stated that they never knew who was coming to the property and cited an example involving an external contractor who had attended to carry out PAT testing who was sub-contracted by another contractor. He also made reference to a situation where a contractor had attended to repair silicone around windows, had left to buy more silicon and had failed to return, leaving the Applicant having to stay in the house all afternoon and wait. The contractors didn't clean up after themselves, with the exception of one occasion.
45. Ms Cowling explained that an up to date gas safety certificate had been in place before the tenancy commenced. At no time during the tenancy had that lapsed. Ms Cowling confirmed that the EICR had been carried out in 2016. She was not aware of the issues Mr Wattie had raised, with the exception of the bathroom lights which had been replaced following the EICR.
46. Ms Cowling had no record of Mr Wattie having complained about incompetent PAT testing and noted that he had complained directly to the landlord. The Respondent couldn't act on information they didn't have. With regard to the legionella, Ms Cowling noted the test had been carried out and no issues highlighted in the report.
47. With regard to the history of repairs, Ms Cowling explained that the toilet seat and toilet were both replaced, the latter by the landlord directly. There had been an issue raised with linoleum and a quote had been obtained however this hadn't been approved by the landlord. Any decision to carry out repairs rested with the landlord who instructed the Respondent. They could not do anything without the landlord's instructions.
48. With regard to the smoke and heat detectors Ms Cowling confirmed that the landlord had instructed this work in 2016 but then changed his mind. It was made clear to the landlord what his obligations were. The Respondent's staff had since discussed with the landlord in depth and he had agreed. A request was sent to the Applicant in January 2020. However the Applicant had refused to allow the works to be done. Ms Cowling explained that the Respondent had no record of the Applicant having requested smoke and heat detectors directly.
49. Ms Cowling explained that the Respondent would advise tenants of which contractors would attend the property. In the specific case Mr Wattie had referred to, the Respondent was not aware that the contractor had subcontracted to somebody else and had told the contractor it was unacceptable. Ms Cowling accepted that it could be frustrating for tenants to

have to wait at home for contractors to turn up and communication could have been better in the scenario involving the contractor carrying out repairs to the window which Mr Wattie referred to. Due to Mr Wattie's conduct, all communication was now with him via email, staff had been instructed not to speak to him by telephone.

50. Ms Cowling explained that the Respondent's procedures for reporting repairs would be provided to tenants when they moved into the property and would be included in the welcome pack. It would set out the procedures for reporting both emergency and non-emergency repairs, as well as the timescales for response citing a 72 hour period for non-emergency repairs. Ms Cowling further explained that the Respondent now has a portal that tenants can use for reporting repairs (FixFlo), however she accepted that this was not available during the entirety of the Applicant's tenancy.

51. **Paragraph 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.**

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

Paragraph 91 - If you use a contractor or a third party, you must take reasonable steps to ensure they hold appropriate professional qualifications and the necessary public and professional liability insurance. You should hold copies of all relevant documents.

Paragraph 92 - On request, you must disclose to landlords, in writing, whether you receive any commission, fee, rebate or other payment or benefit and any financial or other interest you receive from a contractor/third party you appoint.

52. Mr Wattie cited the examples he had previously given in relation to repairs which had not been carried out. There was no procedure for reporting emergency repairs. He referred to the water leak in the bathroom which wasn't acted upon for five days because there were no vehicles available. Mr Wattie had to address this himself. Mr Wattie explained that inspections were carried out by members of the Respondent's staff every twelve weeks. They would take photographs however weren't generally interested in anything else. Mr Wattie also raised the issue of staff not taking account of his wife's hearing which required them to use the doorbell as opposed to knocking. This was often ignored.
53. Ms Cowling explained that she couldn't see a timescale on the Respondent's system for their response to the water leak, however she noted that it was reported and actioned. She thought five days sounded excessive and noted that if their inhouse vehicles were unavailable they would have used an

external contractor. Ms Cowling explained what would be considered an emergency, namely lack of heating and hot water, uncontrollable leak, loss of electricity. Prior to the implementation of the FixFlo portal, emergencies were reported via an out of hours number. The details were on the Respondent's website and sent to tenants every year. Since the new portal has been implemented there is a link on the Respondent's website and on email signatures and in the tenant's welcome pack. Ms Cowling confirmed that routine inspections of properties were carried out approximately every four months and photographs would be taken to see if there were any specific maintenance issues to be attended to.

54. **Paragraph 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.**

Paragraph 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.

55. Mr Wattie referred again to the issues with contractors and their incompetency. He explained that there was no clear complaints procedure in place. The Applicant have never been provided with this. When the issue arose with the transfer of electricity he had contacted Mrs Merchant but received a rude letter back from her.
56. Ms Cowling explained that the information regarding complaints was available for tenants. The Respondent asks that complaints are raised with designated property manager in first instance. If that doesn't resolve the matter, it would be escalated to a department manager and then up to the managing director. Ms Cowling explained that the communication with Mr Wattie was becoming quite heated and aggressive, therefore he was warned about his conduct. In response to questions from the Tribunal, Ms Cowling explained that she didn't think there was anything about complaints in the tenant information pack or written down in formal procedures but tenants could be made aware of the procedure at any point.
57. **Concluding Remarks**
58. In conclusion Mr Wattie stated that the Applicant sought compensation for the property having been let with items in the loft and advised that they had paid six months rent upfront plus a deposit. He also cited the issues with the items

that had been removed from the property by the Respondent and the incompetency of the Respondent's contractors. Ms Cowling explained that the Respondent refuted the application however conceded that an enforcement order requiring the smoke and heat detectors be installed may be appropriate. Ms Cowling further reiterated that the Respondent was acting on the landlord's behalf and on his instruction.

Relevant Legislation

59. 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.”

60. The relevant sections of the Code the Applicant seeks to rely upon are set out above.

Findings in Fact

61. The Applicant and Mr Bryon Wattie reside in the property at 23 Rosewell Park, Aberdeen (“the Property”).
62. The property was let by Mr Terry Thomas in terms of a Tenancy Agreement dated 10 January 2014 which was signed by Mr Bryon Wattie.
63. Mr Terry Thomas instructed the Respondent to manage the property on his behalf.
64. The management agreement between Mr Thomas and the Respondent includes the carrying out of repairs at the landlord’s instruction.
65. The Respondent holds a set of keys for the property.
66. Since 31 January 2018, the keys have been kept securely in a lockbox on the Respondent’s premises.
67. The keys can only be released with the Applicant’s permission and with the consent of a senior manager.
68. Since 31 January 2018, there have been no occasions when either a contractor employed by the Respondent or a staff member have accessed the Property without the consent of the Applicant.
69. In mid-2018 there was a leak in the bathroom from the toilet. The Applicant reported this to the Respondent. The Respondent was unable to arrange for a contractor to attend timeously having regard to the nature and urgency of the matter therefore Mr Bryon Wattie took steps to attend to the leak himself. The Respondent’s contractor did not attend the property until approximately five days after the leak had occurred.
70. In June 2018, there was a gas leak at the property. Mr Bryon Wattie contacted the Respondent. The Respondent contacted the landlord. The landlord passed the Applicant’s contact details to British Gas with whom he had a contract for the maintenance of the gas boiler. British Gas attended the property that same day.
71. In January 2020, the Respondent engaged a contractor to carry out PAT testing at the property. The contractor contacted the Applicant to advise that he could obtain keys to access the property. The contractor was subsequently advised that the Applicant had not given consent for access. The contractor did not access the property without the Applicant’s consent.

72. Following the commencement of the tenancy in January 2014 Mr Bryon Wattie was in contact with the landlord. Since then there have been numerous occasions where Mr Wattie has contacted the landlord directly about matters relating to the tenancy.
73. The Respondent's correspondence with the Applicant and Mr Wattie has been of a professional nature.
74. The Respondent's staff have not acted in a manner that is threatening, intimidating or abusive towards the Applicant or Mr Wattie.
75. The Respondent's contractors have not acted in a manner that is threatening, intimidating or abusive towards the Applicant or Mr Wattie.
76. The Respondent has clear procedures in place for reporting both emergency and non-emergency repairs, including target timescales. Repairs are currently reported through the online portal Fixflo which is widely advertised to tenants.
77. The Respondent does not have a clear written complaints procedure, although there is a process for complaints to be referred to the designated property manager and escalated up to senior managers if the complainer is dissatisfied.

Findings in Law

78. **Paragraph 16** – The Tribunal found no breach of the Code had occurred. The Tribunal did not consider that comments from a member of staff on behalf of the Respondent equated to a failure to comply with legislation and the Tribunal was satisfied from Ms Cowling's evidence that the Respondent was aware of and took steps to comply with legislation incumbent upon it.
79. **Paragraph 17** – The Tribunal found no breach of the Code had occurred. The incidents referred to by the Applicant in support of a breach predated the Code therefore the Tribunal was unable to make any findings regarding those matters.
80. **Paragraphs 19, 23, 26 and 38** – The Tribunal found no breach of the Code had occurred in relation to these sections. The majority of the incidents referred to by the Applicant in support of a breach predated the Code therefore the Tribunal was unable to make any findings regarding those matters. The Tribunal noted the incident in January 2020 with the contractor who had initially offered to access the property using keys but had ultimately not done so. The Tribunal did not consider this particular incident equated to a breach of any of the stated sections of the Code.
81. **Paragraphs 25 and 60** – The Tribunal found no breach of the Code had occurred in relation to these sections. Paragraph 60 specifically applies to references and checks and was therefore not relevant to the matters the Applicant had raised. The Tribunal noted the Applicant's position that contact details had been handed out to contractors but was not persuaded on a

balance of probabilities and having regard to the evidence before it that the Applicant had explicitly stated she did not wish contact details to be released to contractors without her consent. The Respondent had now taken steps to act as a middle man between the Applicant and their contractors in order to facilitate repairs. In his evidence at the hearing Mr Wattie had specifically referred to an incident whereby he had discovered his contact details had been passed to British Gas by the landlord. Mr Wattie's position was that the Respondent must have released his details to the landlord, however the Tribunal did note that in his evidence Mr Wattie had referred to a number of occasions since the commencement of the tenancy when he had made contact with the landlord directly. Accordingly the Tribunal could reasonably assume that the landlord was already in possession of those details at the time that British Gas were informed.

82. **Paragraph 28** – The Tribunal found no breach of the Code in relation to this section. The Tribunal did not accept the Applicant's position that members of the Respondent's staff had behaved in an abusive, intimidating or threatening manner. The incident regarding the change of utilities at the property appeared to the Tribunal to be a genuine error that had been accepted by the Respondent and was not in the view of the Tribunal an attempt to intimidate or threaten the Applicant in any way.
83. **Paragraphs 45 and 46** – The Tribunal found no breach of the Code in relation to these sections, which relate to the provision of information to prospective tenants. On the basis that the tenancy commenced before the Code came into force the Tribunal was unable to make any finding regarding these matters.
84. **Paragraphs 64, 65, 66, 67, 68, 69, 70, 71 and 72** – The Tribunal found no breach of the Code in relation to these sections. Paragraphs 64 to 71 relate to the inventory and check-in process at the start of the tenancy. On the basis that the tenancy commenced before the Code came into force the Tribunal was unable to make any findings regarding these matters. Paragraph 72 requires the Respondent to provide the Applicant with the landlord's name and address if requested to do so in writing. There was no documentation before the Tribunal to evidence that such a request had been made. Regardless, the Tribunal noted that the Applicant had been in contact with the landlord on several occasions since the commencement of the tenancy and would therefore have been in receipt of his contact details.
85. **Paragraphs 80, 81 and 82** – The Tribunal found no breach of the Code in relation to these sections. Based on its findings in fact the Tribunal accepted that the Respondent kept the keys in a secure location with access only authorised to senior staff, and that keys were not released without the Applicant's consent. The Tribunal accepted that these arrangements had been in place since the Code came into force in January 2018. There was no evidence before the Tribunal to suggest that the Respondent had failed to give reasonable notice to visit the property together with the reasons for this and the Tribunal noted that the Applicant at her request was present during any visits that had taken place since January 2018.

86. **Paragraphs 85, 86 and 87** – The Tribunal found no breach of the Code in relation to these sections. Paragraph 85 relates to pre-tenancy checks therefore the Tribunal was unable to make any findings on these matters on the basis that the tenancy commenced prior to the Code coming into force. With regard to Paragraphs 86 and 87, the Tribunal was satisfied based on the evidence put forward by the Respondent that there are clear procedures in place for reporting repairs and maintenance, including emergency repairs.
87. **Paragraphs 89, 90, 91 and 92** - The Tribunal found no breach of paragraphs 89 and 92. The Tribunal did however conclude that a breach of Paragraphs 90 and 91 had occurred. The Tribunal noted the incident referred to by the Applicant in mid-2018 whereby a leak in the bathroom had been reported to the Respondent but not attended to for a period of five days. Mr Wattie had therefore carried out repairs himself. In her evidence Ms Cowling was able to confirm that the repair had been reported but not when it had in fact been addressed. The Tribunal could not therefore be satisfied on that occasion that the repair had been dealt with promptly, having regard to the nature and urgency of the leak, nor could it be satisfied that the Applicant had been advised of the action that would be taken and likely timescale. With regard to the remainder of the repair issues outlined by the Applicant, the Tribunal concluded on the balance of probabilities that any delay in effecting these repairs were the fault of the landlord. The Tribunal accepted that the Respondent had taken steps to address these matters but had not received instructions from the landlord to carry out the necessary repairs.
88. **Paragraphs 112 and 113** – The Tribunal found a breach of paragraphs 112 and 113. Whilst Ms Cowling had outlined the procedure for complaints, the Tribunal was not persuaded that this was set down in a clear procedure with reasonable timescales noted and details on the handling of complaints against contractors and third parties.

Observations

89. It should be noted that the Applicant's tenancy commenced in 2014, prior to the Code of Conduct coming into force on 31 January 2018. Significant element of the Applicant's case sought to rely upon alleged incidents that predated the Code and could not therefore be taken into consideration by the Tribunal when considering whether a breach had occurred. This included allegations as to the conduct of the Respondents at the commencement of the tenancy. It was also unclear at points during the Applicant's evidence when certain alleged incidents had occurred, which resulted in the Tribunal being unable to make any findings regarding those matters. This was particularly pertinent in relation to the various repairs issues highlighted by the Applicant.
90. It was also clear that many of the allegations of disrepair were matters that fell within the landlord's duties under the Repairing Standard which is governed by a separate statutory regime under the Housing (Scotland) Act 2006. The Tribunal accepted that the Respondent is obliged to take instructions from the

landlord prior to carrying out repairs, and whilst staff could offer advice to him in this regard, they could not compel the landlord to carry out works. The appropriate remedy in the event that the landlord chose not to do so would be an application to the Tribunal against the landlord in respect of alleged breaches of the Repairing Standard. This would have been a route available to the Applicant at any point during the tenancy, had she been concerned about the condition of the property.

91. 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. Whilst Mr Wattie was able to give a lengthy account of the Applicant's case, the Tribunal did note inconsistencies in his evidence, particularly when compared with the written representations that had been submitted on behalf of the Applicant. Mr Wattie had also on occasion made broad statements about the Respondent's conduct which when pressed by the Tribunal had transpired not to be an accurate representation of what had occurred, for example stating that the Respondent had ignored the Applicant when she reported a gas leak at the property, when in fact they had provided details for British Gas with whom the landlord had a maintenance contract. The Tribunal also found it difficult to agree with Mr Wattie's interpretation of the Respondent's behaviour towards him. His account of the Respondent's language in their communications did not reflect the Tribunal's view of what was narrated in the copy email correspondence submitted in his evidence. The Tribunal therefore found it difficult to accept his account of events as wholly accurate.
92. Ms Cowling on behalf of the Respondent was gave evidence to the best of her knowledge however at times she was unable to provide details around specific matters that she had not been involved in. It was regrettable that the Respondent had not sought to lead evidence from the witnesses that had been identified in advance of the hearing as it was clear that their evidence would have been of relevance to a number of the matters highlighted by the Applicant. Notwithstanding the Tribunal found Ms Cowling to be a credible witness.
93. Finally, it should be noted that the Applicant sought to submit further written representations following the Hearing. The Tribunal noted that parties had been given ample opportunity to submit documentary evidence in advance of the Hearing and therefore the Applicant was advised that the Tribunal would make its determination of the application based on the evidence before it at the Hearing.

Decision

94. 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 11 and 112, the Respondent must provide a clear written complaints procedures, stating how to make a complaint and including the series of steps the complaint will go through with reasonable timescales linked to those set out in any agreed terms of business. The procedure must also set out how complaints against third parties and contractors will be dealt with, any recourse to the professional or membership body the Respondent belongs to, whether there is access to alternative dispute resolution services, and the availability of a complaint to the Tribunal if they are dissatisfied with the process; and
- (ii) In respect of the breach of sections 90 and 91, the Respondent must make payment to the Applicant by way of compensation in the sum of £100.

95. 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.

Ruth O'Hare
Legal Member

17 November 2020