

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of decision: Section 48(7) Housing (Scotland) Act 2014

Reference number: FTS/HPC/LA/20/2125

26/1 Castle Terrace, Edinburgh, EH1 2EL (“the Property”)

The Parties:

Kristen Porter, 14b Picardy Place, Flat 1, Edinburgh, EH1 3JT (“the Applicant”)

D.J Alexander Lettings Ltd, 1 Wemyss Place, Edinburgh, EH3 6DH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Robert Buchan (Ordinary Member)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with Paragraphs 38, 90, 91 and 93 of the Letting Agent Code of Practice (“the Code”) as required by Section 46 of the Housing (Scotland) Act 2014 and determines that a Letting Agent Enforcement Order (“LAEO”) should be made.

The decision is unanimous

Background

1. By application received on 7 October 2020, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondent had failed to comply with the Code of Practice for Letting Agents. (“the Code”). The Applicant stated that the Respondent had failed to comply with Section 4, paragraph 38 and Section 5, paragraphs 90, 91, 92 and 93 of the Code. The Applicant lodged documentation in support of the application including a copy of a letter to the Respondent notifying them of the complaint, a copy tenancy agreement, and a series of emails.
2. On 19 October 2020, a Legal Member of the Tribunal on behalf of the President, referred the matter to a Tribunal for a determination. Parties were

advised that a hearing would take place by telephone conference call on 7 December 2020.

3. On 11 November, the Respondent lodged written representations and a bundle of documents.
4. The application called for a hearing by telephone conference call on 7 November 2020 at 10am. The Applicant participated. The Respondent was represented by Mr Anderson, Maintenance Team Manager

The Hearing

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

5. The Tribunal noted that the basis of the complaint under this paragraph is that the property had been advertised by the Respondent as having access to a semi private garden. This was referred to in the lease and mentioned during the tour of the property. The Applicant made repeated requests to the Respondents for keys to the garden, but these were never provided. This became a serious matter when access to the garden was needed for repairs and inconvenient after the start of the Covid-19 lockdown.
6. In their written submissions the Respondent accepted that the property had been advertised with a shared garden when there wasn't one. They could not explain how the error occurred but had now corrected their records and were very sorry for the error. Mr Anderson confirmed this at the hearing. He also conceded that this error did amount to a breach of the Code, but that incorrect information had not been "knowingly" provided. He said that he thought that it was an administrative error when information regarding the property was being input to the system. He accepted that the Respondent's processes needed to be reviewed as the mistake was a serious one.

Paragraph 90 – Repairs must be dealt with promptly and appropriately having regard to their nature and urgency.

Paragraph 91 – You must inform the tenant of the action you intend to take on the repair and its likely timescale.

Paragraph 93 – if there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible.

7. The Tribunal noted that the complaints under these paragraphs relate to repairs issues at the property. The Applicant states that repairs were not carried out within reasonable timescales and that she was not provided with

information about when repairs would be carried out. At the hearing, the Applicant confirmed that the repairs issues and relative timescales were as follows –

- (i) 16 December 2019 (move in date) - reported that a window was stuck open. This was repaired on 4 February 2020.
 - (ii) 16 December 2019 – the property inventory indicated that some radiators were not working.
 - (iii) 22 December 2019 – reported bad smell in the bathroom and broken shower head. Also reported the broken radiators, although the Respondent was already aware of this. Shower head was replaced on 1 March 2020. Radiators were repaired on 15 January 2020.
 - (iv) 6 February 2020 – reported that the bad smell from bathroom is worse and food is now coming up through the drain. Cleared on 3 March 2020, although advice was given that it was likely to happen again due to the drain being connected incorrectly.
 - (v) 10 February 2020 – reported two radiators not working. Repaired on 2 March 2020.
 - (vi) 16 March 2020 – reported problem with boiler pressure. Contractors attended but did not manage to repair the boiler.
 - (vii) 26 March 2020 – reported a leak from the ensuite. This was repaired but Applicant is not sure when.
 - (viii) 18 May 2020 – reported a further leak from the ensuite. This was not repaired before Applicant moved out on 22 May 2020
8. The Respondent's written submissions state – “During the tenancy there were maintenance issues. We accept that the first issue of the smell in the bathroom goes on for a long time but the file I've attached shows just how much we were doing to try to resolve a really complex issue. I'm sorry it's so long. In regard to the other issues raised I think the turnaround times are reasonable. Particularly when taking into account that in the first two months of lockdown many trades people were not working and those that were working were needing to prioritise urgent jobs over less urgent jobs. These issues were resolved in an average of 8 days, including weekends. If Kirsten feels she was not being updated then I think the files shows how much communication there was for just that one job. In regards to the other jobs I think I still feel the communication was adequate within these quick turnaround times.”

Window repair

9. Mr Anderson confirmed that the dates specified by the Applicant for the reporting and carrying out repairs are accurate. He stated that he accepted that the time taken for the window repair to be completed was too long.

Smell from bathroom/drainage issue

10. In the application the Applicant states that the bad smell became progressively worse until the ensuite bathroom and bedroom to which it was attached were unusable. Waste started to come up through the shower drain on 6 February 2020. On 7 February 2020, Scottish Water attended and said it was an internal issue. On 9 February 2020, the Applicant reported that the problem was getting worse. After two further calls to the Respondent a plumber attended on 13 February 2020 but did not manage to fix the problem. After a further call a second plumber attended on 17 February but was unsuccessful. After a further call, the Applicant was advised on 21 February 2020 that the factor's plumber would attend. The Applicant was surprised because her tenancy documentation indicated that the property was not factored. The factor's plumber attended on 21 and 24 February. He carried out work but said the problem might recur. The smell and waste issues continued until a cleaning service, instructed by the Respondent, attended on 3 March 2020, and sterilised the bathroom. As a result of this issue, and the broken shower hose, this room was unusable for a total of 78 days.
11. Mr Anderson advised the Tribunal that the smell in the bathroom was not a straightforward matter. There was a lot of trial and error to get it sorted. It turned out to be a communal issue. He advised that the Respondent had no previous knowledge of this issue. He had checked the records and confirmed that there is no record of any previous repair. Miss Porter referred the Tribunal to an email sent to her on 7 January 2020 from Craig Mitchell, a colleague of Mr Anderson. This states - "The toilet smell in the ensuite has also been addressed by the landlord in the past, he was advised due to the toilet location and build structure no pipes are accessible. He has advised the use of a scented toilet detergent relieves any smell." In the same email the Applicant is advised that the broken extractor fan will not be attended to because access issues make it a big job. Mr Anderson advised the Tribunal that this email simply relays the landlord's response to the complaints. It demonstrates that any previous issues with the bathroom had been dealt with by the landlord himself and not the Respondent. Usually the Respondent would have been involved, but the previous tenant had been a short term let company who may have dealt directly with the landlord on the issue.

Shower head and hose

12. Mr Anderson advised the Tribunal that it was the landlord's own contractor who dealt with this. When the problem was reported, it was passed to the landlord who wanted to arrange for his own contractor to do the repair. The Respondent did chase him up regarding the matter but didn't hear back until

the beginning of March when it was confirmed that it had been fixed. Miss Porter disputed this version of events. She stated that on 15 January 2020 she was told that the Respondent was arranging the repair. She was never advised that this had changed or that the landlord was arranging the repair. However, it was the landlord's contractor who eventually carried it out. On checking the system, Mr Anderson was unable to find any record of the Applicant being made aware of what was happening with this repair. He confirmed that they do have procedures for repairs, with timescales. However, it is not generally possible to tell a tenant exactly when a repair will be carried out since that will depend on the nature of the defect. He accepted that it should be possible to tell a tenant when a contractor will attend to investigate and assess the issue. He stated that the Applicant ought to have been contacted and told that the landlord was arranging this repair, that there ought to have been better communication with the Applicant and that some of the repairs took too long.

Radiators

13. Mr Anderson accepted that the time taken to deal with the first radiator repairs was too long. He also conceded that the time taken to deal with the second radiator problem was also unsatisfactory.

Boiler pressure and bathroom leaks

14. The parties were agreed that contractors did attend in relation to the boiler issue but were not successful in repairing it and that this remained an issue until the tenancy ended. They were also agreed that the first leak was dealt with within a reasonable timescale and that the second one was only reported a few days before the tenancy ended and not repaired until the Applicant moved out.

Paragraph 92 – Where access is needed for repairs you must give the tenant reasonable notice of when access is required unless other arrangements have been agreed.

15. The application states that the Applicant was advised, on 23 December 2019, that the maintenance team had been at the property and repaired the radiators. However, she had not been contacted to arrange access and the radiators were still not working. She was concerned that someone had been in the property without her knowledge or consent.
16. In the written submission the Respondent states that it is company policy that keys are not given to contractors and it is for tenants to arrange access. Their records show that keys were given to a contractor on 3 March 2020, with the Applicant's knowledge, but on no other occasions.
17. Miss Porter advised the Tribunal that two different members of staff told her that someone had been into the property and fixed the radiators. The radiators were not working so she was left not knowing if someone had been

in the property, or not. She confirmed that she was aware of the contractor on 3 March 2020. He may have had keys but didn't use them as she met him at the property and provided access. Mr Anderson advised that keys were not given to contractors without the Applicant's consent. The information she had been given had been incorrect, due to staff error.

Further evidence and submissions

- 18.** In response to questions from the Tribunal about the email from Craig Mitchell on 7 January 2020, Mr Anderson said that his colleague had only been passing on the landlord's comments. Mr Anderson did not think that the issues to which the email related were repairing standard issues, so were less pressing. He accepted that part of his job is to ensure that landlords are made aware of their obligations, particularly if a defect is a repairing standard issue. He said that sometimes owners are made aware of repairs matters but choose not to get them done. When asked whether there had been any consideration given to a reduction in rent, Mr Anderson advised that the Applicant had raised the issue of compensation, but the owner declined to consider it. He accepted that the Respondent could have dealt with some matters more quickly but thought some were ok. He was of the view that it was irrelevant that the rent for the property was quite high – that should not affect the service which is offered. He confirmed that the problem with the bathroom was only acted upon when the situation escalated, and waste was coming through the drain. He also conceded that the terms of the email of 7 January 2020 were unsatisfactory.
- 19.** Miss Porter advised the Tribunal that she was unhappy with the service provided by the Respondent. There had been poor communication. She spent a great deal of time calling and emailing in relation to repairs issues. She also had been unable to use part of the property for a significant part of the tenancy. She had to use annual leave to provide access for contractors and often had been given little notice of their visits.
- 20.** Mr Anderson said that, overall, he accepted some of the complaints. The advertising details of the property should have been better. They should have known and provided details of the factor. The time taken to deal with repairs is not reflective of their usual service. For this reason, they offered compensation of £300, which was not accepted. The Respondent is working to resolve the problems. Mr Anderson took on board the concern that the tenant had been the last person to know what was going on. He disputed the claim about the habitability of the property.

The Tribunal make the following findings in fact:

- 21.** The Applicant was the tenant of the property from 16 December 2019 until 22 May 2020.

22. The property was advertised as having a garden when it did not.
23. The Applicant reported a broken window at the property on 16 December 2019 which was not repaired until 4 February 2020.
24. The Respondent was aware that radiators at the property were not in working order when the Applicant moved in on 16 December 2019. The Applicant reported this defect on 22 December 2019. The radiators were repaired on 15 January 2020.
25. The Respondent reported a bad smell from a bathroom on 22 December 2019. This was passed on to the owner of the property. No repair was instructed. This smell became worse and waste began to come through the shower drain on 6 February 2020. The Applicant reported the issue. The defect was resolved, at least temporarily, between 21 February and 3 March 2020.
26. The Applicant reported a broken shower head on 22 December 2020. This was repaired on 1 March 2020.
27. The Applicant reported a further problem with two radiators on 10 February 2020. These were repaired on 2 March 2020.
28. The Applicant reported a problem with the boiler on 16 March 2020. Contractors attended but failed to resolve the matter by the end of the tenancy.
29. The Respondent failed to provide the Applicant with information and timescales for repairs at the property

Reasons for Decision

30. The Tribunal proceeded to consider the application, the documents lodged in support of the application and the evidence and submissions made at the hearing.

Paragraph 38 of the Code

31. The Tribunal is satisfied that the Respondent has breached this section of the Code. It is not disputed that the property was advertised, and the Applicant was told, that the property included a shared garden. The Tribunal accepts the Respondent's statement that the incorrect information was not provided deliberately, but is satisfied that the advertising had not been "accurate" and had been "negligently misleading".

Paragraphs 90, 91 and 93 of the Code

32. The Tribunal is satisfied that the repairs in relation to the drain issue in the bathroom, the radiators, the shower head, and the defective window were not dealt with promptly and appropriately having regard to their nature and urgency. It appears that the smell in the bathroom was not investigated when first reported. Instead, the Respondent passed on the complaint to the landlord who suggested the use of chemicals to mask the smell. While the responsibility for repairs rests with the owner and landlord of a property, the Respondent ought to have investigated the issue themselves before taking instructions from the owner. Had they done so, they may have identified a serious issue at a much earlier stage. It may be that efforts were made after the second report on 6 February 2020, to address the issue, but by then a serious problem had become very grave, resulting in a bedroom and bathroom being completely unusable. The Tribunal also notes that the issues with the radiators and the window occurred in the middle of winter which ought to have been considered when assessing their urgency. The Tribunal was concerned that Mr Anderson did not consider the defects in question to be repairing standard matters, although he conceded that where the repairing standard applied, a defect should be dealt with as a matter of urgency.
33. The Tribunal is also satisfied that the Respondent did not comply with paragraphs 91 and 93. The Applicant was not always given clear information about timescales for repairs, she was given little notice of visits by contractors and not provided with information or explanations for delays. The Tribunal notes that most of the information given to the Applicant was the result of her phone calls and emails to the Respondent. This information was sometimes inaccurate, such as the statement on 15 January 2020 that the Respondent was arranging the shower head repair and that contractors had been to the property and fixed the radiators. The Applicant was also told that the property was not factored, which was incorrect. The Tribunal is also not persuaded by Mr Anderson's statement that it is not possible to tell a tenant when a repair will be carried out. Firstly, the Code requires a letting agent to do this. Secondly, a letting agent should be able to tell a tenant when the contractor will come to investigate the issue. After that visit, that contractor presumably reports back to the letting agent to advise them what is wrong, what is needed to fix it, and to provide an approximate timescale. The Tribunal concludes that the Respondent has breached these sections of the Code in relation to some of the repairs issues at the property.

Section 92 of the Code

34. The issue raised under this section is that the Respondent gave keys to contractors who accessed the property without the Applicant's knowledge or consent. From the evidence, it appears that this was not the case. The Applicant herself confirmed that the radiators had not been fixed. This appears to corroborate Mr Anderson's evidence that keys were not given to a contractor at this time and that the staff members who provided this information to the Applicant were mistaken. The Tribunal concludes that no breach of this paragraph has been established.

Letting Agent Enforcement Order (“LAEO”)

35. The Tribunal proceeded to consider the terms of the LAEO to be issued. The Tribunal noted that Mr Anderson had previously dealt with the Applicant's complaint and had proposed compensation of £300, for the garden issue and some of the inconvenience experienced by her. This had been rejected by the Applicant.
36. The Tribunal noted that the Applicant continued to pay full rent of £4425 per quarter - £1475 per month – throughout the time that there were issues at the property. She was unable to use a bathroom and bedroom for two and a half months because of the drainage issue, the unpleasant smell associated with it and the broken shower fitting. The delay in the repairs and the inconvenience experienced by her in having to arrange access, and repeatedly phone and email the Respondent, was considerable. The Tribunal also notes that the Applicant did not have access to the shared garden which had been promised and that this was a significant issue for her from March 2020 onwards. During the necessary investigations and works, no consideration seems to have been given to the impact upon the Applicant of the issues encountered, other than to advise her that she could terminate the tenancy early. The Respondent may wish to reflect on this failure. The Tribunal is therefore satisfied that the compensation payable by the Respondent should reflect the loss of enjoyment of the property which she experienced. The Tribunal determined that it should include a sum which is roughly equivalent to 25% of the rent paid by her from 19 December 2019 to 3 March 2020, for the loss of use of a bedroom and bathroom. It should also include a sum roughly equivalent to 10% of the rent for the period 18 March 2020 until 22 May 2020, when the Applicant may have made use of the garden. The Tribunal also considers that a further sum of £500 should be paid, for the inconvenience suffered and the loss of annual leave. In total, the Tribunal determined that the sum of £1770 should be paid. The Respondent should also undertake staff training to better understand the repairing standard and how it relates to the Code and should provide a letter of apology to the Applicant for their failure to meet the standards expected of letting agents operating in Scotland.

Appeals

A homeowner or property factor 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.

Josephine Bonnar, Legal Member:

16 December 2020