

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Decision: Housing (Scotland) Act 2014 Section 48 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26**

**Chamber Ref: FTS/HPC/LA/20/2064**

**The Parties:-**

**Graeme Taylor, 69 Ballumbie Gardens, Dundee, DD4 0NR (“the Applicant”)**

**BS Properties, Mr Brian Stewart, 23 South Tay Street, Dundee DD1 1NR (“the Letting Agent and Respondent”)**

**Tribunal Members:-**

**Petra Hennig McFatrige - Chairing and Legal Member**  
**Jane Heppenstall - Ordinary Member (Housing)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having made such enquiries as it saw fit for the purposes of determining whether the Letting Agent has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that, in relation to the present Application, the Letting Agent has not complied with the Code of Practice as follows:**

**Section 2 Numbers 16, 17, 18, 19, 20, 21, 24, 26, and 27**

**Section 3 Numbers 32(i) and 37**

**Section 4 Numbers 52, 61, 65, 68**

**Section 5 Numbers 74, 75, 78, 79, 80, 85, 86**

**Section 6 Numbers 98, 99, 102**

**Section 7 Numbers 108, 110**

**Section 8 Numbers 119, 120, 123, 124, 125**

**and determined to issue a Letting Agent Enforcement Order (“LAEO”) in the following terms:**

**Within 2 months of intimation of the LAEO the Letting Agent must:-**

**A: produce a document and send this to the Tribunal setting out the steps the Respondent is taking to reconcile all relevant bank records with the internal**

**client ledger to ensure that all sums due to clients can be accounted for and accurate records produced going forward.**

**B: pay to the Applicant compensation of a total amount of £5,048.39 and produce proof of payment of said sum to the Tribunal**

**C: produce a document and send this to the Tribunal setting out the steps the Respondent is taking to identify training needs and to put in place appropriate supervision of staff to ensure compliance of staff with the Letting Agent Code of Practice.**

**D: issue a written letter of apology to the Applicant for the breaches of the parties' agreement, failure to meet the standards expected of Letting Agents operating in Scotland, and the breaches of various Sections of the Code and send a copy together with proof of service on the Applicant to the Tribunal at the same time.**

**E: produce a clear written procedure for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information as required in Number 92 of the Code and send a copy to the Tribunal**

**The Tribunal did not find that the Respondent has not complied with the Code of Practice Section 3 Number 29 (a & d), Section 6 Number 101 and Number 105.**

## **[1] Introduction**

On 24 September 2020 an application under S 48 of the Housing (Scotland) Act 2014 (the Act) was made to the tribunal by the Applicant. The application was made in terms of S 48 and rule 95 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations (the Rules) and included a copy of the Letting Agent Code of Practice Notification Letter sent to the Respondent by the Applicant in terms of rule 95 (b).

The tribunal issued directions dated 17 November 2020 and 1 February 2021 to the parties to regulate the process. These are referred to for their terms and held to be incorporated herein.

The case called for a hearing by teleconference on 14 December 2020, 20 January 2021 and 24 February 2021. The Interlocutors of the Tribunal of 15 December 2020 and 20 January 2021 are referred to for their terms and held to be incorporated herein.

## **[2] The following documents were lodged in evidence:**

1. Tenancy Status screenshot of BS Properties entry for the property (tenancy status, property details and property summary)
2. Applicant (GT) bank statement for the period 3 to 23 May 2019
3. Decision of the Tribunal in case EV/20/0045 dated 29 January 2020

4. Factoring Agreement between the parties dated 8 January 2012
5. Energy Performance Certificate for the property dated 28 August 2014
6. BS Properties Landlord Statement for 3/1 26 Albert Street, Dundee DD4 6QG dated 10 July 2020 for the period of 8 February 2013 to 10 July 2020 (hereinafter referred to as the client ledger)
7. Notification letter under S 48 (4) of The Housing (Scotland) Act 2014 dated 26 August 2020 with email correspondence of the parties 24 July 2019 and 21 September 2020 and emails between the applicant and Dundee City Council 15-21 September 2020
8. Applicant's timeline summary of communication
9. Respondent's reply form dated 10 November 2020
10. email exchange between the parties from 15 July 2020 to 24 August 2020 regarding keys to the property and deposit
11. Private Residential Tenancy Agreement for the property commencing 17 May 2019 between the applicant and Mr Marzec.
12. Applicant's email to the Respondent of 26 August 2020 and emails between the parties 10 September 2020 and 11 September 2020
13. Applicant's email of 25 November 2020 attaching email exchange between the parties 15 July 2020 to 6 August 2020 and Energy Performance Certificate dated 5 September 2014:
14. Code of Practice Breach document submitted by the Applicant on 25 November 2020
15. Applicant's Financial Loss documents of 25 November 2020 and 3 February 2021
16. Lindsay's fee notes 29 October 2020 for £577,39 and 30. September 2020 for £1,080.00
17. Email from Applicant of 25 November 2020 with answers to directions
18. Respondent's email 27 November 2020 replying to direction
19. Applicant's email 16 December 2020
20. Applicant's email 29 December 2020 including photographs of property and list of "inaccurate entries" in Landlord Report
21. Screenshot of Applicant's telephone screen showing call made to 01382 202697 10 July 2020 11:14 hours lasting 45 minutes 37 seconds
22. Applicant's email 4 January 2021 with list of further "inaccurate entries" in Landlord Report
23. Respondent's email 29 January 2021
24. Respondent's email 2 February 2021 with direction response including: Bank of Scotland Business Account statement for BS Properties account ending in 4720 28 February 2019 to 31 October 2019 (5 pages), answer to list of "inaccurate entries" sent by Applicant on 4 January 2021
25. Applicant's email 5 February 2021 in response to direction
26. Respondent's holding email 15 February 2021
27. Respondent's email 19 February 2021 with unreadable attachments
28. Respondent's email 22 February 2021 with CID letter, Respondent's Money Handling Procedure, Answers to direction A1 to A7, Respondent's complaints procedure, Respondent's deposit information
29. Respondent's Landlord statements: 1 to 26 March 2018, 2 to 23 February 2018, 1 August 2016-20 December 2017, 1 January 2017 to 14 June 2017, 27 June 2017, 1 April to 11 October 2017

30. Applicant's Screenshot of TSB account ending in \*\*1223 showing payment in from Brian Stewart TA B Bsp £90.00 on 17 October 2019
31. Bank of Scotland Business Account for BS Properties ending in \*\*4720 statements for the following periods: 8 to 11 February 2016, 14 to 17 March 2016, 21 to 27 April 2016, 9 to 15 June 2016, 1 to 6 July 2016, 9 to 14 June 2017, 23 to 30 June 2017, 20 to 26 July 2017, 6 to 12 September 2017, 23 to 28 November 2017, 18 to 21 December 2017, 1 to 5 February 2018, 23 to 27 February 2018, 28 to 29 August 2018, 28 February 2019, 2 to 7 May 2019, 1 to 31 October 2019

### **[3] The Legal Basis of the Complaints**

The Applicant notified the Respondent by letter 26 August 2020 that he considered they had failed to comply with the undernoted Sections of the Code of Practice for Letting Agents:

Section 2 Numbers 16 , 17, 18, 19, 20, 21, 24, 26, and 27

Section 3 Numbers 29 (a&d), 32 (i) and 37(a)

Section 4 Numbers 52, 61, 65, 68

Section 5 Numbers 74, 75, 78, 79, 80, 85, 86

Section 6 Numbers 98, 99, 101, 102, 105

Section 7 Numbers 108, 110

Section 8 Numbers 119, 120, 123, 124, 125

The Tribunal application detailed the following complaints:

Section 2 Numbers 16 , 17, 18, 19, 20, 21, 24, 26, and 27

Section 3 Numbers 29 (a&d), 32 (i) and 37(a)

Section 4 Numbers 52, 61, 65, 68

Section 5 Numbers 74, 75, 78, 79, 80, 85, 86

Section 6 Numbers 98, 99, 101, 102, 105

Section 7 Numbers 108, 110

Section 8 Numbers 119, 120, 123, 124, 125

The specific issues raised by the Applicant regarding each item of the Code are set out in the Code of Practice Breach document submitted by the Applicant on 25 November 2020, which is referred to for its terms and held to be incorporated herein.

### **[4] Hearing**

The hearing in this case took place over 3 days. On the first day, 14 December 2020 and third day, 24 February 2021, both parties participated and Mr Brian Stewart (BS) as the Representative of the Respondent led as a witness Ms Stacey Latham (SL), who had also prepared the initial Written Representations for the Respondent. Miss Latham is the office manager.

On the second hearing day on 20 January 2020 only the Applicant participated. As set out in the Interlocutor of said day, service of the notification on the Respondent

had not been successful and thus the hearing had to be adjourned to the date in February.

On the hearing date of 24 February 2020 both parties and Ms Latham participated. It became clear that some of the documents sent in by both parties had not reached all parties. After a short adjournment all missing documents were circulated by the clerk. The hearing then proceeded. The Applicant was allowed to amend the financial loss claim for compensation as per his representations of 3 February 2021.

The Tribunal proceeded allowing all documents submitted to be received, although some of these had been submitted after the initial period for documents to be lodged. It considered that it was in the interests of justice to allow relevant documentary evidence to be submitted and considered in order to be able to handle the proceedings fairly.

**[5] Oral evidence of Grahame Taylor (GT):**

1. The position of GT at the hearings was as set out in his application and in the documents regarding his financial loss.
2. He gave evidence that he had entered into the contract with BSP in 2012 and had never received an update of the terms and conditions or any other information about BSP's procedures. He also never received information from them about the Tenancy Deposit Scheme or the Code of Conduct.
3. He rented out the property through BSP since 2012 and his contact for BSP in 2018 was Amber Milne. There had been no concerns on his part as rent had been paid under deduction of BSP's fee and the last statement he received showing rental income etc as he would expect was in March 2018. After that he received no further statements from BSP.
4. He started to make enquiries and was told that BSP would take action against the tenant, who at the time he thought was the tenant Anita Tyrcha.
5. As per the email exchanges which followed the initial raising of the rent arrears with him, he had tried to find out information and BSP would either not reply or not reply timeously.
6. He spoke to a member of staff, Rhys, on 10 July 2020 and then received the client ledger for his property and screenshots from BSP's internal system. The statement was not correct as set out in his written representations, in particular he did not received the payment of £2,299.50 on 6 May 2019 but only a payment of £657, which is shown in his bank statement. He had telephoned BSP telephone number on that day. Rhys appeared to be an employee of BSP and answered the call on BSP's telephone number and produced the screenshots of the database and the printout of the client ledger when this was requested. GT stated he would not have known if Rhys was no longer working for BSP. As far as GT was concerned he had telephoned BSP and was given the information he asked for. Rhys told him it was his last day at work.
7. The screenshots show that the property is wrongly described as unfurnished and as vacant. This is not correct. The property is furnished and when he carried out an inspection it was in a dirty and damaged state as shown by his photographs.
8. He had not been informed by BSP that the tenant had moved out, was not consulted about re-letting the property and was not advised that a new tenancy

agreement had been issued to the tenant Krzysztof Marzec. No process of ending the previous tenancy and moving out check had been carried out for the property and no vetting had been done for the new tenant. He understands that BSP simply allowed the boyfriend of the previous tenant to stay in the property without asking him for approval and issued a new tenancy to the boyfriend. He expected BSP to carry out the checks before letting in a new tenant and whether or not that was stated in the agreement, his understanding was that surely if BSP take on the work they must do that. It was mentioned to him by Amber.

9. He was very surprised that Stacey Letham had now "found" a tenancy agreement in August 2020 when he had been previously told no such tenancy existed and thought there had been a squatter in the property. He only got 2 pages of a PRT and they didn't provide him with the full tenancy agreement
10. There was no communication when he made complaints. The tenant should have been properly evicted. The case was rejected in January but on 16 March, 31 March, 30 April and 19 May 2020 he was still told it was ongoing.
11. He had been given incorrect information regarding his complaints, email were not replied to. He went to the office in 2019. All was being blamed on Amber Milne. He was also never issued with information about a complaints procedure
12. His agreement with BSP was that they would to checkout and check the property, report what needed to be done. They would take the deposit and let tenants view the property and communicate with them. They would vet the prospective tenant and ask if he was happy with them, do credit checks and he would then agree the tenancy and BSP would deal with the signing and he would get a copy. This was how it was arranged. This is not what happened in this case.
13. No deposit was taken from the new tenant. However, Stacey had advised him that there was a deposit taken.
14. He also understood from the landlord statement that the former tenant paid 7 months' rent prior to leaving the property and that these resulted in an entry in the statement that the landlord was paid £2299.50 on 6 May 2019 whereas his account in fact was only credited with £657 on that day. He was only provided with payment of 2 months' rent out of the 7 and he considers that he is due the difference.
15. He was advised by BSP that eviction and arrears proceedings had been initiated with the Tribunal. He kept asking for progress and although, as per the decision of the Tribunal submitted with the application showing that the eviction application had been rejected due to the lodging of insufficient or incorrect documentation, he was told that the eviction process was ongoing in various emails as set out in the email correspondence lodged.
16. After he finally found out that the application had been rejected and that nothing else had been done by BSP there was a breakdown of trust between him and BSP and he consulted Lindsay's solicitors and incurred the expenses documented because they then had to prepare the documentation in preparation of raising eviction proceedings on his behalf against the current tenant.
17. He does not think that the contract with BSP was correctly terminated by BSP in a one line email. He also stated that there had been a breakdown of trust and communications with BSP after he had accessed the property because he got nowhere with BSP asking for action and information and at that stage he felt he had to take action himself and started the eviction process.

18. He had not raised proceedings against the tenant for payment of the arrears. He stated he thought that BSP had done that. He also stated that his solicitor then told him to initially deal with the eviction.
19. BSP had undertaken to cover the solicitor's fees in an email to him. He is thus claiming the fees to date.
20. GT further stated that it had been agreed that BSP would hold keys for the property. He now was told the tenant had changed the locks. When he himself changed the locks he gave keys to BSP. He had asked for the keys to carry out an inspection and was told they had no keys and a locksmith would be required. He then dealt with getting a locksmith himself. He does not think he did anything wrong in dealing with that to gain access. At some point he was told that the tenant had changed the locks. If he had not tried to inspect the property he would not have found out about the state of the property, the issue with the keys etc.
21. There had been no inspection for 15 months when he tried to gain access and it should have been every 6 months. If this had been properly done there would have been no problem.
22. He was unable to provide the necessary certificates to the Council about the property. These should have been done by BSP, including PAT testing as the property was furnished.
23. Overall he has now suffered a loss of a total of 22 months' rent arrears which he counts from May 2019 onwards. These are due to the tenant having been issued with a lease without any checks having been carried out and without him having been consulted. He expected BSP to deal with the rent arrears and kept requesting them to do so but they did not follow their procedures. He thought that in terms of the email of 24 July 2019, which referred to "order to pay paperwork" BSP dealt with this. He thought they had raised an action for rent arrears.
24. He stated it was probably clear that he would struggle to recover the rent from the tenant. If BSP had not allowed the current tenant in the property he could have had someone in the property who paid rent.
25. He stated that he knows the letting agent is not a rent guarantee scheme but if they had not breached the Code he would not be in this situation and thus the compensation should be paid for the breach of the Letting Agent Code of Practice.
26. GT further stated he will now require to carry out various remedial works to reinstate the property when he is able to access the property again. Because there had been no inspections and no moving in inventory and check the repairs which will be necessary when the tenant moves out cannot be recharged and not deposit was taken. He has seen the state of the flat and it will require to be redecorated because of writing on the walls, the appliances need to be replaced, it needs professionally cleaned and there was now an escape of water which meant Environmental Health became involved. He tried to engage the tenant. The tenant so far has not reacted to any communication and would not answer the door.
27. He cannot insure the property. He should not have to incur these future costs as the tenant should not be there in the first place.
28. With regard to the bank statements lodged by the letting agent GT stated that he had been told the tenants had paid rent until May 2019. BSP now suggest that the accounts show no payments in and the statement is wrong. It would be

staggering if there had been only 2 rental payments for 4 years with 4 different tenants. The statements he received from BSP including until the last one he received match the ledger. Even if payments don't show on the bank statement submitted, he also received a payment of £90, which is £100 less the 10% fee, coming from a different bank account as shown on his screenshot. His position is that this was paid after Amber Milne left and thus from another BSP account and not from Amber Milne. This indicates that there is another account for BSP. Mr Stewart, not Amber Milne, had told him the person had made a payment plan.

29. He also stated that the problems with Amber Milne are internal problems of BSP and have nothing to do with him. If Amber Milne was a staff member then BSP are responsible for what happened. He thought they would be insured for that kind of thing.
30. He stated he found it extremely unlikely that over all the years no payments had been received but he had been paid. However, even if that was the case, that would be a civil matter and not part of this case.
31. The situation had now severely impacted his mental health and his financial situation as set out in his email to the Tribunal.
32. With regard to the financial loss, he had received no income from the flat for 22 months, which would not have been the case had BSP carried out the procedures correctly and vetted the tenant. He stated that the payment shown on the 10 July 2020 statement of £2,299.50 had still not been received and he only received payment of two month's rent, not seven. There had been an undertaking that BSP would pay his solicitor's fees in an email. With regard to the future costs claimed, these relate to the state of the flat when he entered this in 2020.

#### **[6] Oral evidence of Brian Stewart (BS):**

33. Mr Brian Stewart's evidence to the Tribunal was that whatever had happened had been caused by Amber Milne, a former employee of the firm. Amber Milne had defrauded BSP of hundreds of thousands of Pounds. She had falsified the client ledger. She had not carried out the moving in and moving out process for the property, had not taken a deposit and had left the company in financial peril. CID were involved and criminal proceedings were ongoing against her. She left the employment around August 2019.
34. From the bank account statements he lodged he stated it could be seen that whilst GT had been receiving regular payments, there had been no payments coming in from the tenants for the property for much longer than May 2019. In fact back to 2016 there had been arrears. BS stated that the moneys paid to GT for rent not received should balance out any losses. It was £6000 GT received without BSP receiving the rental payments. The company was now in financial hardship. GT should keep the money and that should be the end of the matter.
35. There was no money BSP had received which was not correctly paid to GT. The 7 months' rent reflected in the alleged payment on 6 May 2019 had not been received. Amber dealt with the payments. There was nothing to show that BSP actually received the funds from which the payments on 6 May 2019 allegedly was paid. Somebody tapped into BSP's database and made false



- entries. Amber Milne sent the client statements and was the Office Manager. The client ledger printed on 10 July 2020 is simply wrong and incorrect.
36. Initially BS stated that the payment on 17 October 2019 under the reference Brian Stewart TA would have been from his business account as he is trading as BSP. When it was put to him by GT that the payment did not show on the bank statements lodged he stated that sometimes Amber Milne had made payments from her own account.
  37. With regard to the issue of the keys, BS stated that the tenant had changed the locks and thus BSP had no keys when GT was asking for them. There had been several conversations over months between BSP and GT when GT was told that BSP planned to serve an abandonment notice after he, BS, had gone to the property a few times.
  38. He stated Amber Milne should have sent out a copy of the Code of Practice to the clients, he was not dealing with this. The contract was never updated as this was never requested and no request for information about other procedures had been received. Regarding the end of tenancy procedure, this would be that a Notice to Quit would be issued. This was done. He did not know if AM had provided the information about this to GT as she has left. It would have been up to Amber Milne to carry out the checkout process, including giving information to the tenant. BSP was unable to do so because of Amber Milne.
  39. The client ledger printout of 10 July 2020 lodged by GT was obtained when Rhys, another employee, was no longer working for BSP and should not have been given to GT. Rhys still had the laptop during furlough. BS stated Rhys had promised to bring back the laptop but had not done so. BS was unable to confirm exactly when the employment for Amber Milne and for Rhys terminated. GT must have telephoned him on Rhys' private number.
  40. The agreement with GT was from 2012 and never updated. BSP collected rent and kept 10%. If there was a late rent payment BSP did speak to GT. BS stated they were not aware no payments had come in. He could not remember an exact date but after Amber had left there was a recorded delivery letter to the tenant. He opened the recorded letter, a Notice to Quit and got in touch with the lady. GT was informed about it when they found out. Amber had left the male occupant in the house. Amber had left the employment. The letter was after May 2019 and he had not been informed by Amber about it. There did not seem to be any problem for a while. The file had been taken by Rhys.
  41. BS stated he was not aware the eviction action had been rejected. He thought Rhys had re-applied which was clearly not the case. BSP did not charge for what they did and have not asked for any money. Rhys had said "stuff" to keep GT happy. Rhys, Amber and Pamela had all not been giving a good service. They all had not followed the procedures. Usually things should be done by email so there is a paper trail.
  42. Inspections should have been carried out every 6 months.
  43. The current tenant had changed the locks. BS stated he tried to get in to do an abandonment notice but this did not work
  44. There was no published complaints procedure and the process would be to speak to clients and make notes. This was not done in this case. He trains all staff with a day course and Pamela did not follow the process.
  45. BS stated he tried to keep the business going after Amber left and can only apologise if things were not done properly. BS stated he never sent out client statements, this was done by Amber Milne.

46. Over all BS stated that the contract with GT ended in August 2020. When it was put to BS that the agreement only provided for two circumstances in which the contract could be terminated and neither was present at the time, he stated he would continue working for GT but he thought there had been a breakdown of the relationship and communication was no longer possible. SAL had advised that after the landlord had taken matters in his own hands and changed the locks BSP could no longer act for him.
47. In short, BS argued that BSP is not a rent guarantee scheme, CID had confirmed that the fraud Amber Milne committed was for hundreds of thousands of Pounds and there is no more money. BSP is not liable for GT's loss. If that was the case every letting agent would not be able to afford that liability. The tenant was left in the house, Amber Milne was not doing her job right. After what Amber Milne had done the company may not be there next week. GT had already received £6000 payments without the rent having been received and this should be the end of the matter.

**[6] Oral evidence by Stacey Latham (SL):**

48. SL stated BSP kept records and had a file but Amber Milne had deleted everything and Rhys had taken the file. Amber had now been charged with fraud against BSP. The only records left would have been the file Rhys had and BSP do not know what Amber has deleted as she had also deleted the back up.
49. She stated she had found the tenancy agreement on the system but saved under a different name after she came back in June. She stated she could not comment on anything that had taken place before December 2019 when the eviction action application had already been made to the Tribunal. There had been emails between GT and Rhys and Rhys would have known the application had been rejected but gave false information to GT. All accepted the information given to GT on 19.5.2020 was totally false
50. Things had gotten heated around 26 August 2020 and BSP felt uncomfortable dealing with GT. She did not think she had to reply to the letter as there was nothing left to say
51. The information in the client ledger lodged by GT was inaccurate but this was from an internal database to which GT should never had access.
52. Monthly statements did not need to be issued if there was no money coming in as there was nothing to account for.
53. BSP did not know the previous tenant had moved out. Only when contacting the previous tenant about arrears did she say she had moved out. BSP became aware. When we found out what had happened I spoke to GT and when we found out we dealt with it.
54. Prior to the current tenant there had been no problems since 2012 and it was a good relationship with GT. However, she thought that GT was looking for more to be done by BSP than was agreed in the 2012 contract e.g. check in and check out inventory to be done.
55. With regard to the end of the contract with GT she stated there was nothing to be done as there were no keys and there was no money, so no end statement would be sent.
56. With regard to the keys, BS had tried to gain access and found out the locks had been changed. She would have got authorisation and a locksmith but GT

just went and changed the locks. She now realises she should have told GT that they had keys but that they did no longer fit rather than tell him they had no keys. However, whether they didn't have them or the tenant had changed the locks and they no longer fitted, the answer that there were no keys was still the same and correct.

57. With regard to obtaining references etc SL stated this had been a constant battle with Amber Milne. There are no reference or checks for this tenant but it is not in the contract with GT. BSP does this when they do viewings but in this case the tenant was already in the property.
58. With regard to the deposit this would be in the PRT agreement but in this case GT was not advised.
59. With regard to the check in process, again if the tenant had moved in this would have been done. It should have been happening. BSP did not have access and the lease was the only available correspondence.
60. Routine inspections would be carried out but BSP did not have access.
61. Regarding tenancy agreement breaches there was a Notice to Quit to get the tenant out and GT was informed.
62. With regard to recovering late rent BSP wrote to the tenant.
63. With regard to inspections again SL stated there was no access. Sheriff Officers should have been used. Gas inspection should be done yearly, this was charged for in 2016. EICR was carried out. Gas certificate expired June 2020. PAT testing was up to the landlord
64. As the contract was from 2012 there was no agreed procedure for notification of repairs and no timescales were agreed.
65. With regard to end of tenancy procedures these were not in the 2012 agreement and there has been no update requested by GT.
66. With regard to the deposit issue, there was no deposit taken by Amber Milne. SL stated on 4 August 2020 she told GT this and this was the only conversation about this.
67. With regard to the issue about dealing with complaints and enquiries, BS was on his own because of the pandemic. Then Rhys, Pamela and SL came back and contacted GT as soon as possible
68. With regard to records and accounts, there are internal records and GT would only get a statement if there was something to pay. GT should not have seen the entries in the 10 July 2020 client ledger, this was an internal system. All the internal information is not for the landlord. The statements issued to the landlord were always correct. The "vacant" entry in the database was not correct. All GT received must have been generated by Rhys on 10 July 2020. The ledger printout was incorrect
69. It was not disputed that the Code of Practice had been breached by BSP but GT got all the money he was due. It had been staggering what had been going on and BS, whilst he owned the company, had trusted an employee and this matter was a backlash of the employee not acting correctly.

## **[7] Submissions:**

The Applicant's position as set out in his statement of financial loss of 3 February 2021 is that due to the failures of the Letting Agent to comply with the Code of Practice he has suffered the following financial loss:

Point 1 £733.11 of outstanding payments which are the difference between the payment of £2,299.50 shown in the printout of 10 July 2020 for the date of 6 May 2019 as a payment made to the Applicant and the funds he actually received.

Point 2 £7,227 in unpaid rent for the period of May 2019 to February 2021. He considers the Letting Agent did not carry out the required checks for the tenant, issued a tenancy agreement without his consent, and did not follow the procedures to recover the rent arrears or evict the tenant. He states "*I might not be incurring such a financial loss as I am now and will continue to do so*" due to the new Covid-19 legislation and longer notice periods and pre – action requirements.

Point 4 £1,657.39 solicitors' fees, which the Applicant states BSP undertook to pay him in the email of 10 December 2019

Point 5 £2,000 as estimated costs to reinstate the property to a state in which it can be rented out and to deal with damage from water escape from the toilet to the outside overflow.

He asked the Tribunal to award the amounts stated above as compensation.

Mr Stewart as owner of BSP admits that the Code of Practice has been breached in various ways but argued that this is due to a previous employee having defrauded the company and not acted properly. His position regarding the financial claims of the Applicant is that over years no income was received for the property although payments to the Applicant were made and that any loss should be balanced against payments made by BSP to the Applicant since 2016, which he states resulted in the Applicant having received payments of about £6,000 from BSP without rent actually having been paid. There should be no compensation imposed as the Letting Agent is not a rent guarantee scheme.

### **[8] Findings in Fact:**

The tribunal makes the following findings based on the oral evidence at the hearings and the documents lodged by the Applicant and Respondent:

1. The parties entered into a factoring agreement for the property at 26 Albert Street Dundee on 8 January 2012.
2. The Applicant is the landlord of the said property.
3. The Respondent acted as Letting Agent for the Applicant for the property.
4. The property was rented to Anita Tyrcha from 15 March 2018 to 15 May 2019 at a monthly rent of £365 and to Krzysztof Marzec from 16 May 2019 to the present day at a rent of £320 per month payable on the 17<sup>th</sup> day of the month.
5. In terms of the agreement:
  - a) clause 1, BSP will lease the property to a tenant who is vetted and forward a copy of the least to the landlord by BSP
  - b) clause 2BSP will charge a fee of 10% commission from the monthly rental
  - c) clause 4, BSP will retain the deposit
  - d) clause 5,BSP will pay the monthly rental under deduction of commission and costs directly into the landlord's bank account and will forward a rental statement monthly
  - e) clause 7, BSP will automatically carry out any emergency repairs for the property
  - f) clause 8,BSP will arrange inspections periodically and prepare schedules of the property's condition

- g) clause 11, BSP will notify the landlord immediately if any problems occur. If rent arrears accrue the problem will be dealt with as efficiently as possible and the solicitor's costs should BSP have to evict the tenant will be charged to the landlord
- h) clause 12, the agreement may be terminated only under the circumstances stated in that clause.
- 6. No provision for a deposit to be paid was made in the tenancy agreement and no deposit was taken by BSP.
- 7. The new tenant Mr Marzec was not vetted by BSP prior to the lease being issued. No references or credit checks had been carried out.
- 8. The landlord had not been made aware of or consulted regarding the change of the tenancy and the reduction in rent.
- 9. Mr Marzec has not paid any rent since moving into the property.
- 10. On or around 24 July 2019 Amber Milne, an employee of BSP, had met with GT and advised him by email of the same date that the tenant, whom she referred to as "she" was in arrears of rent of 3 months.
- 11. She advised GT that a notice to leave had been issued to the tenant and set out the further process of evicting the tenant.
- 12. She advised GT that eviction proceedings and an application for a payment order will be made by BSP on the Monday after 24 July 2019 if the tenant has not moved out by then.
- 13. She also stated she would go to the property on the morning of the next Monday and put an abandonment notice on the door and then check if the flat is vacant.
- 14. In the email of 24 July 2019 am set out the procedure followed by BSP if a tenant stops payments of rent.
- 15. The email of 24 July 2019 confirms that GT would be updated on Monday at 5pm
- 16. On 25 July 2019 GT replied to the email and asked why he had not been kept informed of the situation regarding the property and why previous emails to that email address, [infor@bs-properties.co.uk](mailto:infor@bs-properties.co.uk) had remained unanswered.
- 17. On 30 October 2019 GT emailed the same email account and asked for a statement of the last 20 months, which was the time since the last statement had been issued to GT by BSP.
- 18. In said email GT asked BSP to re-start the eviction action started by Amber Milne and to be kept informed on a regular basis
- 19. On 1 November 2019 GT emailed BS of BSP again stating he expects BSP to evict the tenant and carry out all necessary steps to recover the arrears
- 20. On 6 November 2019 Pam, another employee of BSP, emailed GT advising the eviction process had been started, BSP had the EPC for the property and the EICR had been ordered. She advised that BSP were going to change the locks on the property and she was trying to locate the end date of the lease as "Amber has messed everything up". Pam stated "I will get back to you".
- 21. On 8 December 2019 GT emailed Pam stating no information had been sent for over a month, he was expecting the tenant had been evicted and asking for an update on the arrears situation.
- 22. On that day Pam replied that the documents had been lodged but it would take some time for the eviction to be granted. She promised to keep GT informed and the Tribunal should be in touch by 13 January 2020.
- 23. On 9 December 2019 GT emailed Pam to enquire regarding the rent arrears situation.

24. The reply sent on the same day stated "we are taking the tenant to court, then he will be removed from the property, it takes 3 months to get him out.
25. Later on the same day Pam emailed GT to ask "you have to let me know if you want your rent money back its different paperwork, can you please get in touch".
26. On 10 December 2019 GT emailed BSP "When you called back last night you said you had just emailed me to confirm our conversation, including telling me BS Properties will cover the eviction&rent arrears costs. The only email I have from last night is this one I am forwarding to you, where you asked to phone me? Can you please send this email. " The reply from BSP on 10 December 2019 was "I did send a email, don't know why you didn't receive it, we will cover the cost of the eviction process"
27. On 14 January 2020 GT emailed BSP asking when the tenant will be out of the property and enquiring about other prospective tenants. He also stated "I'm seriously hacked off that this individual is due me thousands in unpaid rent & thinks its ok to do that! On that note how are things going with that?"
28. On 27 January 2020 GT followed this up with another email chasing a reply
29. On 28 January 2020 Stacey Latham, another BSP employee, emailed GT stating "apologies for the late reply, all is in hand with eviction process. I have contacted FTT again today...and they will be in touch to let me know what happens next.... As soon as I know I will keep you updated.
30. The application for an eviction order for the property lodged by BSP on behalf of GT under ref. EV/20/0045 had been rejected by the Tribunal on 29 January 2020 because it did not meet the mandatory lodging requirements.
31. On 30 January 2020 GT emailed SL asking again about the issue of recovery of rent arrears.
32. On 5 February 2020 GT emailed SL asking for a reply.
33. On 6 February 2020 SL emailed GT advising she will be "trying to sort the mess that Amber left, as you can imagine I am inundated with correspondence from many landlords."
34. In or around September 2019 Amber Milne left the employment of BSP.
35. Amber Milne had entered some incorrect information in the internal accounting system.
36. Amber Milne is currently accused of defrauding BS Properties for over £100 000. Criminal proceedings are ongoing.
37. Amber Milne had filed the lease documentation for the property under another client's entries.
  - a) On 13 March 2020 GT again emailed BSP for an update and again requested monthly statements he had previously requested in October 2019 and subsequent telephone conversations. He asked what steps were being taken to recover the outstanding 10 months rent arrears, he asked what was happening with the eviction action. He made a formal complaint about the communication practices of BSP, not sending replies or sending replies that did not answer his queries.
38. In the email of 13 March 2020 GT advised BSP that he considered that BSP was in breach of the Letting Agent Code of Practice and asked them to advise what actions were taken to remedy that.
39. On 16 March 2020 BSP advised GT in an email that there had not been any documentation from the FTT.
40. On 29 March 2020 GT again requested an answer to his previous email.

41. On 31 March 2020 Pam, an employee of BSP, stated in an email to GT she had tried to reach the FTT but they could not get a reply but the eviction action might still go ahead.
42. On 2 April 2020 GT suggested to BSP to check if the tenant was still in the property and reiterated his request for an update regarding action taken about the rent arrears.
43. On 6 April 2020 Pam advised GT that the locksmith stated someone was still at the property, she would go to the flat and update him later that day. She had called the FTT and due to the virus "a lot of paperwork has been put on hold".
44. On 7 April 2020 GT emailed BSP asking for a reply and pointing out the new notice period due to the new legislation.
45. On 29 April 2020 BSP emailed GT that they had been to the property and the tenant was not answering the door. A letter returned to BSP regarding the eviction had been personally delivered to the tenant by BSP.
46. On 30 April 2020 GT emailed BSP asking again for them to contact the FTT.
47. On 15 May 2020 GT emailed BSP asking about an email he had been promised in a telephone call but had not received.
48. On 19 May 2020 Rhys, another employee of BSP, emailed GT about progress at the FTT stating "All of the paper work has been accepted but we cannot legally evict him at this time due to the ongoing situation with COVID 19". This information was incorrect.
49. Around 20 May 2020 GT requested from BSP details of the tenant's name and contact number and requested a copy of the relevant legislative documentation including EICR, EPC and inventory.
50. On 2 June 2020 GT emailed BSP repeatedly to request the information again. He explained that his landlord registration required to be renewed and he thus required the documentation for the property as per the list attached to his email.
51. On 9 June 2020 BSP advised GT Electrical Safety Checks for the property were up to date, fire and heat detection is installed and adequate, there was a carbon monoxide alarm, EPC was complete and BSP would advise about the legionella test and PAT testing.
52. GT had not received the requested information about the tenant's details or information about the deposit for the property.
53. GT followed this up with further emails on 22 June 2020, 2 July 2020 and 10 July 2020.
54. On 10 September 2020 GT advised landlord registration staff at Dundee City Council that he had not received a reply to said emails and thus could not produce the answers required for the landlord registration process.
55. Terri Kean from Dundee City Council contacted BSP and requested the information directly from BSP. On 16 September 2020 BSP advised Mr Kean Amber Milne was to blame for all the missing information and BSP were not able to advise at what stage the eviction proceedings were at that time.
56. On 10 July 2020 GT telephoned BSP on the office number and requested a full statement.
57. A printout of the accounts system regarding the property from 8 February 2013 to 10 July 2020 was forwarded by BSP's employee Rhys on that day to GT.
58. This showed rental payments for the property by the previous tenant up to and including 6 May 2019 and a payment from BSP to GT of £2,299.50 on 6 May 2019.
59. On 7 May 2019 GT received a payment of £657 from BSP into his bank account.

60. On 12 July 2020 GT advised BSP he wished to inspect the property and had left a 48 hour notice for the tenant. He requested the set of keys lodged with BSP for the purpose of entering the property.
61. On 15 July 2020 BSP advised GT by email that "Unfortunately we don't have keys for that property, apologies. We will need to get a locksmith out to the property", followed on 16 July 2020 by an email from BS "Apologies again that we don't have a spare key, this is due to Amber not following the correct procedures."
62. On or around 16 July 2020 GT arranged for the locks to the property being changed and carried out an inspection of the property.
63. The property was still full of the tenant's belongings and was in a very unclean and untidy condition.
64. Later that day GT again requested the details for the tenant in the property as BSP had advised him the previous tenant Ms Tyrcha was no longer living in the property.
65. He further asked for an update regarding the rent arrears recovery on that date and subsequently on 22 July 2020
66. On 17 July 2020 GT again requested from BSP to advise what was going to happen with getting the rent arrears back from the tenant. This was followed by another email from GT on 22 July 2020 and 3 August 2020. The information was not provided by BSP as requested.
67. On 4 August 2020 BSP contacted GT sending a copy of the EPC for the property and advising that it appeared the tenant had left the property.
68. On 4 August 2020 GT requested the deposit back for the property.
69. On 4 August 2020 BSP advised GT that a PRT had been issued to Mr Marzec and that no deposit had been taken from him by Amber Milne.
70. On 5 August 2020 GT requested BSP to take appropriate steps against the tenant, commence abandonment procedures and try to contact the tenant on all available contact options, carry out a property check and to keep GT advised of all steps taken.
71. In reply on 5 August 2020 BSP sought to terminate the contractual relationship with GT writing: "Moving on from this Brian would like to terminate the contract with yourself due to the locks being changed illegally which is a breach of the legal obligations as a Landlord" and offering GT to uplift the keys and all documents.
72. On 6 August 2020 GT advised BSP he did not accept that the correspondence of the previous day is an acceptable and valid termination of the factoring agreement.
73. GT again requested payment of the balance between the £2,299.50 showing in the statement and the £657 actually received in his bank account.
74. On 21 August 2020 GT again requested BSP to continue with the eviction proceedings previously commenced and advising that if no further update was received by 24 August 2020 GT would commence his own eviction proceedings through a solicitor.
75. In the week preceding 24 August 2020 GT observed that the property was still occupied.
76. GT repeated his request for information as to which steps BSP were going to take to get the property back on 25 August 2020.



77. As this was not forthcoming on 26 August 2020 GT issued a formal Letting Agent Code of Practice Notification Letter under S 48 (4) of the Housing Scotland Act 2014. No reply was received from BSP to the letter.
78. BSP regularly did not reply to requests or information or updates requested by GT during the period from 25 July 2019 to 26 August 2020.
79. No steps to recover the rent arrears had been taken by BSP against either Anita Tyrcha or the current tenant Mr Marzec.
80. Such steps had been repeatedly requested by GT with regard to the rent not being paid for the property from May 2019 onwards.
81. BSP held a set of keys for the property at the start of the agreement in 2012.
82. Either by the keys being lost or the tenant changing the locks to the property no keys were held when these were requested by GT in July 2020.
83. No inspections of the property had been carried out by BSP between May 2019 and August 2020.
84. No inventory was prepared at the start of the tenancy on 17 May 2019.
85. GT was not provided with any information regarding the Code of Practice for Letting Agents by BSP.
86. GT was not provided with any information regarding the Deposit Schemes Regulations by BSP.
87. BSP have a complaints procedure. This has not been intimated to GT.
88. BSP have a money handling procedure in place.
89. BSP provided statements to GT in the period between 1 August 2016 and 6 March 2018. No further statements were provided.
90. On 17 October 2019 GT received a payment of £90 under reference "Brian Stewart TA BBsp".
91. In the bank statements lodged by BSP from the Business Account for B S Properties held with Bank of Scotland ending in \*\*\*4270 no payment is shown for the date of 17 October 2019 and no payment of the amount of £90 is shown at all for the period of 1 October 2019 to 18 October 2019.
92. A different account than the business account ending in \*\*\*4279 was used by BSP to make the payment of £90 on 17 October 2019 to GT.
93. For the periods of 8 to 11 February 2016, 14 to 17 March 2016, 21 to 27 April 2016, 9 to 15 June 2016, 1 to 6 July 2016, 9 to 14 June 2017, 23 to 30 June 2017, 20 to 26 July 2017, 6 to 12 September 2017, 23 to 28 November 2017, 18 to 21 December 2017, 1 to 5 February 2018, 23 to 27 February 2018, 28 to 29 August 2018, 28 February 2019, 2 to 7 May 2019, 1 to 31 October 2019 the only rent payments for the property shown were a payment of £710 on 9 February 2016 and a payment of £355 on 21 April 2016. There were no rent payments for the property shown in the lodged statements after 21 April 2016.
94. The rent statements lodged by BSP for the account ending in \*\*\* 4270 only cover the periods stated above.
95. On 7 May 2019 a payment of £657 to GT is shown from said account.
96. The Applicant has incurred solicitor's fees of £1,657.39 due to starting the eviction process of Mr Marzec from the property.
97. Various entries in the client ledger printout of 10 July 2020 do not match the entries shown in the bank statements of BSP's Business Account for the periods for which the statements were lodged.
98. There is a valid EPC for the property dated 24 August 2014.
99. An EICR had been charged for by BSP on 3 October 2016 but not produced to the Tribunal.

100. The client ledger shows a total of 14 rental payments at the rate of £365 per month were made by Anita Tyrcha. The client ledger shows letting agent fees of 10 % of each payment were deducted. The client ledger shows a payment of £2,299.50 to the landlord. This payment had not been made.
101. The applicant received two payments of £657 in February 2019 and May 2019 and a further payment of £90 in October 2019. The discrepancy between the payment shown and the payments received is £895.50. The payment of £90 was made from a different account than the business account ending in \*\*\*4270.

## **[9] Findings in Law and Reasons:**

[10] It is admitted by BSP that there were several breaches of the Code of Practice for Letting Agents and that internal procedures and obligations under the agreement with the applicant were not followed. Mr Stewart, who is the owner of the business, explained this with the failings of his previous employee Amber Milne, who is now charged with defrauding the company for substantial amounts of funds from the Letting Agent business, and from other employees such as the individuals described as Pam and Rhys.

[11] Mr Stewart appears to fail to understand that whilst many of the issues raised in the application do not relate to his own personal conduct towards the applicant, nevertheless he as the owner of the business is responsible to ensure that the letting agent business he runs provides appropriate services to landlords who engage BS Properties as letting agents.

[12] The requirement to comply with the Code of Practice for Letting Agents is considered by the Tribunal on the basis of the actions and omissions of the letting agent business as a whole with whom the landlord contracted. The Tribunal further notes that the Money Handling Procedures for BS Properties lodged in evidence clearly and explicitly sets out that "Brian Stewart is responsible for overseeing the day to day running of the client account and the handling of client money within the business." The Tribunal considers that from the perspective of the landlords engaging BS Properties it is not relevant that there have undoubtedly been internal problems with employees within the company. Ultimately these issues are an internal matter.

**[13] Having considered in detail the email exchanges between the parties, the documents provided and the written and oral evidence from the Applicant (GT), Mr Brian Stewart (BS) and Ms Latham, the Tribunal concluded that the Letting Agent did not fail to comply with the Letting Agent Code of Practice in the following ways:**

### **[14] SECTION 3 Engaging Landlords Before taking instructions**

*29. In your dealings with potential landlord clients you must:*

*Services provided and fee charges*

*a) provide clear and up-to-date written information about the services you provide and the charges (inclusive of taxes) for them;*

*Advice*

*d) if you become aware in the course of your business that a property does not meet appropriate letting standards (e.g. repairing standard, houses in multiple occupation and health and safety requirements), inform the landlord of this;*

Re 29: The Tribunal considered that the charges and services were set out accurately and clearly in the agreement of 8 January 2012. There was no information that the property did not meet appropriate letting standards and thus there was no need to inform the landlord of this.

#### **[15] SECTION 6 Ending the Tenancy**

*101. Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit unless there is good reason not to. For example, evidence of violent behaviour.*

Re 101: The Tribunal was not satisfied that the advice to the tenant was not provided as there was no evidence led from either party on this matter. On balance the Tribunal was not satisfied that the Applicant had provided sufficient evidence that a breach had taken place.

#### **[16] Tenancy deposits**

*105. Where you manage the tenancy deposit on behalf of a landlord you must take reasonable steps to come to an agreement with the tenant about deposit repayment. Where agreement is reached you must make a claim to the relevant Tenancy Deposit Scheme.*

Re 105: It was agreed between the parties that no deposit had been taken for the property for the current or the preceding tenancy. As there was no deposit taken, no deposit repayment arrangement or lodging of the deposit was required. The Tribunal did thus not find that a breach of this item had occurred.

**Having considered in detail the email exchanges between the parties, the documents provided and the written and oral evidence from the Applicant (GT), Mr Brian Stewart (BS) and Ms Latham, the Tribunal concluded that the Letting Agent failed to comply with the Letting Agent Code of Practice in the following ways:**

#### **[17] SECTION 2**

##### **Overarching standards of practice**

*16. You must conduct your business in a way that complies with all relevant legislation*

Re 16: The Tribunal was satisfied from the admission at the hearings and in the written representations that BS Properties was in breach of provisions of the Code of Practice for Letting Agents as set out below in their dealings with the applicant between May 2019 and August 2020 and had thus not conducted their business in compliance with relevant legislation.

*17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).*

Re 17: BS Properties consistently misinformed the Applicant about the progress of the eviction application for the property which had been rejected by the Tribunal in January 2020. On several occasions and as late as 19 May 2020 the Applicant was told by the Respondent that the paperwork for the application had been accepted. This was a clear breach of the Code.

**[18] 18.** *You must provide information in a clear and easily accessible way.*

Re18: BS Properties provided incorrect information to the Appellant and furthermore did not provide any updates on their terms and conditions and procedures to the applicant after the initial contract had been entered into in 2012. Although it was agreed that monthly statements would be issued, none were produced after the statement on 6 March 2019.

**[19] 19.** *You must not provide information that is deliberately or negligently misleading or false.*

Re 19: The information about the eviction application made to the Tribunal by BSP provided to the Applicant was either deliberately or negligently misleading as he was advised as late as May 2020 by email that the paperwork had been accepted whereas the application had been rejected by the Tribunal in January 2020. The email correspondence and the oral evidence clearly show that the Applicant had not been consulted regarding the change of tenant, the reduction of the rent and had not been advised that a new lease for the property had been issued in May 2019 despite several requests of the Applicant to be advised of the details of the tenant. In the emails from Amber Milne on 24 July 2019 she referred to the tenant as “she”, giving the impression that the previous tenant was still occupying the property. This email was sent after Amber Milne had issued a new Private Residential Tenancy agreement to a male tenant commencing 17 May 2019. No information about the new tenancy agreement was provided to the Applicant until on or around 4 August 2020.

**[20] 20.** *You must apply your policies and procedures consistently and reasonably.*

Re 20: The description of the rent arrears procedure of BS Properties was set out to the Applicant in the email of BSP dated 24 July 2019. After 2 days a letter was to be sent to the tenants, after 7 days a recorded delivery letter would be sent to the tenant, after 8 weeks the local authority would be contacted to enquire regarding benefit payments and after 3 months a notice to leave would be issued and an application for payment of the arrears would be made to the Tribunal. This process was not followed by BSP. No correspondence showing that the rent arrears management process was followed was lodged by BSP. Despite several instructions from the Applicant to address the rent arrears situation in emails of 1 November 2019, 8 December 2019, 9 December 2019 and later in the process, no steps were taken by BSP to recover the arrears.

**[21] 21.** *You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.*

Re 21: The email correspondence shows that the Respondent did not obtain references from the current tenant prior to issuing the tenancy agreement commencing 17 May 2019 although this was part of the agreement with the Applicant in terms of clause 1 of the agreement. The Respondent did not consult the applicant with regard to a rent reduction from £365 per month to £320 as stated in the private residential tenancy issued to the current tenant. The Respondent did not consult the applicant to approve the issuing of a new tenancy agreement to a tenant without having carried

out any financial checks. The Respondent did not provide the Applicant with a copy of the tenancy agreement until 4 August 2020, more than a year after the tenancy had started. Furthermore the Respondent did not carry out the inspections of the property as stated clause 8, did not provide the monthly statements as stated in clause 5, did not obtain a deposit from the new tenant as stated in clause 4. No application for recovery of rent arrears was made by the Letting Agent despite the provision of clause 11 of the agreement that "BS Properties guarantee that the problem will be dealt with as efficiently as possible." It is admitted by BSP that the keys were not correctly dealt with by the member of staff Amber Milne and that the financial records were falsified and incorrect. The Tribunal considered that the Respondent failed repeatedly and consistently in providing accurate information in a timely manner to the Applicant when this was requested. The Letting Agent thus did not provide the services agreed with the landlord with reasonable care and skill and did not do so in a timely way.

**[22] 24.** *You must maintain appropriate records of your dealings with landlords, tenants and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code's requirements.*

Re 24: BS and SL confirmed that the internal record keeping of the Respondent was compromised by members of staff. It is clear from the representations by both parties that the internal financial record in form of the client ledger, a printout of which was produced on 10 July 2020 to the Applicant, was not correct and contained several incorrect entries, including the entry that £2,299.50 were paid to the Applicant by BSP on 6 May 2019. It took the Respondent until 4 August 2020 to locate the tenancy agreement issued on 17 May 2019. Information about the rejection of the eviction application made by the Respondent on behalf of the Applicant was also clearly not adequately recorded as this was not conveyed to the applicant and incorrect information regarding this was given to the Applicant until 19 May 2020.

**[23] 26.** *You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.*

Re 26: The email correspondence shows clearly that the Applicant had to send repeated requests for information, which in many cases did not lead to a reply, or, if a reply was provided, did not provide sufficient and correct information. This is shown in the repeated requests for information about the eviction action, the payment action and the details of the current tenant as set out above. Examples of email requests not dealt with in compliance of the Code are the emails of GT to the Respondent of 25 July 2019, 8 December 2019, 10 December 2019, 27 January 2020, 30 January 2020, 5 February 2020 and 13 March 2020. The monthly statements agreed with the Applicant were not provided after 6 March 2019 at all.

**[24] 27.** *You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.*

Re 27: Although the Respondent did provide some information about the rent arrears to the Applicant after May 2019, no client statements showing arrears were produced, which led to the Applicant remaining unaware of the extent of the rent arrears problem. On balance the Tribunal considered that it was likely that the tenant changed the locks to the property and that thus the keys, which the Respondent had been given did no longer fit. The Applicant had not been made aware of the changing of the lock by the tenant until July 2020, although the email correspondence clearly shows that several attempts of the Respondent to access the property had failed.

## **[25] SECTION 3**

### **Engaging landlords**

#### *Tenancy Deposits*

**[26] 32.** *Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out:*

#### *Tenancy Deposits*

*i) if a tenancy deposit is to be taken, who will lodge the deposit with one of the approved schemes*

Re 32: The agreement from 2012 was never updated and still refers to deposits taken being retained by the Letting Agent. There is no provision in the agreement regulating who would lodge the deposit with a registered scheme. The Tribunal also notes that the Applicant was not advised of the requirement to lodge the deposit in a registered scheme despite the agreement postdating the introduction of the requirement to do so in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

#### *[27] Ending the agreement*

**37.** *When either party ends the agreement, you must:*

*a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents.*

*Unless otherwise agreed, you must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill.*

Re 37: The Respondent sought to end the agreement with the Applicant by email of 5 August 2020. None of the required information to be provided under item 37 of the Code of Practice was included as information in that email.

## **[28] SECTION 4**

### **Lettings**

#### **Viewings**

**52.** *If you are to conduct viewings on the landlord's behalf, you must ensure the keys to the property are kept secure and maintain detailed records of their use by staff – for instance, the date the keys were issued, who to and when they were returned. You must take all reasonable steps to ensure the property is left secure after viewings.*

Re 52: Mr Stewart in the email of 16 July 2020 explicitly admitted “Apologies again that we don’t have spare key. This is due to Amber not following the correct procedures.” Whether or not the tenant at some point changed the locks to the property, it is admitted by BS that the procedures for key holding were not correctly followed.

#### **[29] References and checks**

**61.** *You must take all reasonable steps to confirm the applicant's identity and to verify references, in line with your agreement with the landlord.*

Re 61: As per clause 1 of the agreement the Respondent had undertaken to “lease the subjects to a tenant which is vetted by BS Properties”. It is admitted in correspondence from the Respondent that no checks of the current tenant had been carried out and that no references had been obtained. Whilst SL argued at the hearing on 14 December 2020 that this was not possible because the tenant was already in the property, the Tribunal is of the firm view that the obligation to carry out relevant checks prior to issuing a new lease, in this case a Private Residential Tenancy Agreement on 17 May 2019, could have been satisfied despite the person already

occupying the property. The fact that the person as the boyfriend of the previous tenant had access to the property did not confer the rights of a tenant to him and references should and could have been requested and financial checks should and could have been carried out prior to conferring such rights to that individual by issuing a formal tenancy agreement.

### **[30] Tenancy deposits**

**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.*

Re 65: it is admitted by BSP that this had not been done. The Tribunal was satisfied from the document produced by BSP that a procedure to inform new clients about the requirements for deposit handling is in place, however this was not in place for the Applicant.

### **[30] Moving in (inventory/check-in)**

**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.*

Re 68: At the hearing on 14 December 2020 it was admitted by the Respondent that this should have been done. SL argued that it would have been done had the tenant moved in but in this case the person was already in the property and there was no access. Again, as stated under Re 61, whilst it may be correct that the current tenant was already in the property, an inspection could have been carried out and should have been carried out prior to a tenancy agreement being entered into. Had this taken place and had other regular inspections taken place, the progress of the deterioration of the state of the property to the point witnessed by GT when he gained access in July 2020 could have been documented.

## **[32] SECTION 5**

### **Management and maintenance**

**74.** *If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).*

Re 74: SL stated at the hearing on 14 December 2020 that this would have been done had access been granted. However, if access was not granted, this should have been intimated to the Applicant and the necessary steps to gain access should have been carried out, if necessary with assistance of the Tribunal. Furthermore, as above under 68 and 61, at the point prior to issuing the tenancy agreement in May 2019 an inspection could have been carried out and there was no evidence led by the Respondent about difficulties regarding access to the property under the previous tenants between the time the Code of Practice came into force on 31 January 2018 and May 2019. The agreement entered into between the parties was specified as a "Factoring Agreement" and clause 8 made specific provision for periodical inspections. These were either not carried out or not correctly recorded and documented.

**[33] 75.** *Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement and your agreement with the landlord.*

Re 75: Whilst the Tribunal appreciates BS's statement at the hearing on 14 December 2020 that a Notice to Quit was issued and that GT was informed about the rent arrears situation, the Respondent did not take the necessary steps to evict the tenant and thus prevent a further increase in arrears. The Respondent did not lodge an application for payment of the arrears as repeatedly requested and instructed by GT. The arrears situation was known by Amber Milne for months prior to her leaving. After she left, the Respondent did not follow up the progress of the eviction application lodged with the Tribunal and provided incorrect and misleading information regarding this to the landlord as set out above. The Respondent did not raise proceedings to recover the arrears from either the previous tenant or the current tenant although GT had on several occasions asked them to do so. The Respondent did not reimburse the applicant for the solicitor's fees he incurred when he commenced an eviction action against the tenant himself after the failure of the Respondent to deal with the rent arrears and eviction of the tenant despite having undertaken to do so in the email of 10 December 2019 at 13:24 hours, which explicitly stated "we will cover the cost of the eviction process".

#### **[34] Rent collection**

*78. You should inform the landlord in writing of the late payment of rent, in line with your written procedures or agreement with the landlord.*

Re 78: See above under 75. Should it be correct, as the Respondent now states, that rent arrears had accrued for a much longer period, then these were also not intimated to the Applicant and this would form an even more severe breach of this obligation.

*79. In managing any rent arrears, you must be able to demonstrate you have taken all reasonable steps to recover any unpaid rent owed to the landlord (see also section 8).*

Re 79: see above under 75 and 78.

#### **[35] Property access and visits**

*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.*

Re 80: see above under 52.

#### **[36] Carrying out repairs and maintenance**

*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.*

Re 85: An EPC for the property was on record. An EIPC had been charged for by BSP on 3 October 2016 but this had not been produced by BSP to either the Applicant or Mr Keane from Dundee City Council, which is confirmed by the email from Mr Keane to GT on 16 September 2020. This should have been available to the landlord when he requested the documentation required to renew the landlord registration on 9 May and 2 June 2020. Either the charge was made without the work having been carried out or the certificate was not filed correctly and thus the records of the work not maintained.



**[37] 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.*

[38] Re 86: The agreement between the parties states in clause 7 that the property is factored by BS Properties and that emergency repairs will automatically be carried out and deducted from the monthly rental without prior consent up to £100. At the hearing on 14 December 2020 the Respondent confirmed that for the property no timescales for carrying out routine repairs were provided but that this would be discussed with the landlord. The Tribunal considers that this does not meet the requirement set out in item 86 as such agreements should include timescales for carrying out routine repairs.

## **[39] SECTION 6**

### ***Ending the tenancy***

**98.** *You must have clear written procedures in place for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information.*

Re 98: The Respondent admitted that for this tenancy no such procedures were in place and no such procedures were stated in the agreement of 2012 between the parties. BS stated that the Notice to Quit was issued on behalf of GT but that because Amber Milne had left he was not sure if this type of information was provided to the Applicant, although he thought this had been. The Tribunal did not consider that the information in the email of 24 July 2019 by Amber Milne regarding the steps to be taken if a tenant falls into arrears was sufficient to provide the information required in terms of item 98 of the Letting Agent Code of Practice as it only dealt with the steps to be taken to evict a tenant because of rent arrears and did not address any of the other scenarios of a tenancy coming to an end. No such written procedure was submitted by the Respondent.

**[40] 99.** *You must apply your policy and procedures consistently and reasonably.*

Re 99: It was admitted by BS that the procedures in place were not followed by Amber Milne in dealing with the property for various reasons. In particular the process of ending the previous tenancy, issuing the new tenancy in May 2019 and all procedures to be undertaken to ensure regular inspections and the preparation of an inventory as well as carrying out checks on the prospective new tenant had not been carried out. The Tribunal considered that whilst this may be due to the behaviour of the employee of BS Properties, the Letting Agent BS Properties, with whom GT had contracted, was responsible for ensuring that the requirements and procedures were complied with by all members of staff.

### **[41] Inventory/check-out**

**102.** *If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began.*

Re 102: The Tribunal considers that in terms of clause 8 a check-out visit would be part of the factoring agreement between the parties. It was admitted by the Respondent that there had been no check out procedure for the leaving tenant for the property before the new lease was issued because the new tenant was already in the

property. The Tribunal was satisfied that a report of the state of the property should and could have been prepared when the previous tenant moved out and before a new lease was issued to the current tenant. This would have allowed the identification of any further damage occurring under the current tenancy.

## **[42] SECTION 7**

### ***Communications and resolving complaints***

#### ***Communications***

**108.** *You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.*

Re 105: The Tribunal considered that the email correspondence lodged in evidence by the Applicant comprehensively showed that emails were not replied to within a reasonable time scale and that complaints were not dealt with efficiently. The Applicant had repeatedly requested information about the progress of the eviction case, which were answered with incorrect information as stated above. Some of the enquiries regarding this were answered with significant delay e.g. 1 month after the email of 6 February 2020, 13 days after the email of 13 March 2020. Emails with requests for information regarding documentations for the property remained unanswered from 9 June 2020 to 10 July 2020 and with regard to the details of the occupancy of the property, the Applicant's requests for information were not answered correctly and it took until 4 August 2020 for BSP to locate the tenancy agreement. This constitutes a clear breach.

**[43] 110.** *You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.*

Re 110: The Tribunal was satisfied that the Respondent did not make the Applicant aware of the Code of Practice as the agreement between the parties was never updated and no evidence was provided that all clients had been contacted when the Code came into force. The Tribunal was satisfied from the email of the Respondent dated 22 February 2021 that for new clients this is provided.

## **[44] SECTION 8**

### ***Handling landlords' and tenants' money, and insurance arrangements***

**117.** *In this section "client money" means money held or rent collected on behalf of a prospective tenant, tenant or landlord (including former tenant or landlord). This section only applies if you hold and handle client money.*

Re 117: The Tribunal was satisfied that this part of the Code of Practice applies in this case as the Letting Agent agreement with the applicant shows in clauses 2, 3 and 5 that the Respondent was handling rental payments on behalf of the Applicant.

#### ***[45] Client accounts***

**119.** *You must keep adequate records and accounts to show all dealings with client money.*

Re 119: On behalf of the Respondent BS and SL both explicitly stated at the hearings that the internal record keeping of payments received and paid out to clients was incorrect as one employee had falsified the records. There was no evidence from BS

or SL to show that this had been identified timeously and that the internal money handling procedures were sufficiently robust to identify inaccuracies. Incorrect records were thus kept by the Respondent.

**[46] 120.** *You must be able to account immediately to them for all money held on behalf of clients*

Re 120: The Tribunal considered that immediate accounting for funds was not possible because the Letting Agent was not able to produce reliable accounts of the monies held and thus could not account for said monies. By their own admission, the records held were inaccurate over years. The Applicant had explicitly requested a statement of rent on 30 October 2019 and requested monthly statements on 13 March 2020, 22 June 2020. These were not provided.

**[47] 123.** *You must regularly record and monitor all transactions and reconcile these monthly as a minimum.*

Re 123: BSP lodged the internal money handling procedure, which states: "We regularly record and monitor all transactions on this account and reconcile these on a weekly basis." However, for the period in question from May 2018 to 10 July 2020, the Tribunal considered that this process was not consistently followed as the inaccuracies in the internal client ledger were present when the Applicant obtained a printout of the client ledger for his property. For example the payment of £90 on 17 October 2019 into the Applicant's account is not shown in the ledger and a payment to the Applicant of £2,299.50 on 6 May 2019 was inaccurately entered into the accounts. The Tribunal is satisfied from the Applicant's bank statement lodged for that period that the Applicant only received a payment of £657 on 6 May 2019. Whilst the money handling procedure as such would be compliant with the requirement of the Code of Practice, the Tribunal was satisfied on the basis of the ledger lodged by the Applicant and the bank statements of the Applicant that the internal procedures were not sufficiently robust to ensure that the internal records were reconciled and accurate for this client.

**[48] 124.** *You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).*

Re 124: The Tribunal was satisfied on the evidence of both parties that the internal records of the Respondent as shown in the ledger printout obtained by the Applicant on 10 July 2020 were inaccurate and not reliable. The Tribunal was further satisfied on balance of probability the payment shown in the internal record as a payment to the Applicant of £2,299.50 on 6 May 2019 was not made to the Applicant and that he only received the sum of £657 on 7 May 2019, £657 on 28 February 2019 and £90 on 17 October 2019. The Applicant considers that the balance should now be paid to him as shown in the ledger and argues that not to do so is a breach of point 124. The Tribunal considered that on the face of it the internal client ledger showed rental payments on specific dates between 15 March 2018 and 6 May 2019 from the previous tenant. These then corresponded to entries about letting agent fees of 10% for each payment shown in the ledger. Whilst the Tribunal does accept that there are certain inaccuracies in the client ledger printout of 10 July 2020, which the applicant received from the letting agent's employee when he requested this, on the face of it the ledger still is a record of rental payment having been made for the property. The Respondent stated that the payments were not received. The Respondent lodged various bank statements for the periods set out above under finding in fact number 93. None of the

bank statements lodged for 2018 and 2019 actually cover the dates when the rent payments are logged as received in the client ledger. On balance the Tribunal considers the ledger provides a written record of payments which has not been evidenced as incorrect for these entries by the bank statements lodged by the letting agent for the period of March 2018 to May 2019. The Tribunal notes that the payment of said £2,299.50 represent 7 payments of rent to the landlord at £328.50, calculated as the monthly rent of £365 under deduction of the 10% letting agent fee of £36.50. On balance the Tribunal thus finds that the payment of the 7 months' rent amounting to £2,299.50 is due to the Applicant. He only received payment of £1,404 as per the statements provided. These bank statement lodged by the Applicant show payments into his account of £90 on 17 October 2019, £657 on 7 May 2019 and £657 on 28 February 2019. This constitutes a shortfall of £895.50, which should have been paid to the Applicant.

**[49] 125.** *You must pay or repay client money as soon as there is no longer any need to retain that money. Unless agreed otherwise in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.*

Re 125: See above under 124.

### **Remedies:**

[50] Based on the above findings the Tribunal considered further what the consequences of the failures to comply with the Letting Agent Code of Practice should be in terms of S 48 of the Housing (Scotland) Act 2014.

[51] The Act provides: S 48 (7) Where the Tribunal decides that the letting agent 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 the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.

[52] The Tribunal considered that the failings to comply with the Letting Agent Code of Practice in this particular case arose due to the problems caused by the former employee Amber Milne, who is currently subject to criminal proceedings. The Tribunal further noted that the Respondent was able to produce current money handling, complaints and handling of deposit funds procedures, which appeared to be satisfactory. The Tribunal has no reason to doubt that these are now followed and that these are available to new clients of the Respondent.

[53] However, the Tribunal also considered that these procedures, in particular with regard to money handling, deposit handling and accounting, were not followed with regard to the Applicant and that the Respondent did not produce reliable current up to date financial records. This constituted breaches of items 16, 17, 18, 19, 20, 21, 24, 27, 32, 65, 7578, 79, 99, 117, 119, 120, 123 of the Code.

[54] The Tribunal considered on these breaches of the Code that the Letting Agent must produce proof of an internal process to be undertaken to ensure that the client

records are brought up to date in light of the problems arising from the inaccurate entries made by the previous employee. The Tribunal thus makes a Letting Agent Enforcement Order for the Letting Agent to produce within 2 months a document setting out the steps the Letting Agent is taking to reconcile all relevant bank records with the internal client ledger to ensure that all sums due to clients can be accounted for and accurate records produced going forward.

[55] With regard to the motion to order compensation to be paid to the Applicant, the Tribunal must first determine the loss to the Applicant arising out of the breaches of the Code and then in a second step order such compensation as it considers appropriate.

The first question is thus: What loss was caused by a breach of the Code?

The burden of proof for any such loss is on the Applicant. He has to evidence the financial loss and the causal link to the breach of the Code of Practice.

[56] The Applicant argues that the 4 points set out in his documents regarding financial loss arose out of the breaches of the Code, in particular the lack of vetting of the tenant, the issuing of the tenancy agreement without consultation and approval, the delay and failure to adhere to the letting agent's own procedures of dealing with rent arrears and the delay of the eviction action, which was then exacerbated by the legislative changes under the current pandemic.

[57] Point 1 non-payment of funds due: The client ledger printout shows a payment to the applicant of £2,299.50 on 6 May 2019. The Tribunal is satisfied that for the period of 2019 the Applicant only received payment £1,404. As there is no evidence to the contrary for the incoming rental payments between March 2018 and May 2019, the ledger payments appear on balance to be due to the Applicant as set out under item 124. He did not receive the funds due and thus has suffered a loss of £895.50, which is a direct financial loss arising from the breaches of items 124 and 125 of the Code.

[58] Point 2: The Applicant asked for compensation to the amount of £7,227, which he calculated are rent arrears for the property which have arisen under the current tenancy agreement with Mr Marzec. This was calculated by him at the level of the previous rental of £365 per month under deduction of the agreed 10% letting agent fee, resulting in an expected monthly payment to the landlord at the rate of £328.50 for a total of 22 months from May 2019 to February 2021. The Tribunal notes that the monthly rent in the current private residential tenancy is set at £320 per month payable at the 17<sup>th</sup> day of each month in advance. This is a reduction in rent for the property of £45 from £365.

[59] The Tribunal accepts that the tenancy agreement and in particular the reduction in rental payments, were not discussed with and approved by the Applicant. In terms of the current tenancy agreement, taking into account the 10% letting agent fee, the applicant thus could only expect to receive a monthly rental payment of £288 rather than £328.50. This was not agreed by him and the Tribunal accepts that the loss of entitlement to rental payments due to the reduction in rent for the tenancy agreement issued by the Respondent constitutes a financial loss for the applicant of £40.50 per month. The loss of £40.50 per month is a direct result from the non-compliance with the Code of Practice item 21. The letting agent did not consult the Applicant about issuing the new tenancy agreement and did not obtain approval for a reduction in the

rent amount stated for the property. As the tenancy agreement issued to Mr Marzec only stipulates a rent amount of £320 per month, any demand against the current tenant under the tenancy agreement can only be for this reduced amount.

[60] The Tribunal thus considers that there is an actual financial loss for the Applicant of £40.50 per month over the 22 months period amounting to a total of £891 from the unapproved reduction in rent. This is a direct result of the breach of item 21 of the Code of Practice and should be awarded in full as compensation.

[61] The applicant further argues that, since no rent at all has been paid by the current tenant, the Tribunal should order compensation for the entire amount of rent due for the 22 months from May 2019 to February 2021. He states that the non-payment of rent was caused by the lack of vetting of the current tenant and the lack of action taken by the Respondent to deal with the ongoing rent arrears. Ultimately he considers that because the tenant is still in the property and the eviction action started by the Respondent was not successful, the Respondent should reimburse him for all rental payments due. The Tribunal does not consider that the Applicant has provided sufficient evidence of an actual financial loss of 22 months rental income for the property.

[62] The Applicant has a contractual right to the rental payments and the debtor for these payments under the tenancy agreement is the tenant. In order to be entitled to compensation from the letting agent for a breach of the Code of Practice, the Applicant would have to prove an actual financial loss was caused by the non-compliance of the letting agent with the Code of Practice. This would require evidence that payment of the rent arrears cannot be obtained from the tenant. The first port of call for the rent arrears must be the actual debtor, in this case the tenant. The Applicant has a clear contractual right to the payment of the rent arrears against the tenant under the tenancy agreement. There is no evidence to show that a payment application for rent arrears against the tenant would not be successful. The tenant may not have paid rent but there may be funds to pay any payment order for rent arrears if the Applicant was to obtain such an order. The Applicant has not taken any steps to obtain a payment order against the tenant and thus has no evidence that there will be an actual financial loss for the rental payments due by the tenant under the tenancy agreement. If the Tribunal ordered payment of the arrears from the Respondent as compensation at this stage, the Applicant may be able to obtain double payment for the sum due if he is then successful in a payment action against the tenant. The Tribunal thus does not consider that an actual financial loss has been sufficiently evidenced and thus no compensation is due in this regard.

[63] The agreement between the applicant and the letting agent in clause 11 stipulates that solicitor's fees for eviction will be rechargeable to the landlord. However, this agreement was superseded by the explicit undertaking set out in the email of 10 December 2019 from the Respondent to the Applicant that in this case the cost of the eviction action will be paid by the Respondent. The Applicant had repeatedly instructed the Respondent to raise an action to evict the tenant. The Respondent did so but then provided information to the Applicant that the action was ongoing although the Tribunal had already rejected the application in January 2020. After the Applicant became aware that the action for eviction had been rejected he consulted a solicitor. This was an entirely reasonable step to take for the Applicant, as he had effectively been lied to by staff of the Respondent for 5 months about the progress of the eviction

action. He incurred costs for solicitor's fees in connection with ongoing efforts to evict the tenant from the property. This has been vouched for with invoices amounting to a total of £1,657.39. These would not have been necessary if the Respondent had not lodged an invalid eviction action and delayed advising the Applicant of the rejection of said application. The Tribunal considers it appropriate to award compensation of £1,657.39 for the solicitor's fees in compensation of the breaches of the Code under items 17, 20, 21, 27 and 75.

[64] The Applicant is seeking compensation for future costs arising out of repairs to the property and contents. However, the Applicant has not provided any evidence which would show the extent of any damage to the property and has not provided any invoices or estimates for any actual expenses arising to him. He has failed to provide evidence of any specific loss incurred. No evidence was provided showing that any specific damage to the property resulted from the current tenant and in his representations the Applicant clearly has not considered that any costs for painting, cleaning and replacement of contents would have to be calculated on the basis of apportionment of reasonable wear and tear to the landlord. No evidence was lodged of the alleged water damage and there was no evidence of any causal link of such damage to a breach of the Code of Practice. The Tribunal does not consider that any compensation can be awarded for that claim.

[65] However, the Tribunal considered the representations of the Applicant that he has suffered considerable stress and anxiety due to the accruing rent arrears, the protracted and unsatisfactory correspondence with the Respondent, the lack of record keeping and inspections and the incorrect information provided to him by the Respondent regarding the eviction action. He has had to spend time to now deal with the eviction action himself and to address the rent arrears himself. The Applicant set out in his email to the Tribunal of 3 February 2021 the effect the matter has had on his mental and physical health and the Tribunal accepts that the conduct of the Respondent with regard to the issuing of a tenancy agreement without obtaining references, the lack of a moving in record and following regular inspections, the unsuccessful eviction action, the lack of action regarding rent arrears and the failure to answer queries and communicate timeously and efficiently have clearly caused the applicant unnecessary and unwelcome stress and inconvenience. The Tribunal considers that an appropriate award of compensation for said stress and inconvenience for the various breaches of the Code of Practice as set out in the decision should be included and considers an amount of £2,500 compensation as appropriate, based on the appalling service the Respondent provided to the Applicant in this case over a matter of more than a year and the fact that the letting agent on several occasions explicitly provided incorrect and misleading information to the Applicant.

[66] The Tribunal considered the argument of the letting agent that the Applicant allegedly received rental payments over a period of years despite no rent having been paid by various tenants. In relation to the application made by the applicant under S 48 of the Housing (Scotland) Act 2014 the Tribunal can only deal with the question of whether or not breaches of the Letting Agent Code of Practice took place and what the appropriate remedy should be for such breaches. The Tribunal would not be able to make a finding of an entitlement of the letting agent against the applicant and thus cannot take any such claim into account. Any potential civil demands of the

Respondent against the Applicant would have to be dealt with in a different forum and would have to be properly evidenced there.

[67] As previously stated, the Tribunal does not consider that the argument that a specific employee caused said breaches whilst in the process of defrauding the letting agent can lead to any different outcome. The Respondent as a letting agent business contracted with the Applicant. Whilst the Tribunal does not doubt that some of the failings were caused by one specific employee, who also appears to have been in the process of defrauding the Respondent, Mr Stewart also blamed a further two employees for failings in the provision of service to the Applicant. This indicates to the Tribunal that there was a distinct lack of supervision and appropriate oversight of employees within the business. The Tribunal considers that the Respondent is similarly responsible to ensure that internal procedures, terms and conditions in agreements with clients and all duties under the Letting Agent Code of Practice are dealt with correctly by all staff.

[68] The Tribunal thus makes a Letting Agent Enforcement Order for the Letting Agent to pay to the Applicant compensation of a total amount of £5,048.39 and to produce proof of payment of said sum to the Tribunal.

[69] The Tribunal makes a Letting agent Enforcement Order for the respondent to produce a document setting out the steps the Respondent is taking to identify training needs and to put in place appropriate supervision of staff to ensure compliance of staff with the Letting Agent Code of Practice and to produce a copy to the Tribunal.

[70] In light of the level of non-compliance of the Respondent with the Code of Practice and the impact of said non-compliance on the Applicant, the Tribunal also determined that it was appropriate for the Respondent to issue a written letter of apology to the Applicant for the breach of the parties' agreement, failure to meet the standards expected of Letting Agents operating in Scotland, and the breaches of various Sections of the Code. A copy and proof of service is to be provided to the Tribunal.

[71] The Respondent has not provided any evidence that the Respondent has in place a clear written procedure for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information as required in Number 92. The Tribunal makes a Letting agent Enforcement Order for the Respondent to produce evidence of an appropriate procedure in terms of this requirement.

**The Respondent should note that failure to comply with an LAEO may constitute a criminal offence.**

**In terms of section 46 of the Tribunals (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**

Hennig McFatridge  
Legal Member and Chair

Date: 18 March 2021