

Housing and Property Chamber

First-tier Tribunal for Scotland



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/19/1452

Re: Flat 2/2, 1019 Prospecthill Road, Glasgow, G42 0JE (“the Property”)

The Parties:-

Mr Daniel C Gallagher, Ballindrait, Bunbeg, Letterkenny, Co Donegal, Ireland (“the Applicant”)

1st Lets (Glasgow) Ltd, 2 Calder Street, Glasgow, G42 7RT (“the Respondent”)

Tribunal Members:-

Alastair Houston	-	Chairing and Legal Member
Eileen Shand	-	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 Respondent has complied with the Letting Agent Code of Practice (“the Code of Practice”) as required by the Housing (Scotland) Act 2014 (“the 2014 Act”) and considered the written and oral evidence of the parties, determines that the Application should be refused.

1. Background

- 1.1 The present application is an application under section 48 of the Housing (Scotland) Act 2014 (the Act) made to the tribunal by the Applicant. The application was made in terms of section 48 and rule 95 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations (“the Rules”). The Application comprised of the application form and supporting documentation, including substantial quantities of emails between the parties.

- 1.2 Prior to any evidence being heard in respect of this application, there had been two hearings on 7 October 2019 and 5 December 2019 attended only by the Applicant. At the first, the Tribunal had noted that the initial Respondents, 1st Lets UK (Glasgow) Ltd, appeared not to exist. The hearing was adjourned to allow the Applicant an opportunity to consider the designation of the Respondents. At the second hearing, the Tribunal made an order substituting 1st Lets (Glasgow) Ltd as the Respondents. The reasons for this are contained within the hearing note relating to the hearing of 5 December 2019.
- 1.3 Subsequent to this order being made by the Tribunal, a written response was received from the Respondents. Further documentation was lodged by the Applicant, purporting to demonstrate the links between two companies, being 1st Lets UK Ltd and 1st Lets (Glasgow) Ltd.

2. The Hearing

- 2.1 The first day of the hearing took place on 6 February 2020. The Applicant appeared personally. He was accompanied by Ms Donna McKibbens, who acted as a supporter. The Respondent was represented by Ms Joanna Simpson, in her role as an employee, being the personal assistant to a director. It was noted that she was also to give evidence. An observer, Mr Ron Livingstone, was also present. The summary of the evidence heard is below. Where the corporate identity is important, the Tribunal has distinguished between 1st Lets UK Ltd and 1st Lets (Glasgow) Ltd otherwise, reference is simply made to "1st Lets".
- 2.2 The Tribunal heard evidence firstly from the Applicant. He confirmed that he was the owner and proprietor of the Property. He had owned the property for around 20 years. It had been a rental property since 2012, being a family home prior to that. He had initially used a letting agent, Lets Direct, to manage the Property in 2012. That company had gone into liquidation in September 2012. At that point, management of the Property had been taken over by 1st Lets as they had agreed to assume management of a portfolio of properties previously with Lets Direct. The Applicant was party to a written agreement relating to services with Lets Direct.
- 2.3 The Applicant had been contacted by Ms Donna McKibbens, then an employee of 1st Lets, to advise of the arrangement to assume management of the Property. He had no difficulty with this and the Property was, at no point, not managed by a letting agent. The Property was tenanted in September 2012 when agency was assumed by 1st Lets. The Applicant believed that a written agreement relating to services had been emailed to him by 1st Lets, which he had signed and returned. He conceded that the said agreement had not been lodged with the Tribunal.
- 2.4 1st Lets agreed to manage the property for no charge for the first three months. Thereafter, he was to pay £50 per month for services provided. This was to be deducted from the rent collected by 1st Lets. He was provided with terms and conditions and was notified that he was responsible for repairs. Any tenant

would notify 1st Lets of a repairing issue and they would report to the Applicant to authorise the relevant work.

- 2.5 The Applicant recalled a meeting with Ms McKibbens in or around October 2012. He understood her to be the office manager of 1st Lets. He only had contact with her at that time. The location of the meeting was the office premises previously used by Lets Direct, being 2 Calder Street, Glasgow. He was not aware of any link between the companies. The written tenancy agreement between 1st Lets and Mr Anthony Branniff was referred to. The Applicant had given authority for the agreement to be entered into by 1st Lets on his behalf. There had been no discussion about the structure of the company the Applicant understood to be trading as 1st Lets. The Applicant acknowledged that the written tenancy agreement named 1st Lets UK Ltd.
- 2.6 The aforementioned Mr Branniff was a tenant of the Property until February 2019. He appeared to have abandoned the Property at that time. Mr Branniff had paid a deposit in connection with the tenancy to 1st Lets. The Applicant understood this deposit was to be lodged with an appropriate scheme, as required by law. He was not advised as to whether this was done. He assumed any relevant paperwork would be held at the office of 1st Lets.
- 2.7 The Applicant could not recall specifically what services were to be provided under any agreement with 1st Lets. To his understanding, they were to take reports of repairing issues from tenants and arrange any work he authorised to be instructed, the cost of which could be deducted from rent received. They were not authorised to carry out repairs without notifying the Applicant first, albeit he conceded there may have been occasions when minor repairs were carried out without notification. He could not recall if the agreement contained any provision relating to repairs which would cost in excess of one month's rental income. 1st Lets were to vet prospective tenants prior to entering into any lease, advertise the Property, draft any written tenancy agreements, serve any notices required in connection with a tenancy, provide advice to the Applicant on any necessary steps to terminate a lease and take payment of the monthly rent, which was remitted to the Applicant via bank transfer.
- 2.8 If the Applicant required to contact 1st Lets, he had Ms McKibbens's business card to contact her directly. There was no other named person for him to make contact with. He only spoke with one, maybe two other employees as there were a number of staff changes. He understood 1st Lets to have around six or seven staff members in total. He was residing in Ireland and would attend the office on visits to Glasgow, which was no more frequent than around once per year. This would simply be for a catch up, rather than meeting about a specific issue.
- 2.9 There had been no issues with rent being paid by Mr Branniff until the Property was abandoned on or around 14 February 2019. The rent had been due on the first day of each calendar month. It would be remitted to the Applicant around the 10th of each month. The last rental payment he received pertained to January 2019.

- 2.10 There had been an issue with the electrical installations within the Property in 2016. The Applicant had been contacted, around February or March 2016, by 1st Lets to advise that the tenant had suffered an electric shock. Contact had been by telephone. The Applicant could not recall who had contacted him. He had been advised that an Electrical Installation Condition Report would be required. The purpose of such a report would be identify any further issues needing attention. Towards the end of March 2016, the Applicant made payment to 1st Lets of £400.00 to be put towards the cost of the report, which was to be completed by Mr George Anderson. The payment was made in person by the Applicant at 1st Lets office and the Applicant was provided with a receipt by Ms McKibbens. The subsequent cost of the report was £500.00. The Applicant intended to make payment of the shortfall, rather than it being deducted from rent, however, he never received an invoice for the remainder due. He did not receive a copy of the Electrical Installation Condition Report until January 2019. He had assumed the report and any necessary repairs had been completed but had not made any enquiries as to whether it revealed further work to be needed at the Property.
- 2.11 There had been issues with the washing machine within the Property. These had occurred in December 2018. The Applicant had been notified that the washing machine was no longer working and needed to be replaced. The Applicant had purchased a replacement machine and arranged for installation. He had understood that the delivery of the machine could not be done in December 2018 due to a lack of access to the Property. He had asked 1st Lets to notify Mr Branniff of the delivery and it was subsequently installed later the same day. The Applicant wanted to inspect the condition of the Property in January 2019 when he was visiting Glasgow. This had been prompted by the issues with the replacement of the washing machine. He understood 1st Lets were to carry out inspections on a biannual basis. The blank agreement lodged was representative of that he recalled signing, but he could not recall if it was an exact copy.
- 2.12 The Applicant met an employee, known as "Maz", of 1st Lets and the tenant at the Property in January 2019. The Applicant carried out an inspection and noted that Mr Branniff advised the Property was infested with bed bugs, resulting in the disposal of bedroom furniture and fumigation at the tenant's expense, the Property did not appear to be clean, smoke alarms had been removed, the electric fire within the living room and been removed and wiring was exposed and the decorative condition was poor. The tenant did not disclose whether he had notified 1st Lets. The Applicant did not pursue these issues with 1st Lets at the time but raised them prior to ending the agreement for them to manage the Property in February 2019. He could not recall the method by which these issues were raised.
- 2.13 There was email and telephone communication between the Applicant and 1st Lets referring to the tenant continuing to reside at the Property. The Applicant contacted the tenant and advised he would arrange for the necessary works to be completed. The tenant advised he intended to leave and that the Applicant should retain the deposit paid in lieu of rent for February 2019. The Applicant raised this issue with Ms Simpson and was told that a director of 1st

Lets had spoken to the tenant and confirmed he was not intending on moving out. The Applicant understood the director to be Mr Nadeen Iqbal. He had no dealings with Mr Iqbal personally up to this point apart from one email dated 18 January 2019. The Applicant referred to his emails of 4th to 16th January 2019 which were lodged with the Tribunal.

- 2.14 This was the Applicant's first contact with Ms Simpson. The Applicant had not received reports relating to any previous inspections. He had not requested any so assumed there were no issues at the Property. He had assumed staff at 1st Lets would deal with management of the property. He was unhappy with the condition of the Property in January 2019 and had noted damage to kitchen units and a repair needing carried out to the kitchen ceiling. He had a meeting with Ms Simpson at 2 Calder Street, Glasgow, on 5 January 2019. The condition of the Property was discussed as well as the issue of having the washing machine replaced. Nothing else was discussed at the meeting. The Applicant conceded that the issue of the £400.00 paid in connection with the EICR was not to be pursued. The Applicant had a telephone call with Mr Iqbal in mid-January however could not remember the contents of the call. He believes Mr Iqbal advised he was the director of 1st Lets UK Ltd. There was no further communication regarding the condition of the property following this. The only communication was through Ms Simpson and related to the tenant leaving. The dissolution of 1st Lets UK Ltd was not discussed at the meeting. No letter was received regarding this and a postal address had never been provided to 1st Lets, only a telephone number and email address. The Applicant learnt of the change in company structure from a former member of staff, after the telephone call with Mr Iqbal. He did not question the changes and assumed he would be notified further.
- 2.15 Following the telephone conversation with Mr Iqbal, all communication between the Applicant and 1st Lets was by email. The Applicant expected 1st Lets to attend to the issues arising from the inspection. He instructed new letting agents, 1-2-Lets, due to growing unease over the conflicting information regarding the tenant leaving. He had also never received proof of the deposit being lodged. The Applicant referred to emails lodged from Safe Deposit Scotland and MyDeposit Scotland confirming no deposit was protected in respect of the Property. He had not contacted Letting Protection Scotland. A member of staff of 1st Lets, Marlene McKenzie, had advised the Applicant the Property had not been inspected for 18 months, due to a backlog of work. Only one inspection report had ever been provided, relating to the inspection the Applicant had attended. The Applicant understood a set of keys had been held by 1st Lets, these having been provided by the previous agents at the time of transfer.
- 2.16 After the inspection on 15 January 2019, the Applicant was made aware that laminate flooring had been installed in the living room within the property. He had not provided authorisation for such work and believed there was no need for it, following the inspection. He was never informed of the cost of the work and no further discussion took place regarding it.

- 2.17 The Applicant submitted a complaint regarding his perceived issues with the management of the Property by email dated 14 February 2019. This was sent to the email address belonging to 1st Lets UK Ltd. He received a response from Ms Simpson after forwarding the email to her. He was dissatisfied with the response and the communication between 1st Lets and his new agents. He did not consider the response received to be substantive.
- 2.18 Following the end of the Applicant's evidence, the Tribunal adjourned the hearing due to a lack of time. The second day took place on 17 September 2020 by teleconference. The delay was caused by the coronavirus pandemic. The Applicant and Ms Simpson again attended with Ms McKibbens also present, this time as an observer. A preliminary issue was dealt with in that the Applicant sought to lodge bank statements demonstrating further loss resulting from the alleged breaches of the Code of Practice. The Tribunal considered these but refused to allow them to be lodged on the basis that the Applicant had had ample opportunity to clarify the exact financial losses he said he suffered and had indeed done so at an earlier hearing. Further, the Tribunal considered it would not be in the interests of justice for the Applicant to introduce a new head of loss half way through the hearing of evidence.
- 2.19 Ms Simpson gave evidence for the Respondent on the second day. She advised that she was employed by 1st Lets (Glasgow) Ltd as a personal assistant to a director, Mrs Aslam. She had been employed in this position since February or March 2018. She had never been employed by 1st Lets UK Ltd. When she commenced her employment, Mr Iqbal had also been a director of 1st Lets (Glasgow) Ltd but she was unsure as to the precise structure of the companies. Her duties involved the checking of leases before signing by directors, general management within the office, reporting to the director and processing applications by prospective tenants. She advised that any issues raised by tenants were normally dealt with by other members of staff however, she would answer the telephone from time to time and speak with tenants. She did not have any involvement in the remittal of rent received to landlords.
- 2.20 Ms Simpson became aware that the Property was being managed by 1st Lets UK Ltd around November or December 2018. There had been issues with the replacement of the washing machine and storage heaters not working. At the time, 1st Lets (Glasgow) Ltd had two employees – Ms Simpson and a receptionist, Marlene. 1st Lets UK Ltd was being run by the director, Mr Iqbal, alone with no employees. She was unsure if Mr Iqbal was also a director of 1st Lets (Glasgow) Ltd at the time. Ms Simpson contacted the Applicant personally to report the issues and after a telephone call it was agreed the washing machine was to be replaced and a tradesman to inspect the heaters. Mr Iqbal would have then dealt with the instruction of this work. She had had no involvement with the Property prior to this.
- 2.21 Around November and December 2018, 1st Lets (Glasgow) Ltd managed around 150 properties. Two other companies, namely 1st Lets UK Ltd and 1st Lets (Scotland) Ltd, were also in operation. Both 1st Lets (Glasgow) Ltd and 1st Lets UK Ltd operated from the office at 2 Calder Street, Glasgow. 1st Lets (Scotland) Ltd operated from an office on Woodlands Road, Glasgow. At 2

Calder Street, the receptionist had access to a database on a computer. Should a call from a tenant be received, the receptionist would check who was responsible for the management of the property and transfer the call appropriately.

- 2.22 Ms Simpson believed the work agreed with the Applicant was completed. She was not involved in any inspection of the Property. Ms Simpson confirmed she could only speak to the procedures of 1st Lets (Glasgow) Ltd. Inspections of tenanted properties were carried out on an annual basis unless prompted by concerns about the tenant or requested by the landlord. She was not aware of the terms of any agreement the Applicant would have had with 1st Lets UK Ltd relating to inspections. She believed that she seen a copy of the agreement between the Applicant and 1st Lets UK Ltd but was unaware of its specific terms.
- 2.23 She attended a meeting at 2 Calder Street, Glasgow, on 5 January 2019. This was attended by the Applicant. It was a meeting following a letter being sent to the Applicant to discuss the impending dissolution of 1st Lets UK Ltd and transfer of management of the Property to 1st Lets (Glasgow) Ltd. All landlords who had agreements with 1st Lets UK Ltd were written to. She did not have a copy of the letter sent to the Applicant but had seen the standard letter sent out. 1st Lets (Glasgow) Ltd were to take over management of the properties with landlords able to terminate the agreement within 30 days should they not wish to have their properties managed by 1st Lets (Glasgow) Ltd.
- 2.24 During the meeting, the services offered by 1st Lets (Glasgow) Ltd were discussed as well as remedial work that would be required to be carried out to the Property should 1st Lets (Glasgow) Ltd be responsible for managing the Property. These works included the upgrading of the bathroom, renewal of flooring and redecoration. There was no agreement made with the Applicant who wanted an opportunity to think matters over. Thereafter, there were no more meetings with all communication, as far as Ms Simpson was aware, being carried out by email. 1st Lets (Glasgow) Ltd were not instructed to carry out any of the works discussed at the meeting. All emails sent to and received from the Applicant had been lodged. Ms Simpson was not aware of any telephone contact between the Applicant and Mr Iqbal.
- 2.25 Ms Simpson advised that she understood 1st Lets UK Ltd to have been dissolved on 22 January 2019. There was no explicit agreement with the Applicant for 1st Lets (Glasgow) Ltd to thereafter manage the Property. She would have been aware if there was as she was responsible for the written agreements. She acknowledged that a payment of rent appeared to have been made by 1st Lets (Glasgow) Ltd to the Applicant. This was an error by the accountant responsible for the company's financial affairs.
- 2.26 Ms Simpson advised that, around the time of the dissolution of 1st Lets UK Ltd, approximately five properties transferred to 1st Lets (Glasgow) Ltd. She had no involvement with any tenancy deposits relating to these properties. She believed that Mrs Aslam had applied for the transfer of deposits from any accounts belonging to 1st Lets UK Ltd to 1st Lets (Glasgow) Ltd. She was

aware of the Code of Practice and confirmed that 1st Lets (Glasgow) Ltd were a registered letting agent with the LARN 2007012. She was unsure if 1st Lets UK Ltd were registered.

3. Findings In Fact

- 3.1 In or around September 2012, the Applicant entered into an agreement with 1st Lets UK Ltd to manage the Property.
- 3.2 That agreement continued until 22 January 2020, when 1st Lets UK Ltd was dissolved.
- 3.3 The property was managed by 1-2-Lets from 14 February 2019.
- 3.4 There was no agreement between the Applicant and Respondent for the Respondent to manage the Property.
- 3.5 At no time prior to the 14 February 2019 was the Respondent responsible for managing the Property.

4. Findings In Fact And Law

- 4.1 The Respondent did not carry out any letting agency work within the meaning of section 61 of the Housing (Scotland) Act 2014 in respect of the Property.
- 4.2 The Respondent was not appointed as letting agents to carry out letting agency work by the Applicant in terms of section 48 of the Housing (Scotland) Act 2014.

5. Reasons For Decision

- 5.1 This application is slightly unusual in that the defence advanced by the Respondent, in essence, is that they were not responsible for managing the property. Their position is that any letting agency work was performed by 1st Lets UK Ltd. The Applicant's position was that the two companies were indistinguishable and that the Respondent should be held liable for the breaches of the Letting Agent Code of Practice alleged in the original application.
- 5.2 The Tribunal does not believe that the Respondents can simply be held liable for any breaches. No authority was put before the Tribunal to support this proposition. 1st Lets UK Ltd and 1st Lets (Glasgow) Ltd are two separate legal entities, both being registered companies. Whilst it is recognised by the Tribunal that the two shared premises and, at times, directors, that is not sufficient for one to be held responsible for any acts or omissions of the other.
- 5.3 The Tribunal has therefore considered whether or not the Applicant had a locus to enforce the Letting Agent Code of Practice against the Respondent. The relevant provision is contained with Section 48 of the Housing (Scotland) Act 2014, which states:-

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is—

(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,

(b) in relation to an application by a landlord, a letting agent appointed by the landlord,

(c) in relation to an application by the Scottish Ministers, any letting agent.

A landlord can only enforce the Letting Agent Code of Practice against a letting agent appointed by them. In the present case, the Tribunal does not consider there to be sufficient evidence of the Respondents having been appointed by the Applicant or there otherwise being an agreement between them in respect of the management of the property.

- 5.4 There was no copy of the original written agreement signed by the Applicant when Lets Direct ceased to manage the property. The Applicant accepted that he had given authority for a tenancy agreement to be entered into in respect of the property. That agreement had been produced and designed 1st Lets UK Ltd as the agent of the Applicant. The Tribunal has therefore concluded that any agreement entered into by the Applicant in or around September 2012 was with 1st Lets UK Ltd. There was no evidence of anything occurring to potentially alter this agreement until December 2018. The Tribunal accepted the evidence of Ms Simpson that a letter was sent to the Applicant advising him of the prospective transfer of properties from 1st Lets UK Ltd to 1st Lets (Glasgow) Ltd, although, for whatever reason, the Applicant did not receive the letter. Thereafter, it was a matter of agreement that a meeting took place between the Applicant and Ms Simpson on 5 January 2020. The accounts of the meeting differed, however, the Tribunal does not consider the discrepancies between the parties' positions to be material. Ms Simpson advised that the prospective transfer was discussed with Applicant advising he would consider the position. The Applicant maintains no such conversation took place. Irrespective of which account is correct, the Tribunal does not believe that an agreement was made for the Respondents to manage the Property, even on a provisional basis, at this meeting.
- 5.5 Thereafter, all communication was by email, with the exception of the telephone call between the Applicant and Mr Iqbal and the inspection of the Property on 15 January 2019. The Applicant's own evidence was that he could not recall the contents of the conversation whilst the inspection was centred around the condition of the Property. The Tribunal is unable to conclude that any agreement was formed at this stage for the Respondent to manage the Property. The emails provided by the Applicant make reference to the issues with which the Applicant remained dissatisfied and replies did come from the Respondent. The Tribunal notes that, as 1st Lets UK Ltd was dissolved on 22 January 2020, it could be expected that a response would come from 1st Lets (Glasgow) Ltd. In any case, the emails do not amount to establishing the

relationship between the parties necessary for the Applicant to enforce the Letting Agents Code of Practice.

- 5.6 The remaining issue that merited consideration by the Tribunal was the remittal of rent to the Applicant on 10 January 2019. The Tribunal noted that two somewhat differing explanations were given by the Respondent for this. In the written submissions, the Respondent made reference to the payment having been made prior to it being received from the tenants, essentially as a goodwill gesture to ensure the Applicant was not out of pocket. In her oral evidence at the hearing, Ms Simpson advised that payment from the 1st Lets (Glasgow) Ltd account was a mistake by the accountant. The two positions are not completely irreconcilable – it may be that the payment had been intended yet the origin was erroneous. It is, however, not for the Tribunal to speculate. The bank statement lodged by the Applicant was sufficient for the Tribunal to make the earlier order substituting 1st Lets (Glasgow) Ltd as the Respondent, however, on its own, is not sufficient to demonstrate that the Respondent was appointed by the Applicant as letting agent for the Property.
- 5.7 As the Tribunal has concluded that the Applicant has no locus to enforce the Letting Agents Code of Practice against the Respondent, the substance of the alleged breaches do not require to be considered. As was indicated to the Applicant at an earlier hearing, it was a matter for him if he wished to take advice on any possible remedies available in respect of a company that had been dissolved. Since the application was lodged, and as of the date of the conclusion of the hearing, the Tribunal was not aware of any change in status of 1st Lets (UK) Ltd which remained dissolved. For the reasons given, any of the alleged breaches could only have been committed by 1st Lets (UK) Ltd, against whom an application could not be brought. Accordingly, the application must be refused.

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 them.

