



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(6) of the Housing (Scotland) Act 2014 ('the 2014 Act')

Chamber Ref: FTS/HPC/LA/22/0038

Re: Property at Ground Floor, 14 Jackson Terrace, Aberdeen, AB24 5LP ("the Property")

Parties:

Ms Lydia Gahr, Ground Floor, 14 Jackson Terrace, Aberdeen, AB24 5LP ("the Applicant")

Mr James Richard Thomson, Mr Terry Mathieson, Thomson Properties Aberdeen Ltd., 2nd Floor Chattan Mews, 18 Chattan Place Aberdeen, AB10 6RD ("the Respondent")

Tribunal Members:

Yvonne McKenna (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The Tribunal determines;-

(i) that the Respondent has failed to comply with paragraphs 17, 41, 46, 85 and 86 of the Letting Agent Code of Practice ("the Code"). The Tribunal therefore issues a Letting Agent Enforcement Order.

(ii) The Tribunal orders that a payment of compensation in respect of those breaches of the Code is made in terms of Section 48 of the 2014 Act by the Respondent to the Applicant for the sum of £750.

The Tribunal's decision is unanimous.

Background

1. By her application dated 10 January 2022 the Applicant applied to the Tribunal in terms of section 48 of the 2014 Act and Rule 95 of Schedule 1 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the 2017 rules') to determine whether the Respondent had

failed to comply with the Code. In her application the Applicant stated that the Respondent had failed to comply with paragraphs, 17, 19, 41,46,85,86 and108 of the Code.

2. The application was accepted for determination on 1 February 2022.
3. The Tribunal had before it the following written documents;-
 - Application to the Tribunal and supporting information dated 10 January 2022
 - Submissions from the Respondent dated 5 March 2022 together with Documents 01-90
 - Further submissions from the Applicant dated 22 March 2022, together with Documents AP-01, AP-02 and AP-03, the 24-page Inventory for the Property and the Tenancy Agreement
 - Further Submissions from the Respondent dated 22 March 2022 including a City lets draft advertisement
 - E-mail from the Respondent dated 25 March 2022 attaching copy signed lease.
 - E-mail from the Respondent dated 12 April 2022 containing final submissions
 - E-mail from the Applicant dated 11 April 2022 regarding the Case Management Discussion Notes
 - E-mail from the Applicant dated 15 April 2022 headed Supplemental information for Validation of Applicant's Claims. Together with documents Applicant Expense 01-07

The Case Management Discussion (1 April 2022)

4. The Case Management Discussion ('CMD') took place by teleconference due to complications caused by the COVID-19 pandemic. The Applicant was present and was supported by her parents who did not participate. The Respondent was also present. Initially Mr James Richard Thomson joined the Hearing. Mr Thomson indicated that he wished his colleague Mr Terry Mathieson as a co Director in the Letting Agents Company to be included as a joint Respondent. There was no objection to this by the Applicant and this was allowed by the Tribunal.

5. The Applicant's application then went on to make claims under the Scottish Core Standards for Accredited Landlords and Letting Agents and The Repairing Standard. The Tribunal explained that these particular proceedings are only confined to the alleged breaches of the Letting Agents Code of Practice and could not deal with other issues.
6. It transpired that the Applicant had already made a separate application to the Tribunal regarding the outstanding repairs she maintained were required at the Property relating to necessary insulation. This was dealt with under reference FTS/HPC/RP/22/0061.
7. The Tribunal then discussed whether any facts were capable of agreement. Parties identified that the following facts could be agreed
 - The Private Residential Tenancy was signed on 16 June 2021
 - The Landlord Mr Jack (otherwise known as John) Milne suffered a stroke and was unable to continue to actively run his business as he was infirmed
 - The Landlord's daughter Ms Claire Young acted under the authority of the Landlord
 - The Lease details a start date of 16 May 2021
 - The rent payable in terms of the Lease is £300 per month
 - A deposit of £450 was due and paid in terms of the tenancy agreement.
 - No EPC (Electric Performance Certificate) was included in the advertisement of the Property.
8. Directions were issued to parties in the following terms;-
 - Firstly the Respondent was afforded a period of 14 days to lodge any final submissions. (The Tribunal made it clear that each side would then need to rest on the evidence that was before the Tribunal otherwise there would be a continual situation of information coming in and parties wishing to respond to the same and the case would never reach a conclusion.)
 - Secondly both parties were afforded a 14 day period in which to lodge a List of Witnesses with the Tribunal if so advised.
 - Thirdly, the Applicant was afforded 14 days to lodge any vouching regarding her claimed losses/ damages as a consequence of the Respondent's alleged breaches of the Code including any records of energy payments, receipts for heating and dehumidifiers

9. The case was continued to a Hearing date on 9 May 2022 at 10am to take place by teleconference

The Hearing (9 May 2022)

10. The Hearing took place by teleconference before the same members who conducted the CMD. The Applicant was present supported by her father who did not participate in the Hearing. The Respondent was present represented by Mr James Richard Thomson and Mr Terry Mathieson.

Preliminary matters

11. The Applicant had set out in her e-mail of 11 April 2022 that there were a couple of inaccuracies in the CMD Note that was issued. She explained that the correct signing date of the Lease was 12 June 2021 and not 16 June 2021. This was accepted by the Respondent.
12. She also stated that the PRT contained a typo at page 9 where it detailed that the lease started on 16 May 2021. She said that parties could not agree the commencement date of the lease. Her position was that the start date was 12 June 2021 being the date the lease was signed whereas the Respondent believed the start date should be considered to be 16 June 2021 which she accepted was the date of entry.
13. The Applicant said that she required extra time to be able to look at documentation referred to in the course of the Hearing as she suffers from autoimmune inflammatory arthritis. She had some of the productions in paper copy and some she had on-line.
14. She also said that she had one other document which she considered to be relevant to these proceedings namely the decision in relation to the repairs case. (as detailed above; FTS/HPC/RP/22/0061). She said that this ruling was relevant as it covers the same property and that the decision states that the Property does not meet the tolerable standard.
15. This decision was already within the Tribunal's knowledge. A short adjournment was granted to allow the Respondent the opportunity to be provided with that decision and to read the same over. Given that this was a repairs case the Respondent had not been a party to those proceedings which had involved the Applicant and the landlord.
16. The Respondent was specifically asked if further time was required in order to consider this decision and whether a postponement was required. Mr Thomson had also said that his 90 year old Aunt had unfortunately recently

died and that the funeral was taking place today. He had decided not to attend but said that he was, “not in a good place” on the date of the Hearing. However, the Respondent asked the Tribunal to continue and confirmed that he did not wish the proceedings to be adjourned to another date.

17. Mr Thomson said that his witness Mr Walker was in fact on holiday and asked if he could give evidence first to allow him to enjoy his break. There was no opposition to this by the Applicant.

Evidence of Mr Alastair B Walker, FRICS, RICS Registered Valuer, Atholls, Chartered Surveyors (Summary)

18. Mr Walker is a Chartered Surveyor with some 55 years of experience and qualified in 1972. He has been a Fellow of the Royal Institution for over 25 years and has been involved in the preparation and the production of domestic EPCs for over 20 years including the current style introduced by legislation in 2009.
19. He also advises clients and leasing agents as to possible improvements that could be made to houses and flats to improve their energy efficiency and the ratings / bandings.
20. His evidence was that the current style and format of the EPC was introduced on 20 November 2017 and remains largely the same but with some changes and updates. He said that the whole area of EPCs is currently under review to more accurately reflect the production of renewable energy, heating systems and research on the energy efficiency of buildings. Existing EPC software used to calculate the EPC has been in use for some time and has not caught up with current costs and materials available.
21. He was asked by the Respondent to provide an EPC for the Property which he carried out on 14 June 2021. It was provided a rating of Band G by him. He said that the EPC results for domestic properties are indicative and speculative in nature.
22. He stressed that although he had seen the Property in order to carry out the EPC that he had not assessed the Property for dampness or structural defects. He had not been instructed to investigate the heating system. He said that installing heat retention radiators can in certain circumstances raise a banding. His remit was to provide the EPC and separately to comment on the prospects of insulating the Property.
23. He said that the degree of attachment of the Property affected its EPC rating along with the layout of the Property. This flat is fully detached and part of the building is at the rear. The Property is L-shaped. It is the bottom flat and is at the end of a row. He explained that what reduces the rating of the Property is all of the external walls which allow heat loss to occur on a far greater scale. Upper floor flats rate higher as hot air rises.

24. A large part of Mr Walker's evidence was regarding the cost of insulating the Property and the difficulties that may be encountered in doing so. He said that the Property floor is not easily and readily accessible from below as it is a full basement with ancillary accommodation and does not have an open subfloor area. The basement is divided up into cellars, stores and circulating space, with the underside of the floor of the ground floor flat plastered on lathe. His advice to the owners was that even if the floor and the walls of the Property were insulated and new windows put in throughout that it would be difficult for the Property to attract an improved grading. New regulations are being proposed by the Scottish Government which will require landlords to bring properties to a D grading in the EPC. The introduction of these regulations has been put back again now to 2025. If regulations make improved grading mandatory he advised that the owners should consider selling the Property.
25. Even if the Property were to be insulated to a huge extent this would not raise the EPC above a certain limit. There would need to be a combination of insulation and the Property's heating being addressed. Even if this were done, the Property would still be unlikely to attract a banding beyond Band F. The bathroom may be made too small as a consequence and there would be all sorts of other complications regarding skirtings, fascias and cornicing.
26. He said that he did not believe that many owners of properties in Scotland would be able to afford the works required to bring properties to the standard that Scottish Government required them to meet and they will be forced to sell their properties.
27. He added that what the tenant pays in any property for heating and energy bills will depend also on the lifestyle of the tenant.
28. Mr Walker was asked what type of works he undertook during national lockdown restrictions which were imposed in Scotland at the beginning of January 2021. He said that his company had a property factoring department which continued to operate and that this continued to provide EPCs on empty properties as well as valuations. Once restrictions eased he was permitted back into flats with tenants.
29. In relation to this Property he was provided with the keys in order to carry out the EPC.

Further Procedure

30. The Tribunal indicated to the parties that it intended to hear evidence from each of them in turn in relation to each of the alleged breaches of the Code. This was the procedure adopted. The Tribunal accordingly took each of the purported breaches in turn and heard from the Applicant and the Respondent in turn. Finally the Tribunal was addressed in relation to the quantification of a payment order should any breach or breaches be established.

Section 2 –Overarching Standards of Practice

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

31. The Applicant stated that the Respondent was not transparent with regard to the condition of the flat at the time of the rental in relation to insulation, ventilation and heating. This, she said, was evidenced by the failure to include an EPC during the Property advertisement and at the time of letting. Further, she argued that the Respondent had not posted within the flat, a valid EPC.
32. She said that being privy to the information that the Property has had two consecutive EPC G ratings, and that both EPCs highlighted “no insulation” in their descriptions, the Respondent knew that the energy performance would mean that the Applicant would be unable to properly heat the Property which in return would result in condensation issues leading to mould problems within the Property.
33. The Applicant said that she asked on multiple occasions regarding the status of insulation in the Property. She referred to e-mails that had been sent enquiring about insulation and that she had not received a response on that point from the Respondent
34. She maintained that she was misguided by Mr Thomson when she enquired about the average monthly cost for utilities during the viewing of the Property by her friends, which she participated in virtually, by video-call from Amsterdam. She said that she was told this amounted to £60 per month whereas in actual terms the cost has been around £113 per month and has now been updated to £170 per month (in terms of the 2011 EPC and the updated 2021 EPC).
35. The Respondent’s position was that the Applicant received an Inventory on 12 June 2021 when she signed the lease. This stated that the EPC was due in June 2021 and was not questioned by the Applicant. The Respondent also set out that the heating within the Property was brand new and that the owners had chosen the type of heaters recommended by their electrician. The Respondent was fully aware that the Property required a new EPC as it required to be renewed and also due to the fact that new heating had been installed.
36. Mr Thomson denied stating that the average heating bills would average £60 per month. He said that he would not have said that. He said that he had been asked this type of question on multiple occasions by prospective tenants and if he gave a verbal estimate it would always be with a caveat that it depends on the personal lifestyle of the tenant, and that the EPC would not take into account the personal lifestyle of the tenant. He said that he could not and

would not have given the Applicant an exact figure. He would only have been able to give an estimate. He could therefore not accept that the Applicant had been misled by him and that in order for her to argue that she was misled she would need to show that he had given a definitive quotation which he would never have done. He also referred to the staggering rise in energy costs which no-one could have contemplated.

37. In relation to the Applicant's requests for information about insulation, Mr Thomson said that he had brought these to the owner's attention and that it was not his job to make any arrangements for insulation. The owners were aware of the Applicant's request for insulation and it was up to them to take that onboard. He said that he could not be held responsible for the owners saying that they would not insulate at that time
38. Mr Thomson said that he had never ignored communication from the Applicant and referred in his evidence to the fact that when the issue of insulation was raised in communication it was one of a myriad of points raised at the time, most of which he had come back to. He also said that he could not immediately come back with the owner's position as costing of insulation was required. He also referred to the fact that when the issue of insulation was raised by the Applicant that at that time she had been offered possession of another flat which had confused the situation. At that point the Respondents may have believed that the Applicant would be taking up the offer of another property. He had therefore not ignored the situation but this was deferred pending the Applicant possibly taking up another property.

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

39. The Applicant said that in not providing a valid EPC that the Respondent deliberately omitted information relating to the actual cost of maintaining the level of heating that the Property required.
40. The Respondent said that the EPC could not be held to be evidence as to the cost of energy and was an estimate as to the efficiency of the Property and associated cost. In June 2021 the Respondent could never foresee what happened to rises in utility energy costs in the UK. Heating of a property is subjective, as nobody would be able to predict how much energy a person may use. Due to COVID-19 many people have had to spend far more time indoors, and heat their properties. It was therefore impossible both at the time the Applicant took entry and currently to quantify individual heating costs.
41. Mr Thomson said that during the lockdown period all of the Respondent's advertising was dealt with by City lets Scotland.
42. The Property was advertised on or around 21 December 2020 after TT Electrical had completed their work on renewing the heating. A valid EPC was in place when this advert went live as it did not run out until 4 March 2021.

43. This advertisement was allowed to carry forward after 4 March 2021 in error. Mr Thomson candidly accepted that he did not have an EPC for the Property at the time it was advertised from that date. It was not a situation where he knowingly did this. Covid had caused many issues regarding working practices for the Respondent. The pandemic had given rise to almost insurmountable problems regarding how to keep the business running and keeping everyone including tenants, owners, the two Directors and the Respondent's employees safe. Mr Thomson could not say why there was no EPC on the advert. He was going through a terrible time. He said that all that he could say was that the pressures he was under attributed to this slip-up at the time. He said that at the start of the pandemic that the Respondent was dealing with approximately 95 properties. Since March 2020 they required to deal with all the new legislation. The Respondent suffered a huge loss of rental income and the company secretary was put on full-time furlough. The two Directors Mr Thomson and Mr Mathieson had to carry on running the business from home for a year. It was stressed that the EPC was instructed prior to the PRT being signed by the Applicant.

44. With regard to why he had not forwarded the EPC to the Applicant when he received it Mr Thomson said that he should have done so and this was another slip-up. He said that a spread sheet procedure was in place regarding each property to ensure that each individual property smoke detectors/carbon dioxide detectors/ EPC/ gas safety certificates/ Legionella risk assessments certificates etc. were all up to date. The procedure highlights each item that requires renewal. This is generally logged into on a daily basis given the amount of properties managed by the Respondent.

Section 4 Lettings Marketing and Advertising

41. You must comply with relevant legislation on the marketing and advertising of properties for rent. For example, you must include a landlord's registration number(or clearly state 'landlord registration pending') and the energy performance indicator from the property's energy performance certificate (EPC) in your property advertisements and remove letting boards within 14 days of the property being let.

45. The Applicant said that the Respondent knowingly and wilfully advertised the Property without a valid EPC. She provided a copy of the online advertisement. Her position was that the previous EPC for the Property expired on 4 March 2021, three months prior to her lease date, and that the Respondent was legally obliged to commission a valid EPC before the Property was advertised and leased out. She said that the position of the Respondent that the COVID restrictions were responsible for the delayed EPC was irrelevant and pointed out that restrictions were lifted mid-April 2021, well in advance of the Property being let out. She pointed out that when the

Respondent had commissioned the EPC on 10 June 2021 that it took a response time of only 4 days for the EPC to be carried out, and this period included a weekend. Therefore the renewal of the EPC could have been undertaken any time prior to the letting with the new valid EPC included in the listing for rental as required.

46. The Respondent's position was that the Covid lockdown made it extremely difficult for them to update the EPC at this time. The Respondent said that the Letting Agents did not wilfully advertise the Property without an EPC rating. The Property was empty and the new EPC was not commissioned until after the Applicant showed interest in the Property. The previous EPC was available to be seen by the public on the Scottish EPC Register

46. You must not knowingly omit relevant information or evade questions from prospective tenants relating to the letting of the property in line with consumer protection legislation

47. The Applicant's position was that the Respondent knowingly and wilfully let the Property without a valid EPC, evidenced by the fact that the EPC was not commissioned and issued until after the letting date, and that the EPC had still not been posted within the Property as required under the Energy Performance of Buildings (Scotland) Regulations 2008 section 5.1. She said that the lack of an EPC was not visible from her viewing.
48. Whilst Mr Thomson said that he had not knowingly omitted the EPC the Applicant referred to the Inventory for the Property which was forwarded to her by the Respondent on 12 June 2022 at 21.14. This Inventory included under the heading Certifications ;EPC June 2021 (10 years) The Applicant said that at the time that Inventory was sent to her the Respondent knew that the EPC did not exist and was in actual fact not in place until 14 June 2021. This showed she said that this had been knowingly included in this document by the Respondent. She also said that this subsection of the Code was breached as the Respondent had evaded responding to her queries regarding the level of insulation in the flat.
49. Mr Thomson said that he had instructed the EPC when the Inventory was provided to the Applicant and that Mr Walker had been provided with the keys to the Property. That was the reason that he did not include the date on the EPC as being specific but rather June 2021 as he knew that it would be happening in June 2021.
50. Mr Thomson said that from his perspective the lease commenced not on the date that it was signed but on the start date dictated in the lease, the date that entry actually takes place. All of this was done before the date of entry.

Section 5
Management and Maintenance
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.

51. The Applicant claimed that the Respondent knowingly avoided completing pre-tenancy checks as required, in not completing a valid EPC assessment prior to the letting of the Property. She also said that she had not been provided with a copy of the EPC until 30 March 2022, 10 months after it was carried out and after she had commenced her tribunal process. She was unaware that the EPC was required on advertisements until she viewed other flats around December 2021.

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.

52. The Applicant claimed that the Respondent had failed to provide her target timescales in carrying out repairs agreed upon by the Applicant the Respondent and the Landlord. She accepted that there were written procedures and processes in place regarding repairs and maintenance and that she was aware she required to contact the Respondent as opposed to the owner landlord direct. She had however not received any target timescales and there were no written procedures for this in place.

53. Mr Thomson said that at the time he was trying his very best given the constraints of working during the pandemic to abide by all necessary requirements. He referred to e-mails where the Applicant complimented him on his attending to repairs. He tried as best as possibly could to help the Applicant with all of her requirements.

54. He accepted that his written procedures did not include target timescales and that they should. He was asked if the written procedures now do include target timescales. Mr Mathieson said that they simply detailed "as quickly as possible" but did not provide target timescales.

Section 7
Communications and resolving complaints

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.

55. The Applicant claimed that the Respondent had not responded to her enquiries and complaints within a reasonable time nor had the Respondent kept her informed pending repairs. The Applicant said that her main example of this was the issues she had in the bathroom with the water cylinder and referred to an e-mail her mother had sent on 20 October 2021 at 1.08 to the Respondent where it was detailed :-

“I mentioned this in my last e-mail (dated Oct 19) but an update on the bathtub cylinder would be appreciated before the end of the week. The first mention of the bathtub and the cylinder was Sept 19 with a reminder on the Oct 13th. Please provide us an update.”

56. She said that she finally received a response on this matter from the Respondent on 23 November 2021 when an e-mail was sent stating *inter alia*:-

“The Landlord cannot be expected to be constantly keeping you up to date with regard to any further ongoing works or the arrangements of work estimates in connection with the possible work on the bathroom.”

57. The Respondent provided detailed e-mail evidence and said that this showed the Respondent to be very attentive in all their replies to the Applicant and her mother. The Respondent pointed out that the Applicant and her mother both thanked the Respondent for the numerous repairs that they had carried out.

58. In relation to issues with the bathtub and the cylinder, Mr Thomson said that again the possibility of the Applicant moving out of the Property and into another flat offered to her by the Respondent had confused the situation at that time. The Applicant was offered and had viewed the upstairs flat and the Respondent believed that she was going to go ahead with that move. A decision was made by the owners to withdraw that offer meaning that the Respondent did not revert on this particular issue straight away. The requests were put to the owners but at the end of the day it was the landlord /owners decision whether to carry out works or not.

59. Mr Thomson said that the owners were becoming exasperated at the levels of matters being brought to their attention by the Applicant and he had in this latter e-mail repeated their comments to the Applicant. Mr Thomson said that he had to deal with the landlords as well as the Applicant and that they were becoming exasperated and that they had “had enough”

Quantification of Claim by the Applicant

60. The Applicant said that due to the Respondent's breaches of the Code that she had suffered loss and required compensation. She said that living in a cold flat and due to not having been provided with the EPC this had impacted on her health and her well-being as a tenant and it had impacted on her financially. She sought recompense for the following;-

A. At the time of letting, the Respondent stated that the average monthly electrical expense would be approximately £60 per month. She has spent well in excess of that amount and said that for the 9 months of the tenancy, the cost based on the Respondent's average would be £540. The actual cost for 9 months (08 July 2021 to 14 April 2022) is £1749. The excessive energy cost is £1209. The Applicant provided vouching by way of excel sheets showing a breakdown of energy top-ups and a registry of meter balances. The Property does not have a smart meter. She sought £1209 in heating costs.

61. She added that she had involved the Environmental Health Department of Aberdeen City Council in November 2021 regarding the issue of dampness in the Property. She had also contacted Shelter (Scotland) for advice. She said that they had given her advice regarding the minimum temperature that she should maintain the Property in. She said that the minimum temperature for the living room was 21 degrees, the bathroom was 22 degrees, the hall was 16 degrees and the bedroom was 18 degrees. She said that she had been advised to keep the Property heated and ventilated

62. When she was in the Property she maintained a constant heat of 23 degrees during the day. She said that she had kept the heating on even when she was out of the country but had lowered this to 13 degrees at those times. Even at a lowered temperature the daily heating costs were £4 daily.

B. As the Respondent was not transparent in the disclosure of the capabilities of the heating units in the flat, she was obliged to purchase two additional heating units at a cost of £44. Vouching was provided. She said that when she moved in that the electric heaters were not very efficient and Mr Thomson had brought in extra heaters. These were not cost effective so she had purchased more cost effective ones.

C. As the Property was damp the Applicant required to buy dehumidifiers, refill cartridges and additional mould inhibiting cleaning supplies costing £40.67 for which vouching was provided.

D. As the Property is not suitable from a health or financial perspective the Applicant is looking to relocate and sought £600 as an estimation of her relocation expenses, including a mover who would pack and unpack her belongings due to her arthritis, and cleaning expenses for the Property.

63. The Applicant said that she had put her viewings of other properties on hold as she had a severe case of COVID for which she needed hospital treatment and had taken a long time to recover. She is a student at The University of

Aberdeen and is also working in a Care Home. She has required to seek an extension on her dissertation.

64. Mr Thomson said that the Applicant had chosen to move into a flat without personally viewing it. He said that COVID had caused a lot of issues as so many things were out of the ordinary. He said that this Property may not have suited the Applicant due to her arthritis. He said that most people who find a particular property does not suit them find an alternative and hand in their notice. The Applicant has had ample time to do so. One year on and she is still resident in the Property. He said that both the landlord and the Respondent had tried as much as possible to assist the Applicant in the Property. Prior to the Applicant moving in the owners had spent up to £6000. The Property had been decorated with new carpets and new bedroom furniture was purchased for the Applicant.
65. He said that the Respondent had managed this Property for in excess of 30 years and that he had never been presented with all of the issues the Applicant has raised.
66. He said that the Applicant's evidence enforced his view that the Applicant's lifestyle has contributed to her problems. He queried why the Applicant would heat the Property when she was not in the Property and even when she was abroad. He said that some people would drain their water system if going abroad and that he did not know anyone who would keep it at a temperature of 13-14 degrees when they were not in.
67. He said that the Applicant should perhaps have asked what the level of heating should be kept at to stop the formation of frost. He suggested that the Applicant had exasperated her problems by keeping the temperature in the Property at a constant too high level. He said that before the Property was let to the Applicant that there were no signs of damp and that potentially he believed that condensation caused by the Applicant had attributed to the problems of damp. He said that over-heating and an occupier using too many drying facilities and showering and bathing frequently would cause this type of issue. He said that the Applicant had created with her own lifestyle in over heating the Property the energy problems that she encountered. During the day when she was out of the Property she has kept the heating at a constant level and she only has herself to blame for the excessive energy costs.
68. He said that he did not see why the Respondent should be responsible for relocation costs or clearing costs.
69. In respect of the cost of the two heaters he said that the heaters that he gave to the Applicant were oil filled heaters and should be better than the fan heaters she had purchased. He said that his tenants had found oil filled heaters very effective.

Findings in Fact

70. The Letting Agents Code of Practice came into effect on 31 January 2018.
71. The Applicant is the tenant of the Property and the Respondent is the Letting Agent for the Property in terms of the Private Residential Tenancy Agreement (PRT) entered into by the Applicant and the landlord Mr Jack Milne.
72. The Property was advertised for rent by the Respondent with City lets Aberdeen.
73. The Property was withdrawn from City let's live letting adverts as soon as the Applicant signed the lease.
74. Prior to signing the Lease the Applicant viewed a video of the Property on 4 June 2021.
75. On 5 June 2021 the Applicant asked for her two friends to view the Property on her behalf in which she participated by video.
76. On 8 June 2021 the Applicant asked to fill out an application form for the Property
77. The Applicant signed the tenancy for the Property on 12 June 2021.
78. The Entry date and the start date for the tenancy was 16 June 2021.
79. The Applicant took entry to the Property on 16 June 2021.
80. The rent payable in terms of the Lease is £300 per month
81. A deposit of £450 was due and paid in terms of the Lease.
82. When the Property was originally advertised for rent there was an EPC which expired on 4 March 2021.
83. From 4 March 2021 the Property continued to be advertised for rent although the EPC had expired. without an EPC included in the advertisement of the Property.
84. Mr Walker of Atholls Chartered Surveyors was asked to carry out the EPC on 10 June 2021
85. The EPC assessment was carried out on 14 June 2021 and is dated 14 June 2021.

86. The Applicant was sent an Inventory on 12 June 2021 on which it is stated EPC June 2021.
87. At the time the Inventory was sent out the replacement EPC was not in existence.
88. The advertising of the Property took place during the lockdown enforced by the Scottish Government during the COVID-19 pandemic.
89. The Respondent omitted to include the EPC in the advertisement of the Property
90. The written procedures and processes in relation to carrying out repairs and maintenance do not include target timescales for carrying out routine and emergency repairs.
91. The Respondent has breached subsections 17, 41, 46, 85 and 86 of the Code.
92. The Applicant suffered inconvenience and distress as a result of the Respondent's breach of the Code.

Reasons for Decision

93. The basic failures to adhere to the Code in this case stem from the fact that the Respondent did not provide the EPC prior to the PRT being signed and indeed did not forward a copy of the EPC to the Applicant until March 2022.
94. The Tribunal looked at each potential breach of the Code in turn;-
95. In relation to **subsection 17** it is clear that this relates to both tenants and prospective tenants. The Tribunal considered that there was a **breach** of the Code. The Tribunal considered that the Respondent was not transparent in not including the EPC after March 2021 when the previous EPC had expired.
96. There did not appear to be any procedure in place to ensure that this type of situation did not arise even allowing for the difficulties encountered in the pandemic.
97. The situation was compounded by the fact that the Respondent sent an Inventory to the Applicant on 12 June 2021 which included the stipulation that the EPC was dated June 2021 when at this time the EPC was not in place.
98. Even after the EPC was carried out the Respondent did not provide the Applicant with a copy of the same.

99. In relation to **subsection 19** the Tribunal found there was **no breach** of the Code. The Tribunal considered the whole evidence and took account of the difficulties that the Respondents were under. The Tribunal took the view that allowing the Property to be advertised without an EPC was a mistake that the Respondent had made. The Tribunal accepted the evidence of Mr Thomson that this was a “slip-up” on his behalf as opposed to deliberately or negligently providing misleading or false information. The Tribunal also accepted his position that he had included the date on the Inventory in the knowledge that this was being carried out imminently.
100. For the avoidance of doubt the Tribunal also accepted the evidence of Mr Thomson that he would not have given a specific figure in relation to prospective energy costs to heat the Property. The Tribunal accepted that he may have given a rough indicator but that this would have been with a caveat that it would be dependent on the prospective tenant’s lifestyle choices in heating the Property.
101. In relation to **subsection 41** the Tribunal found there was a **breach**. The Property was indeed advertised without an EPC indicator. This breach was accepted by the Respondent. The EPC indicator requires to be included in any advertising and the certificate shown if anyone interested in renting wants to see it.
102. In relation to **subsection 46**, the Tribunal considered that there was a **breach** of this subsection. In carrying out the business of property letting as the Respondent has for 45 years the Respondent ought to have detailed on the Inventory that the EPC was commissioned and would be carried out over the next 7 days or so but was not yet in place. The Tribunal consider that this information was knowingly omitted and was relevant and therefore find that there is a breach of this subsection.
103. In relation to **subsection 85** the Tribunal find that there was a **breach** of this subsection. The Respondent accepted in evidence that the EPC had expired for the Property. The replacement EPC was not delivered to the tenant prior to the tenancy commencing and has not been displayed in the Property. The appropriate pre-tenancy checks before the Property was rented out were not therefore carried out.
104. The Tribunal accepted that at the time in question the Respondent had furloughed all support staff and was working in extremely difficult circumstances. However the system and controls to ensure that failed at this time. The system required to be checked on a daily basis to ascertain what issues need to be addressed and this was not done.
105. In relation to **subsection 86** the Tribunal find that there was a **breach** of this subsection. The Respondent accepted in evidence that the written procedures and processes for tenants to notify of repairs and maintenance did

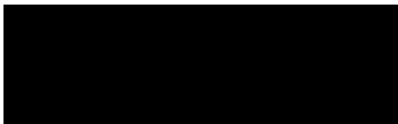
not and does not include target timescales for carrying out routine and emergency repairs.

106. In relation to **subsection 108** the Tribunal find that there was **no breach**. There was never a clear acceptance by the Respondent that the envisaged work in the bathroom required to be carried out. The Applicant's enquiries regarding the bathtub and cylinder had been brought to the attention of the owners by the Respondent. The Tribunal found that on the whole that the Respondent had responded to the enquiries raised by the Applicant and dealt with all of her issues as quickly and as fully as it could.
107. Amongst the voluminous productions that were provided to the Tribunal were many examples of issues that had been raised by the Applicant and it was clear these issues had been dealt with expeditiously and fully by the Respondent.
108. The Tribunal noted that much of the evidence that was provided to the Tribunal, particularly in written form, was not entirely relevant to the alleged breaches of the Code.
109. The Tribunal did not accept that all of the Applicant's claims for compensation were properly sought. Much of what she spoke about related to her related repairs case
110. In particular the Applicant said in her own evidence that she did not know about an EPC until December 2021 some months after she moved into the Property. Her claims for damages do not flow clearly from the alleged breaches of the Code. The Tribunal do not accept that the claims for heating costs in their whole entirety fall due by the Respondent. It was clear that there was also a substantial degree of excess energy expenses such as heating the Property when the Applicant was abroad. The Applicant was under a duty to mitigate any loss In addition the Respondent provided heaters and pointed out that the Applicant has not removed herself from the Property and therefore the Tribunal finds it difficult to see why the Respondent requires to pay for relocation and cleaning costs on vacating.
111. The Tribunal also considered that it appeared that the Respondent was operating the business at a particularly difficult time during the pandemic. Nevertheless the breaches of the Code caused inconvenience and difficulty for the Applicant which could have been avoided or minimised had the Respondent complied fully with the Code. Accordingly the Tribunal considers in its discretion having regard to all the factors in this case that it is appropriate that the Respondent makes payment of the sum of £750 to the Applicant in terms of section 48 of the Housing (Scotland) Act 2014.

112. The Tribunal in all of the circumstances consider it is reasonable to issue a Letting Agents Enforcement Order. This accompanies this decision and should be read in conjunction with it.

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.



Yvonne McKenna

9 May 2022

Legal Member/Chair

Date