



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014 (Act) and the Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No.328)) (Rules)**

**Chamber Ref: FTS/HPC/LA/22/0998**

**Parties**

**Mr Kevin Smith (Applicant)  
Stonehouse Lettings (Respondent)**

**Mrs Marie Smith (Applicant's Representative)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Sandra Brydon (Housing Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has not complied with paragraphs 21, 25, 35, 102, 112-113 and 123-124 of the Code of Practice for Letting Agents (Code) as required by the Act and issues a Letting Agent Enforcement Order (LAEO).**

**Background**

This was an application under section 48 of the Act and Rule 95 alleging various breaches of the Code of Practice for Letting Agents and seeking to enforce the Code against the Respondent.

The Tribunal had regard to the following documents:

1. Application received 5 April 2022;
2. Written Submissions from the Applicant contained within the Application;
3. Further Submissions from Applicant dated 29 April 2022;
4. CMD Note and Directions to Respondent dated 12 August 2022;
5. Written Submissions from the Respondent dated 18 August 2022;;
6. Respondent's additional submissions enclosing Property Ombudsman Decision dated 30 September 2022.

## Hearing

The Applicant participated and was represented by Mrs Smith. The Respondent participated and was represented by Ms Aileen Merchant (Director).

The Tribunal set out the procedure to be followed at the outset and identified the documents and productions that would be referred to.

The Applicant asserted a breach of paragraphs 21, 25, 27, 35, 37, 62, 68, 75, 89, 94, 102, 112-113 and 123 - 125 of the Code.

The Tribunal then heard evidence from the Applicant specifically with regard to the allegations against the Respondent. The Applicant's evidence was (in the main) contained within the detailed written submission which had been submitted in response to the Direction.

Ms Merchant gave evidence on behalf of the Respondent. Her evidence was (in the main) contained within the detailed written submission which had been submitted in response to the Direction in this application.

The tribunal members asked questions of both Parties, the Applicant was questioned by the Respondent and vice versa.

Having heard the Parties' oral and written evidence the Tribunal made the following findings in fact:

1. The Applicant entered into an agency agreement originally with Bruce and Partners who were subsequently acquired by the Respondent;
2. The Respondent did not issue updated term of business until requested to do so by the Applicant on 1 June 2019;
3. The terms of business provided included increases in fees despite the Applicant being assured that the terms of business remained the same;
4. The Respondent was to prepare a lease, check-in and check-out inventory of the Property;
5. A lease and check-in inventory was sent to the Applicant on 8 January 2021;
6. The Applicant emailed inaccuracies in the lease and inventory on 11 January 2021 and 26 January 2021;
7. The Respondent emailed the tenant on 29 January 2021 rectifying the missing information in the lease;
8. An updated inventory was received on 24 February 2021;
9. Prior to commencement of the tenancy the Parties had agreed that the Respondent would waive their next management fee of £300 due to issues over lack of service. On 14 January 2021 the Respondent emailed the Applicant his statement for the current tenancy showing the management fee had been deducted. The Applicant queried this by email of the same date. No response was received. The Applicant chased this by email of 26 January 2021. No response was received. The Applicant chased on 4 March 2021. No response was received. The Applicant chased on 25 March 2021. The

Respondent replied by email saying the matter had been passed to Ms Merchant on 26 March 2021. The Applicant heard nothing further until the statement of 23 April 2021 was received from the Respondent confirming credit of £300.

10. Following a radiator falling of the wall during the tenancy the Respondent appointed a contractor to undertake remedial work. The Applicant dealt directly with the contractor and agreed the remedial work to be performed;
11. Subsequent to the tenancy ending the Applicant discovered the remedial work had not been performed satisfactorily. The Applicant contacted the Respondent to that effect. The Respondent confirmed by email of 18 August 2021 that the contractor maintained the repair was satisfactory;
12. The Respondent collected one of a set of dining room chairs from the tenant and stored in the Respondent's office in May 2021. The chair was accidentally disposed of by the Respondent. The Respondent paid £20 compensation to the Applicant in respect of the chair. The dining room set had been purchased new prior to commencement of the tenancy and was rendered useless as a consequence of the loss of the chair;
13. The Respondent did not inform the Applicant that the tenant's husband would be living in the Property as the Respondent did not know he was living there;
14. The Applicant instructed the Respondent to terminate the tenancy by email of 21 April 2021 received after close of business. The Applicant telephoned the Respondent on 23 April as he had not received a response. He was told the Notice would be issued on 26 April 2021 – which it was. The tenants vacated early on 30 June 2021.
15. The Respondent prepared a check-out inventory following termination of the tenancy and the tenants moving out on 30 June 2021. The Applicant emailed on 29 June 2021 and 2 July 2021 to confirm whether the inventory had been prepared and keys returned. The Respondent confirmed that it had on 2 July 2021. The Applicant received the inventory on 5 July 2021. The inventory did not include reference to missing property and damage that the Applicant had advised in his email of 29 June 2021. The Applicant inspected the property on 2 July 2021 and sent a list of inaccuracies in the inventory to the Respondent on 6 July 2021. The Respondent responded on 16 July 2021 confirming changes to the inventory, raised queries with the Applicant and still contained inaccuracies. The Applicant provided the Respondent with further detail of the inaccuracies on 26 July 2021. The Applicant has yet to receive an updated inventory containing the matters raised.
16. The Respondent used an inaccurate version of the inventory to pursue the return of the tenant's deposit with the deposit protection scheme.
17. The Respondent informed the Applicant that a claim had been submitted to LPS in respect of the deposit on 29 July 2021. The Applicant chased for an update on 17 September 2021 by email. The Applicant was advised the claim was at awaiting tenant response stage. The Applicant queried that and was informed by LPS that due to a technical issue the claim had to be resubmitted. The Applicant heard nothing further and emailed on 1 October 2021 for an update. The Applicant was informed the deposit was to be returned in full. The Applicant enquire when the deposit would be paid and never received a response. The Applicant received a statement on 14 October 2021 which confirmed repayment of the deposit and additional charges of £78 in respect

- of the inventory and £120 in respect of serving the Notice to Leave. The Applicant queried by email on 26 October 2021 the basis for the additional costs and the fact that he had not been advised. No response was received.
18. The Respondent sent the Applicant email correspondence on 20 July 2021 enclosing another client's details.
  19. The Respondent did not inform the Applicant of their complaints procedure when complaints were made nor were they dealt with under their complaints procedure.
  20. The Applicant pursued a claim with the Property Ombudsman. The outcome of that claim was contained within the Decision dated 30 September 2022.
  21. The Applicant sent a detailed letter of complaint to the Respondent by email of 16 November 2021.

Having considered the evidence and made the above findings the Tribunal decided:

**(a) Paragraph 21 of the Code**

This requires Letting Agents to carry out services provided using reasonable care and skill and in a timely way.

The Applicant's complaint was that the Respondent failed to conduct themselves in compliance with the Code in their dealings regarding the check-in/out inventory; lease; management fees; damage by tenant; issuing of notice and missing property. To an extent this was admitted by the Respondent.

The Tribunal considered that the Respondent had breached paragraph 21 in that they had not carried out their service in a reasonable or timely way. The Respondent failed to deal with the Applicant's queries over the check-in inventory and lease in a timely manner; the Respondent failed to notify the Applicant of changes to management fees; the Respondent disposed of the Applicant's property (chair) by mistake; the Respondent failed to deal with the issues over the Check-out inventory and return of deposit with reasonable skill and care and in a timely manner.

The Tribunal do not consider that the Respondent's dealings with the radiator repair or the service of the notice to leave breached the Code.

**(b) Paragraph 25 of the Code**

This requires Letting Agents' to ensure they handle all private information sensitively and in line with legal requirements.

The Applicant received confidential information from the Respondent that belonged to another client.

The Tribunal consider that the Respondent breached this paragraph of the Code.

**(c) Paragraph 27 of the Code**

This provides that a Letting Agent 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 the Letting Agent become aware of, such as a repair or breach of the tenancy agreement.

The Applicant contends that this was breached by the Letting Agent's failure to inform him that the tenant's husband was living there.

The Tribunal accepts the Respondent's evidence that they were unaware of this and had acted on the information provided by the tenant. As such there has been no breach of the Code in this regard.

**(d) Paragraph 35 of the Code**

This paragraph requires a Letting Agent to agree any subsequent changes to their terms of business and confirmed in line with the agreement.

The Applicant contends this was breached by the Respondent's failure to notify of any increase to costs in respect of the preparation of the inventory or for service of a notice to leave.

The Respondent accepts that no notification was given to the Applicant with regard to these costs. The respondent apologised and did not charge the Applicant for the ingoing inventory, only charged the previously agreed rate for the outgoing inventory and the Respondent always charged for the Notice to Leave (although they state that they do not know what the previous agents charged for this).

The Tribunal found this paragraph had been breached.

**(e) Paragraph 37 of the Code**

This paragraph requires a Letting Agent to give the landlord written confirmation they 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, the Letting Agent must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill.

The Applicant contends no final notification was given to them in compliance with this paragraph.

The Respondent informed the Applicant of final sums claimed due, return of the tenancy deposit and the tenant's departure. Whilst there was not one single letter setting out this information the Tribunal finds that the information was (in the main) provided.

The Tribunal accordingly does not find that this paragraph was breached.

**(f) Paragraph 62 of the Code**

This paragraph requires a Letting Agent to prepare a tenancy agreement that fulfils all legal requirements and any specifically negotiated clauses.

The Applicant contends the Respondent did not rectify errors in the tenancy agreement such as the identity of the energy supplier and installation of smart meters. No response was received to the Applicant's queries.

The Respondent has produced an email of 29 January 2021 to the tenant confirming this information.

The Tribunal accept the Respondent's evidence on this point and find this paragraph has not been breached.

**(g) Paragraph 68 of the Code**

This paragraph requires a Letting Agent preparing (and having signed and accepted) a check-in inventory.

The Applicant contends that the inventory was inaccurate and he had to pursue changes being made to rectify it. This was eventually confirmed as done by 24 February 2021.

Whilst there was delay in doing so an inventory in the correct form was produced so the Tribunal could not conclude that this paragraph had been breached.

**(h) Paragraph 75 of the Code**

This paragraph requires the Letting Agent to record any issues or breaches of the tenancy agreement and bring to the landlord's attention.

The Applicant contends that the Respondent failed to make him aware that the tenant's husband was living in the property.

The Respondent maintains that it accepted the tenant's representations that her husband would be in Nigeria and visit periodically.

The Tribunal accepted the Respondent's evidence on this point and found that this paragraph had not been breached.

**(i) Paragraph 89 of the Code**

This paragraph requires the Letting Agent when notified by a tenant of any repairs needing attention, to manage the repair in line with the agreement with the landlord. Where the work required is not covered by the agreement the

Letting Agent should inform the landlord in writing of the work required and seek their instructions on how to proceed.

The Applicant contends that this was breached due to the Respondent notifying the radiator repair by telephone and not in writing.

The Tribunal finds this paragraph has not been breached. The clear practice between the parties was that they communicated regularly by email and telephone. The Applicant was notified and the repair dealt with.

**(j) Paragraph 94 of the Code**

This paragraph requires the Letting Agent to pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.

The Applicant contends that the Respondent failed to do so in respect of the radiator repairs. The Applicant accepted that he had dealt with the contractor direct and the Respondent was aware of this.

Given that the Applicant had dealt with the contractor direct the Tribunal consider that this paragraph has not been breached.

**(k) Paragraph 102 of the Code**

These paragraphs require the Letting Agent to manage the check-out process and must produce 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.

The Applicant contends the Respondents failed to prepare an accurate check-out inventory. There were many omissions and mistakes (such as the failure to note burn in the carpet in the living room and missing floor covering from the hall to the bathroom). Despite considerable time and effort on the Applicant's behalf these mistakes were not completely rectified and resulted in additional costs being met by the Applicant and not recoverable from the tenant – a figure of £2,500 was mentioned but no vouching produced.

The Tribunal accepted the Applicant's evidence to support the contention that the Respondent had failed to carry out a thorough process and produce an accurate report and that the Respondent is in breach of this paragraph.

**(l) Paragraph 112-113 of the Code**

These paragraphs require the Respondent to have a clear written complaints procedure that states how to complain and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in agreed terms of business. The procedure must also set out how the Letting Agent will handle complaints against contractors and third parties; any recourse to the complaints procedures of a

professional or membership body; whether the Letting Agent provide access to alternative dispute resolution services; if the Letting Agent is subject to another regulatory body (for example the Scottish Legal Complaints Commission); and that a landlord or tenant (including former landlord or tenant) may apply to the Tribunal if they remain dissatisfied once the complaints process has been exhausted, or if the complaint has not been processed within a reasonable timescale through the complaints handling procedure.

The Applicant contends that this was not done. He was not informed or directed to any written complaints procedure during the many complaints he raised on his behalf or in connection with the contractor.

The Respondent's position is that they did not consider the emails or telephone calls made constituted formal complaints and that is why no reference was made to the written complaints procedure.

The Tribunal accepts the Applicant' evidence and rejects the Respondent's explanation that the many complaints were not formal. The Tribunal considers that the Respondent ought to review and update their complaints procedure so that issues raised by landlords during the course of managing a tenancy that relate to the performance of the Letting Agent's service should be registered as complaints and the landlord's attention drawn to the written complaints procedure along with a copy of such procedure.

The Tribunal consider that these paragraphs have been breached.

**(m) Paragraphs 123-125 of the Code**

These paragraphs require the Respondent to: regularly record and monitor all transactions and reconcile these monthly as a minimum; 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); and to 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, where feasible credit interest earned on any client account to the appropriate client.

The Applicant contends that the Respondent's failings in dealing with the agreed £300 credit for management fees, £20 for the chair, delay in dealing with the deposit and costs which had not been notified in respect of increased costs of inventory and cost of serving a notice to leave constituted breach of these paragraphs.

The Tribunal finds that paragraphs 123-124 were breached in respect of the £300 credit which was initially deducted and then refunded; the delay in processing the recovery of the deposit and the failure to notify increased costs and the cost of the notice to leave.

The Tribunal find no evidence to support a breach of paragraph 125.



## **(n) Remedy**

Having determined the breaches of the Code by the Respondent the Tribunal considered the impact this had on the Applicant and any losses suffered by him as a direct consequence of that.

The Applicant wishes reimbursement of the cost of the inventory, notice to leave and also reimbursement of the cost of the missing chair.

The Applicant seeks compensation for the distress caused for overcharging, not returning his money timeously and for all the time spent trying to get responses and things concluded.

The Respondent has paid £250 compensation to the Applicant pursuant to the Property Ombudsman findings. The Respondent has also paid the sum of £20 compensation for the loss of the chair.

It is clear that the Respondent did not adhere to their contractual obligations or the Code in the respects identified above. For that reason the Tribunal consider that an appropriate remedy is for the Respondent to pay compensation to the Applicant in respect of the distress, inconvenience and additional time and effort that was involved due to the Respondent's failings.

The Tribunal consider that a fair, proportionate and just amount of compensation in respect of their multiple breaches of the Code would be the sum of £580 comprising £80 in respect of the loss of the Applicant's dining chair and £500 damages for distress and inconvenience.

The sums awarded are in addition to the sums awarded by the Property ombudsman.

The Tribunal also consider that the Respondent should update their complaints procedure to reflect that all complaints (whether by email or telephone) will be dealt with under their complaint procedure and set out how these will be dealt with and resolved.

### **The Tribunal made the following Letting Agent Enforcement Order:**

- 1. The Respondent shall pay the sum of £580 by way of compensation to the Applicant within 21 days; and**
- 2. The Respondent shall produce an updated written complaints procedure within 21 days.**

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party**

must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



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Legal Member/Chair

11/11/2022  
Date