Housing and Property Chamber
First-tier Tribunal for Scotland

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

Reference number: FTS/HPC/LA/19/3165

The Parties:

Mark Roberts, 9 Vale Road, West Lulworth, Wareham, BH20 5PY ("the Applicant")

Castle Residential, 63 Causeyside Street, Paisley, Renfrewshire, PA1 1YT ("the Respondents")

Karen Kirk (Legal Member) and Helen Barclay (Ordinary Member)

1. The Hearing

This Hearing was a Hearing fixed in terms of Section 48(1) of the Housing (Scotland) Act 2014 and concerned an application by the Applicant against the Respondent for failure to comply with the Letting Agency Code of Practice in terms of the Letting Agent Code of Practice (Scotland) Regulations 2016 (the code) at paragraphs 16,17,19, 21, 24,26,27,30,32a)d)e),55,57,61,62,65,66,76,78,79,74,75,98,99,101,102,104f,108,124 ,125 of the Code. The hearing took place by WebEx video due to the covid-19 pandemic.

2. Attendance

The applicant attended personally.

Jacqueline McClelland attended for the Respondent. Also in attendance to assist Ms McClelland was Daryl Harper but she did not give formal evidence.

3. Decision of the Tribunal.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having made enquiries as it saw fit for the purposes of determining whether the Letting Agency has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 ("the 2014 Act"), determines unanimously that

1. **The Respondent failed to comply with the Code of Practice at Paragraph 27, and**
2. **It was appropriate to order the payment of compensation in respect of those breaches of the code in terms of Section 48 of the 2014 Act by the Respondent to the Applicant for the sum of £140.**

4. Process and Preliminary Matters

1. The Tribunal had earlier issued directions in the Application. On the 10th March 2020 the Respondents were directed to provide a written summarised response to each of the Applicant's allegations set out in the letter to the Respondents dated 10th January 2019. There were also directed to provide a full copy of the emails or communications they intended to rely on from the full communication table lodged, all Let Alliance paperwork and a full copy of their complaints handling policies. These directions were reissued and the hearing was postponed due to the pandemic. A hearing thereafter took place which was also adjourned to allow proper preparation of the case and to arrange for the Hearing to take place by WebEx video.

5. Summary of Evidence

1. The Applicant

The Applicant sought to establish in terms of his application that the following paragraphs of the Letting Agency code had been breached:

Paragraphs,16,17,19,21,24,26,27,30,32a)d)e),55,57,61,62,65,66,76,78,79,74,75,98, 99,101,102,104,108,124,125.

a)Instruction

The Applicant set out that he received an oral representation from the Respondents in 2015 regarding the letting of his property and detailing what they could provide. He said further that he wished to rent to a professional. The Applicant said his first couple of tenants were suitable and when he got notice served that his tenants were leaving and his property was empty he pushed the Respondents for a new tenant to be found. He said it was over 2 to 3 months that the flat was empty and he was keen to get a new tenant. He said when this Tenant was found she passed all the checks and he was happy about it.

b)New Tenant

The Applicant said that in regards references it was his understanding that in order to rent the property the tenant would need to provide financial statements, details of previous landlords and locations. The Applicant said none of these details were in the credit report. The Applicant said he knew there was 2 levels of checks and he was aware of going through rental checks himself. The Applicant said he was told nothing

about a new tenant but he had received an email from the Respondents to say that they had found a new tenant. The Applicant said he knew nothing about a guarantor, to which he became aware much later. The applicant said he was of the view no reference checks on the guarantor were carried out and that he become aware the guarantor was in supported accommodation with no means.

c)Deposit

The Applicant said he was not advised that the tenant had failed to pay the full deposit amount. The Applicant said he considered that keys could not be given to a property until you paid a deposit and passed checks. The Applicant said he become aware after chasing the deposit at the end with Safe Deposit Scotland and seeing a letter to the Tenant from the Respondent referring to the partial deposit that the tenant had not paid the full deposit and he had not been told this by the Respondents. The Applicant's position was that there was in his view no due diligence done on the tenant and she should not have been in his property. The Applicant's evidence was that had he been aware of the deposit and had the references been thorough the tenant would not have rented his property.

d)*Deduction of Costs*

The Applicant said that the partial deposit amount lodged by the tenant was £185 and this was returned to the Respondents by Safe Deposit Scotland. The Applicant said that he received £101 rather than £185 because the Respondent deducted: for a Notice To Quit the amount of £30 and a management fee due of £54.

The Applicant also said he had asked to be made known about any deductions from his rent first. He said the tenant had caused damage and had taken a hammer without approval to hammer a nail in and had burst a pipe. The Applicant said that this was not accidental and it was stilled owed to him.

The Applicant said that the property needed a Legionnaires inspection carried out and he had arranged it but was not able to send it to the Respondents who rather than email him for it took the fees from the rent money to carry it out. The Applicant said the Respondent took 3 months to refund the monies for this.

e)Collection of Rent procedures

The Applicant said that in the Respondent's procedures for collecting rent it says within 7 days of rent not being paid the Respondents would get in touch with the tenant and there would be an escalation process from there if not paid with the guarantor contacted within 10 days. The Applicant said he did not see any chasing of the Tenant until he got in touch with the Respondents. He said the Respondents clearly sent emails to the tenants but not in 7 days of the rent being due and that the guarantor had only been contacted twice and he had not received any information until he got in touch with the Respondents himself. The Applicant said there was a delay in him receiving rent when it was paid the rent kept getting paid later and later.

The Applicant said in evidence that he came back to the country after being away for work in Sept 2017 at the end of the month and that he came home and found no emails from the Respondent. He said he checked his bank balance and the rent money was not there. The applicant later agreed that the month he was referring to was August 2019 .

f)Checkout procedures/ Property Checks

The Applicant said that there had been no reasonable check out undertaken and that at the end of tenancy there had been smoking in the property by the tenant, broken articles and a shower fitting was gone. The Applicant said that in addition to rent due he had went through a separate application with the Tribunal to seek an order for the rent money due which was successful against the tenancy and also he was successful in getting awarded a third of costs for damage done by the tenant.

The Applicant said he went through the full complaints procedure with the Respondents and he recalled an email from the Respondent of apology and that they would refund the deductions from the £185 returned to them by Safe Deposit Scotland. The Applicant's position was that he wanted the shortfall he said was £224 and he gave his bank details for this.

The Applicant said that if the Respondent's had carried out checks they would have noted the smoking and damage. He said further that the Applicant knew that they had difficulty in getting the tenant in.

2. Jacqueline McClelland for the Respondents

a)Commencement of Agreement and the Tenancy concerned

Ms McClelland for the Respondents said she had worked for them for 8 years and was the manager of the branch concerned. She said the Applicant was advised the tenant in question was employed as a cleaner and wanted to sign for the tenancy and she was in full time employment at that time.

b)Tenant Referencing

Ms McClelland said that the procedure was that new tenants were given a 3rd party application form which was filled out by them and forwarded to a third party referencing company. The reference company used was Let Alliance. The information and forms is then completed online by the Applicant she said. McClelland told the Tribunal that it states on the 3rd party Let Alliance agreement that the tenant was employed. The information was not included in the forms as the process is between the tenant and 3rd party. She said all references are dealt with by that third party and that the previous two tenancies at the property which went well were also put through Let Alliance.

Ms McClelland said that they received the report back from Let Alliance that the tenant was approved but that the response can sometimes come back to say a guarantor was required. The Tenant had a satisfactory report but she said that as the Applicant had informed the team that he was in financial constraints because of the gap in rent between tenants she ensured they had a guarantor although that was not required.

Ms McClelland said that the Applicant had a working relationship with a colleague who no longer worked for the Respondent's, named Laura. Ms McClelland referred to the documents lodged for the Respondents and said that there were updates to the Applicant on what she described on a diligent basis from 6th June to 15th June on the system relaying everything to him regarding the application. She said it was reported back that the tenant had intended to hang pictures and went through a communal pipe. The tenant had called the contract number and the Respondents organised a repair to ensure water was not leaking into the property.

c)Rent Delay

Ms McClelland said in regards to the delay in paying rent due to the Applicant and that she had had a look at the transactions and disagreed that there were any delays. She said that on 24th Jan 2018 rent was received from the tenant and sent out to the Applicant on the same day. She said further on 13th March 2018 that rent was received and on the same day remitted to him. Again she referred to rent being received on 10th April 2018 and being remitted that day. Further evidence was provided that rent was paid on 1st June 2018 and remitted on 6th June and thereafter paid on 15th July and sent to the Applicant on 16th July.

Ms McClelland said that during the course of the tenancy the tenant was then on housing benefit a tenant but they could not receive the benefit directly as the tenant was never in enough arrears consistently for this. She said that every time the tenant met the criteria for rent to be paid directly the tenant then paid to the rent and because of the situation the Respondents could not apply for the rent directly.

d)Communication

Ms McClelland said that when the tenant started to be late on rent she was dealing with the Applicant on a one to one basis. She said she called him on Saturday afternoons and Sunday mornings, that she spoke to the tenant's neighbours as they knew her as she visited the property so much. She said that she also visited the guarantor. Ms McClelland's view was that she tried her best and she completely understood the applicant's situation so she would try and visit the tenant even before the working day and at weekends. She said that the Applicant told the office that if he could not get rent then he could not go to his grandfather's funeral. Ms McClelland said that the Applicant was informed via calls, emails and texts with the main communication was always via phone calls.

e)Deposit

Ms McClelland on the issue of the partial deposit said that a member of staff did not confirm to the correct procedures and that she had agreed in that aspect the Respondent had not met the requirements. She said she had offered to credit the deductions made to the £185 to ensure the Applicant got the full £185. She said further that she had agreed that the colleague had not acted appropriately and the matter was dealt with internally.

In regards the Legionnaires certificate she said that it was chased up for two months with the Applicant and as they did not have the certificate they carried one out but when it was received they credited the monies back to the Applicant for the certificate.

f)Check out

Ms McClelland said that an Inventory was carried out and on check out the Applicant was advised of findings. On 19th October the Applicant she said was sent photographs of meter readings.

6. Submissions

For the Applicant

The Applicant submitted that he considered that the Respondent had breached the Letting Agency code. He submitted that the financial checks were not robust of the tenant or of the guarantor and that he should have been advised of the deposit shortfall immediately and that he was only told the bare minimum. The Applicant said the losses he incurred were as a direct result of unreasonable and unprofessional behaviour by the Respondents. He said the tenant failed to make rental payments in time and caused damage to the property. He sought the Tribunal award him the full deposit, the outstanding rent and damages awarded by the tribunal against the tenant which he has not recovered, compensation as he said it horrible situation causing stress which was dangerous to his unborn baby. The Applicant said relatives passing away at the time and high risk pregnancy made worse by the situation caused by the Respondent's.

For the Respondent

Ms McClelland for the Respondent said that they had sought some resolution for the Applicant from the tenant as the situation had caused upset to all but she strongly refuted the claims by the Applicant. She submitted that she tried her best Ms McClelland did pursue the rent arrears and had various communications with the tenant. She said that the Respondents knew of Applicant's wife's pregnancy and other family matters but had tried to do what they could.

7. Findings in Fact and Law

1. The Applicant is the heritable proprietor of the property at 63 Causeyside Street, Paisley.
2. In 2015 the Applicant contracted with the Respondents to be his letting agency, who are a registered letting agency in terms of the Housing (Scotland) Act 2014 and from then managed the Applicant's tenancy. This agreement was lodged and was dated 2nd July 2015.
3. At Clause 23 of the agreement the parties agreed that any costs associated with eviction would be in addition to the monthly management fee.
4. At Clause 12 of the agreement the parties agreed that the Respondents would instruct their contractors to repair the property up to a value of £150.
5. From 2015 until 2017 the Respondents successfully managed two tenancies for the property.
6. The Respondent's procedure to reference check potential tenants was to use a third party reference agency called Let Alliance.
7. Let Alliance approved the Applicant's first 2 tenants following his agreement with the Respondents in 2015.
8. On 10th July 2017 the property was let to a third tenant, Julie Finnegan ("the tenant") The Tenancy ended on or around the beginning of October 2018.
9. Prior to this new tenancy the property had been vacant for a few months without rental income and the Applicant was concerned about this in regards his own personal finances.
10. The Applicant put pressure on the Respondents to find a new tenant as the Applicant was in financial difficulty.
11. Miss Finnegan made an application to Let Alliance who carried out the relevant third party checks. This process was separate and distinct from the Respondents and had been referred to in the agreement between the parties.
12. The tenant was approved by Let Alliance and no guarantor was required.
13. Let Alliance score the tenant as 549 when the lowest range is 480 and stated to the Respondents that the tenant credit score was satisfactory and her residency had been established.
14. The Respondents however sought a guarantor for the tenancy because they were aware of the financial difficulties the Applicant was experiencing.
15. At Clause 7 of the Tenancy the deposit was £325, comprising one month's rental.
16. The tenant did not pay the deposit amount of £325 and paid £145 stating that the remainder would be paid. The tenant received the keys and the tenancy commenced on 10th July 2017.
17. The Applicant was not told a partial deposit had been obtained and the Respondents continued to press the Tenant for payment.
18. The Respondents have accepted that not to tell the Applicant that the deposit was only partially paid was an error.
19. The Tenant was in employment at the start of the tenancy but her circumstances changed and she became entitled to state benefits.
20. The Tenant was regularly late in payment of rent and the Respondents had to frequently communicate with the tenant seeking payment.
21. The Respondents lodged a log in terms of the property from the log lodged the tenant made the following payments to rent arrears.

12th Sept 2017	£360
10th October 2017	£290
17th December 2017	£290
20th December 2017	£290
15th January 2018	£325
17th January 2018	£325
23rd January 2018	£30 (damage costs)
2nd March 2018	£650
8th March 2018	£650
17th June 2018	£325
27th June 2018	£650
4th July 2018	£650
19th July 2018	£50
1st August 2018	£50
1st August 2018	£375
16th August 2018	£375
21st August 2018	£325

22. The tenant would frequently attend the Respondent's office with cash payments towards the rent.
23. The Respondents log in terms of the property also included references to inspections and visits to the property on behalf of the Applicant. There was also a number of letters sent to the tenant from the Respondents. From the log and productions lodged the Respondents made the following visits and contact in regards the property during the tenancy:

1.10.18	*Email to tenant to carry out inspection.*
27.9.18	*Letter to the tenant referring to arrear and damage to property.*
21.8.18	*Email to tenant re rent arears.*
21.8.18	*Text message to tenant re rent arrears*
16.8.18	*Email and text to tenant re rent arrears*
1.8.18	*Email to tenant re rent arrears*
19.7.18	*Text message to tenant re rent arrears*
11.7.18	*Text message to tenant re rent arrears*
9.7.18	*Visit re bleeping alarm*
8.7.18	*Gas inspection*
4.7.18	*Text message to tenant re rent arrears*
27.6.18	*Email and text to tenant re rent arrears*
22.6.18	*Email and text to tenant re rent arrears*
19.6.18	*Email to tenant re rent arrears*
31.5.18	*Email and text to tenant re rent arrears*
24.5.18	*Email and text to tenant re rent arrears*
22.5.18	*Text message to tenant re rent arrears*
10.5.18	*Request to call office*
3.5.18	*Asked to call office as landlord wishing to sell to family member*
27.4.18	*Called re above and asked if wished to remain in property*
13.3.18	*Visit to tenants home and paid cash of £650 for rent and deposit*
7.3.18	*Text message to tenant re rent arrears*

6.3.18 Text message to tenant re rent arrears
2.3.18 Email and text to tenant re rent arrears
7.2.18 Inspection
17.1.18 Email and text to tenant re rent arrears
23.1.18 Email to tenant re damage costs
15.1.18. Text message to tenant re rent arrears
7.12.17 Email and text message to tenant re rent arrears
10.10.17 Email and text message to tenant re rent arrears
11.9.17 Text message to tenant re rent arrears
7.8.17 Email re remainder of the deposit.
7.8.17 Incident inspection

24. The Applicant carried out a legionnaires test on his property but did not inform the Respondents who carried out their own test at a cost. The cost was deducted from the rental agreement as per the terms of the agreement but refunded to the Applicant after he produced his own certificate.
25. Safe Deposit Scotland returned the deposit of £185
26. The Respondents carried out an inventory and final checkout. The final move out inspection took place on 9th October 2018.
27. On 4th March 2019 the First-tier Tribunal for Scotland issued an order for payment in favour of the Applicant against the tenant for the sum of £1327.60.
28. The Respondents breached paragraph 27 of the code because although the error in the deposit was a mistake they had failed to communicate that to the Applicant promptly and it was a significant breach of the tenancy terms given the deposit was £325.

b) Reasons for Decision

The Tribunal had the benefit of both the written evidence in the form of email communication and written communication between the parties and extensive oral evidence given by WebEx video. The Tribunal benefited from clear evidence lodged by the Respondent's in compliance with previous directions issued. The Tribunal determined that the Applicant was credible but he was angry and frustrated in the delivery of his evidence which affected at times the quality of same. For example the Tribunal noted that the Applicant gave evidence that he had returned from work abroad at the end of September 2017 to realise upon checking his bank account that no rent monies had been received. He subsequently withdrew this and agreed with the Respondent the month he was referring to was August 2017. The Respondent had provided evidence that the correct month was August and that the tenant had paid the August rent and this was paid to the Applicant in mid-August 2017 and not at the end of the month. It was not the case that the Tribunal did not consider the Applicant unreliable but that his evidence was affected by his anger and frustration at matters. The Applicant's expectation of the Respondents were in many respects higher than what is set out in the Letting Agent Code of Practice (Scotland) Regulations 2016. The Applicant appeared not in a position to be able to financially afford any element of risk in his rental property and that to the Tribunal appeared unreasonable and created unreasonable expectations of the Respondents as the letting agency. The Tribunal

noted that the Applicant repeatedly raised in evidence the matter of the partial deposit despite the fact that the Respondent's conceded on a number of occasions during the Hearing that they accepted this error and also apologised to him. The Tribunal noted the Applicant had obtained an order for payment against the tenant but he had been usable to enforce same at the time of the Hearing. The Applicant considered the Respondents were responsible for this loss alongside the partial deposit error and compensation he was due for the distress cause to him and his family. The Tribunal for these reasons did not accept his submissions that the code was breached in many respects and had directly caused him loss.

Miss McClelland in contrast did appear to the Tribunal to be careful, calm and attentive in her delivery of her evidence and was also credible. For example Miss McClelland did not give answers to a number of questions without checking her records for details and dates in particular in regards to when payments of rent received were then transferred to the Applicant. Miss McClelland was quick to accept the error of the partial deposit only having been paid and for this not to have been communicated to the Applicant. The Tribunal noted Miss McClelland apologised for this and appeared and genuine and sincere in her acceptance of this error. She advised the Tribunal that practices had changed in the office overall. Nevertheless the Tribunal considered that in the terms of this issue the Respondent's breached the code at paragraph 27.

In essence the Tribunal considered with the exception of the deposit situation which the Respondent's accepted and the fact that the Tribunal accepted that the Applicant had not been advised of there being a Guarantor regardless of the fact it was not required by Let Alliance then on the whole the Respondent's acted with due care and attention in terms of their duties. The Tribunal considered in terms of the evidence that the Respondents communicated with the tenant regarding late payments of rent regularly. The Tribunal considered the Respondents communicated regularly with the Applicant regarding matters. The Applicant the Tribunal considered put considerable pressure on the Respondents in regards the tenant's late rent and arrears, for example explaining that if they did not get payment of the rent due he would be unable to attend his grandfather's funeral. In response the Tribunal determined the Respondents did carry out checks and communications to ensure rent was paid. The Tribunal determined that in regards communication and managing property and rent the Respondents did not consider that any part of the code was breached.

The Tribunal noted that the Applicant considered that the Respondent's did not carry out due diligence in regards the references of the tenant. The arrangement between the parties was to use a third party referencing agency. The tenant had been approved by that agency as had been the case for the previous tenancies under the agreement between the parties. The tenant was in employment at the start of the tenancy. References provide an idea of the prospective tenant at the time and are not an indemnity or guarantee which eliminates risk. The Respondents used a third party agency and this was the agreement between the parties which met in the Tribunal's view the requirements under the code in terms of references. The Tribunal did not consider in regard to references that any part of the code had been breached in that regard.

The Respondents evidenced a great deal of contact between themselves and the tenant with their log containing all the texts and emails sent. The tenant appears to

have responded to the Respondents with the various times she made payments to the arrears, some of which coincide with contacts by the Respondent. Ms McClelland said that she made a number of visits to the property and in the records one of these showed the tenant making payment of £650 towards the arrears in cash and this was reported to the Applicant. The Tribunal did not accept what the Applicant averred in regards the Respondents failures due to the continued late rental payments and arrears. The Respondents were not responsible for the behaviour of the tenant and were contracted to manage the property and tenancy. They met their responsibilities in reacting to the fact the tenant was in arrears and this was evidenced clearly by the logs. Without their proactive management for the Applicant it may well have been the case that the arrears would have been in excess of the amount due at the end of the tenancy. The Tribunal considered in many respects the Respondents acted in good faith for example refunding a deduction for a legionnaires test that the Applicant had carried out but had not emailed this to the Respondents. The Applicant took exception to this but his agreement allowed contractors to a certain level to be instructed. For the other deductions the Applicant had signed an agreement to say that eviction costs were separate and so the Respondents in the Tribunal's view considered that they were entitled to charge for the Notices to Quit. In addition the management costs were not sought by the Respondents or insisted upon now as there were rent arrears. This goes over and above the duties of the Respondents in the agreement.

The Applicant has obtained an order for payment against the tenant for the rent arrears and damage to property but his position was that he could not obtain this from the tenant and given same he sought in addition to compensation and the deposit monies this award to be paid by the Respondents. The Tribunal considers that the rent arrears and the damage to the property are the fault of the tenant and the Respondent does not bear responsibility unless in terms of Section 48 of the Housing (Scotland) Act 2014 they arose as a result of the Respondents failing to adhere to the code.

The Tribunal does not consider that the Respondent's failed in terms of the code in regards all but one of the paragraphs under section 2 of the code alleged by the Applicant in overarching standards of practice. The Respondents made a mistake in regards the partial deposit but this was not deliberate, negligent or dishonest. The Respondents carried out their role with reasonable skill and care timeously and kept records of their contacts and work for the Applicant. Within the complaints process initiated with the Applicant the issue of the deposit was accepted. However the Tribunal did consider that in terms of paragraph 27 the Respondents did fail to inform the Applicant promptly of the fact the deposit was only partially paid which was a breach of the tenancy and so the Tribunal did consider that paragraph 27 of the code was breached by the Respondent's. They ought to have informed this Applicant of this and accepted they erred and did not inform him.

The Terms of business between the parties was signed and clear and the Tribunal did not consider there was any breach of Section 3 of the Regulations. The Reference check with Let Alliance was carried out on all the tenancies managed for the Applicant and was not a breach of any of the paragraphs alleged by the Applicant from paragraphs 57 to 64. The guarantor was not required by Let Alliance and was additional. The tenancy deposit paragraphs were not relevant in terms of paragraph 65 and 66 as the Respondent complied with the Tenancy Deposit Schemes (Scotland) Regulations 2011 and there was no evidence they had not in any way. In terms of

Section 5 rent collection the Respondents were in contact almost weekly on repeated occasions in any event as set out in the log with the tenant to collect rent and the Tribunal did not consider there was any breach of the code from paragraphs 76 to 79 as a result.

In terms of Section 6 of the code in bringing the tenancy to an end whilst there was no evidence lead by the Applicant on this the Respondents lodged evidence referring to same and no breach of the code from 98 through to 99 was established and nor was any breach of the code established in terms of the check out procedures from 101 to 104. The argument made by the Applicant was that if the code had been complied with the damages he saw would have been picked up in these steps but the code relates to carrying out the relevant processes which were indeed carried out and there was no evidence that they did not carry these steps out appropriately.

In terms of the remainder of the allegations of their being a breach of the code from paragraphs 108 through to 125 the Tribunal did not consider that they were breached. There was clear evidence of complaints being dealt with and the Applicant being communicated with reasonable although the Applicant did not agree with the responses nor the offer made to not charge the Applicant the deductions made to the return of the £185 deposit which were lawfully due in terms of the agreement. The Tribunal accepted the level of communication there was between the applicant and the Respondent as laid out by the Respondent given the extent of the communication they had logged and evidenced generally to the Tribunal. The Tribunal considered that the Respondents made payment of any monies due to the Applicant reasonably in terms of paragraph 124 and 125 of the code.

Inevitably the situation did cause distress to the Applicant and clearly to the Respondents given the pressure they were under from the Applicant. However the pressure on the Respondent was not as a result of failures of the Respondent but the tenant. The deposit was not handled appropriately and there was a breach of paragraph 27 in respect to that incident only. The Respondent received £101 deposit after deduction of a fee including VAT for £30 Notice to Quit due in terms of the contract and the management fee of £54 including VAT for the 1st August 2018 management fee. The deposit ought to have been £325 and only £185 had been lodged with Safe Deposit Scotland which comprised the initial partial deposit of £145 and the additional monies paid towards the deposit gathered by the Respondents of £40. Deductions were clearly due of £84 detailed in the Respondent's landlords statement of 10th December 2018 and there was a number of management fees that the Respondents did not seek to recover from the Applicant. However the Tribunal considered in light of the fact there was a breach of the code which directly related to a reduction in the deposit for the property then the Applicant was entitled to the difference of £140 in the deposit of £325 which out to have been taken. This comprises of the £325 deposit, of which he received £101 and he was due the costs of the notice at £30 and the August 18 management fee of £54 which leaves £140

Accordingly the Tribunal considered that the Respondent's make payment of the sum of £140 to the Applicant in terms of S48 of the Housing (Scotland) Act 2014

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.

Legal Member:

10 February 2021