



**Written Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 48(1) of the Housing (Scotland) Act 2014 (“the Act”) and Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/LA/22/3853**

**Re: Property at Flat 3, 9, Woodmarket, Kelso, TD5 7AT (“the Property”)**

**Parties:**

**Miss Jacqueline Tait residing at The Stable House, Whitehall Estate, Chirnside, Duns, Berwickshire, TD11 3LD (“the Applicant”)**

**Border Country Lets, 30, Woodmarket, Kelso, TD5 7AX (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Colin Campbell (Ordinary Member)**

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the Application for the reasons set out below.

### **Background**

1. By application received between 6 April 2023 and 10 May 2023 (“the Application”) the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondent had failed to comply with the Code of Practice for Letting Agents (“the Code”).
2. The Application comprised the following documents: -(i) application form in the First-tier Tribunal standard application form indicating that the parts of the Code complained of are Overarching standards of practice at 17, 18, 19, 20, 21, 24, 26 and 28, Lettings - Tenancy agreement at 62 and 64, Management and maintenance at Rules 84, Ending the tenancy at 97, 98, 99 and 100, Communications and resolving complaints at 108, 111 and 112 , (ii) copy correspondence between the Applicant and the Respondent (iii) copy short assured tenancy agreement between the Applicant and Dennis Fortune and Mrs Cathy Fortune dated 6 and 7 November 2013 with an entry date of 8 November 2013 relative to the Property (iv) copy confirmation in respect of tenancy deposit and (v) copy Notice to Quit dated 2 March 2023 and issued by Hastings Legal, 12-13, Murray Square, Duns.

3. A legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (CMD) was fixed for 4 August 2023 at 14.00 by telephone conference call.

#### **CMD**

4. The CMD took place on 4 August 2023 at 14.00 by telephone conference call. The Applicant was present on the call and was unrepresented. The Respondent was represented by Mr. Mark McGregor, the Respondent's Property Manager.
5. The Tribunal advised the Parties that the purpose of the CMD was to identify if matters were disputed or could be resolved and if a Hearing on evidence is required. Mr. McGregor confirmed that the Respondent opposed the Application.

#### **Discussion at CMD**

6. The Tribunal took the Applicant through the complaints as set out in the Application.

#### **7. Overarching standards of practice**

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

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

The Applicant, Miss Tait, explained that these parts of her complaint refer to the way in which the Notice to Quit was served. Although the Miss Tait accepted the Notice to Quit is a legal requirement and did not challenge the landlord's entitlement to issue the Notice to Quit, her position was that a notice period of two months was inadequate and that service of the Notice to Quit by three separate methods of issue was overwhelming. She explained that Mr. McGregor had telephoned her in advance of the Notice to Quit being issued to advise her of it and that he had advised that two Notices would be sent to her, one of which would require to be signed for. Miss Tait stated that in addition to two Notices which were posted, a further Notice was hand delivered and she found this overwhelming and excessive. She also found the telephone call from Mr. McGregor to be unnecessary and patronising.

Mr. McGregor explained that the purpose of his telephone call was a good practise approach to give prior warning in a small, close community and that the Notices to Quit had been served by the solicitors on behalf of the new landlords, Mr and Mrs Fortune having sold the Property.

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

The Applicant, Miss Tait, explained that this part of her complaint also refers to the way in which the Notice to Quit was served as Mr. McGregor had advised her that two Notices would be sent, one of which required to be signed for, when, in fact, three Notices were issued and none was signed for. Miss Tait also stated that she had been told by Ms. James of the Respondent that rent should be paid on the first of the month to comply with the tenancy agreement and that Ms. James appeared to think that Miss Tait paid on the sixth of the month.

Mr. McGregor stated that the Notices were served by solicitors and not the Respondent and the hand delivery was prudent as a postal strike was on-going at the time.

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

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

The Applicant, Miss Tait, explained that this part of her complaint again refers to the way in which the Notice to Quit was served. She took the view that as Mr. McGregor had advised her that two Notices would be sent, one of which required to be signed for, the fact that three Notices were issued and none was signed for amounted to the Respondent not applying its policies and procedures consistently and reasonably. She viewed the three Notices as inconsistent with the advice that two Notices would be sent and the volume of repeated letters to be intimidating and unreasonable.

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

Miss Tait, explained that this part of her complaint again refers to the way in which the Notice to Quit was served and the advice given that she would receive two Notices and not three.

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

Miss Tait's issue here was that her written complaint to the Respondent was dealt with by one of the staff members she had complained about.

Mr. McGregor advised that the Respondent is a small organisation and his colleague, Ms. James, dealt with the complaint as he had been the key staff member dealing with Miss Tait.

*28. You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.*

Miss Tait, explained that, again, this part of her complaint again refers to the way in which the Notice to Quit was served and the fact that she found the volume of Notices to be intimidating. She explained that it also related to the way in which Mr. McGregor replied to her enquiry with regard to release of the tenancy deposit.

With regard to the tenancy deposit, Mr McGregor stated he had replied in standard terms that the deposit would be released after the final inspection and when all was found to be in order. He explained that he could not give an assurance until that time but stressed that Miss Tait was an excellent tenant who kept the Property in very good order.

## **8. Lettings - Tenancy agreement**

*62. If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the landlord; type; length of tenancy where it is a short assured tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on taking care of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number.*

*64. At the start of the tenancy, you must give the tenant a copy of the tenancy agreement along with any other relevant statutory documents.*

Miss Tait explained that her tenancy agreement with Mr and Mrs Fortune was an old style agreement and, having taken advice from Shelter and others, she took the view that the Respondent should have issued a tenancy new agreement in 2023 when Mr and Mrs Russell, the new owners acquired the Property.

## **9. Management and maintenance**

*84. You must make it clear to the tenant or occupier beforehand if a third party will visit the property unaccompanied.*

Miss Tait explained that this part of her complaint related to her belief that someone had entered the Property when she was not present. She explained that the new owners, Mr and Mrs Russell, had purchased three flats in the building of which the Property forms part and, although, she had been advised at one point that they wished to recover possession of the Property for a family member to reside in, it had become apparent that they were converting the three flats into one residence. She explained that she became suspicious on receiving a phone call from Mr. McGregor that the velux window was opened as the open window could not be viewed from street level.

Mr. McGregor said he had received a telephone call from Mrs Russell about the window. He understood the open window had been identified by someone from elsewhere in the street. He was adamant that no-one from Borders Country Lets had entered the property.

## **10. Ending the Tenancy- Bringing the tenancy to an end**

*97. The correct procedure for ending a tenancy depends on such factors as the type of tenancy and the reason it is ending. But in all circumstances you must comply with relevant tenancy law and ensure you follow appropriate legal procedures when seeking to end a tenancy.*

*98. You must have clear written procedures in place for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the*

*tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information.*

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

*100. You must not try to persuade or force the tenant to leave without following the correct legal process.*

Miss Tait, again explained that these parts of her complaint refer to the way in which the Notice to Quit was served, the volume of Notices issued and the fact that she was not given a reason for tenancy being brought to an end. She explained that she had been told that Mr and Mrs Russell would continue her tenancy, she was then told that the tenancy would be terminated to allow a family member to occupy the Property but it now appeared that the Property was being converted into a larger residence. Miss Tait accepted that her tenancy was a short assured tenancy which had been brought to an end on a no fault basis. She advised the Tribunal that she vacated the Property of her own accord on 6 March 2023 after receiving the Notices to Quit as she was being overwhelmed and suffering stress as a result of the Notices, although she returned the keys at a later date.

## **11. 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.*

*111. You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.*

Miss Tait's issue here was the same as set out for Rule 26 that her written complaint to the Respondent was dealt with by one of the staff members she had complained about.

## **12. Complaints resolution**

*112. You must have a clear written complaints procedure that states how to complain to your business 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 your agreed terms of business.*

Miss Tait's issue here was based on her issues in respect of Rule 26 and 112 as she took the view that the Respondent ought to have a process of independent scrutiny.

## **Correspondence from the Applicant following the CMD.**

13. Following the CMD, the Applicant, Miss Tait, submitted two emails which did not contain new information.

## Issues for Tribunal

14. Having heard the Parties at the CMD, the issue for the Tribunal was: is there currently sufficient information and is there likely to be sufficient evidence to proceed to a Hearing at which the Application has a prospect of success?
15. Although there a significant number of complaints of the Code, the core issues are narrow being the way in which the Notice to Quit was served and the way in which Mr McGregor of the Respondent communicated with the Miss Tait.

## Tribunal's consideration of the Tribunal Rules.

16. The Tribunal had regard to the Rules which it must follow in dealing with applications at case management discussions.
17. The relevant Tribunal Rules are:
  - i) Rule 2 which states: *“(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly. (2) Dealing with the proceedings justly includes (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; (b) seeking informality and flexibility in proceedings; (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party’s case without advocating the course they should take; (d) using the special expertise of the First-tier Tribunal effectively; and (e) avoiding delay, so far as compatible with the proper consideration of the issues;”*
  - ii) Rule 3 which states: *“(1) The Chamber President and the First-tier Tribunal must seek to give effect to the overriding objective when (a) exercising any power under these Rules; and (b) interpreting any rule. (2) In particular the Chamber President and the First-tier Tribunal must manage the proceedings in accordance with the overriding objective”;*
  - iii) Rule 17(3) which states: *“ The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties’ dispute may be efficiently resolved, including by (a) identifying the issues to be resolved; (b) identifying what facts are agreed between the parties; (c) raising with parties any issues it requires to be addressed; (d) discussing what witnesses, documents and other evidence will be required; (e) discussing whether or not a hearing is required; and (f) discussing an application to recall a decision.”* and
  - iv) Rule 17(4) which states: *“The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing including making a decision”.*
18. With regard to Rules 2 and 3, the Tribunal is obliged to assist the Parties and to treat the Parties on an equal footing procedurally.
19. The Tribunal had regard to the oral submissions made by Mr. McGregor on behalf of the Respondent. The Tribunal took the view that Mr. McGregor did not dispute the facts and details as set out in the Application but disputed the effect and relevance of these facts and details in relation to the Respondent’s conduct with regard to the

Code. Accordingly, the Tribunal took the view that the Respondent's position was that there was no relevant case to answer as the grounds of the Application had not been established and treated this position as a preliminary plea to that effect.

20. The Tribunal had regard to the content of the Application and the oral submissions made by Miss Tait. Miss Tait had confirmed to the Tribunal that the issue which prompted the Application was the issue of the way in which the Notice to Quit was served on her. The Tribunal had regard to the fact that Miss Tait accepted that the core issues had occurred over a very short space of time in late February and early March 2023 and at the end of a tenancy and that there was not a range of incidents.

21. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Applicant was the tenant of the Property and the Respondent was the letting agent in terms of the Act and so is bound by the Code;
- iii) The Applicant's tenancy began on 8 November 2013 and was brought to an end by Notice to Quit dated 2 March 2023;
- iv) The Notice to Quit conforms to the statutory requirements in respect of the wording of Notice to Quit and in terms of the wording of the Notice of Intention to raise proceedings;
- v) The Notice to Quit was served in triplicate;
- vi) The Notice to Quit was not prepared by the Respondent but by solicitors acting for the landlords;
- vii) The Applicant vacated the Property voluntarily before the Notice to Quit expired;
- viii) Mr. McGregor of the Respondent telephoned the Applicant before the Notice to Quit was served;
- ix) In that call, Mr. McGregor advised that his understanding was that the Notice to Quit would be sent twice;
- x) There is no evidence or information in the Application or supported by the oral submissions at the CMD to show that, in that call, Mr. McGregor acted in a way which was abusive, intimidating, threatening or unpleasant;
- xi) There is no evidence or information in the Application or supported by the oral submissions at the CMD to show that the correspondence from the Respondent to the Applicant is abusive, intimidating, threatening or unpleasant ;
- xii) There is no evidence or information in the Application or supported by the oral submissions at the CMD to show that the Respondent allowed third parties to enter the Property without the Applicant's knowledge or permission and
- xiii) The Applicant was aggrieved and upset by the way in which the tenancy was ended and the way in which the statutory requirements were complied with.

22. The Tribunal then had regard to Rule 17(3) which tasks the Tribunal with exploring how matters might be resolved and if a Hearing is necessary.

23. The Tribunal had regard to its findings in fact, to the specific wording of Code and to the Respondent's preliminary plea that the grounds of the Application are not established.
24. The Tribunal took the view that although the Applicant, Miss Tait, was aggrieved at the ways in which the Notice to Quit was served and, although the Tribunal had sympathy for her situation, the Notice to Quit had not been prepared or posted by the Respondent. It had been prepared and posted by solicitors acting for the new landlords and so the Respondent could not be held responsible for the service by post. The Tribunal accepted that the Respondent had hand delivered an additional Notice to Quit and accepted that the reason for this was delays caused by the postal strike. The Tribunal's view, in any event, is that the Notice to Quit are compliant with the relevant legislation and that it is common practice for multiple methods of service to be used. The Tribunal's view is that, although Miss Tait was upset by the procedure, nothing could be done to remedy this.
25. The Tribunal considered the actions of Mr McGregor and took the view that, although Miss Tait was aggrieved at his telephone call and the wording of his emails, the content was reasonable and professional. The Tribunal accepted that Mr. McGregor had indicated that two Notices would be issued but took the view that the hand delivery of the third Notice was of minor importance.
26. No evidence was produced or likely to be produced to show responsibility on the part of the Respondent for third parties entering the Property without prior notice.
27. Accordingly, the Tribunal upheld the Respondent's preliminary plea that the grounds for the Application had not been established as no evidence had been produced or was likely to be produced in support of the complaints made in the Application and so held that a Hearing is not necessary.

#### **Decision of the Tribunal with reasons.**

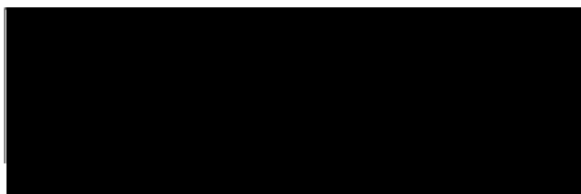
28. The Tribunal then had regard to Rule 17(4) which allows the Tribunal to make a decision at the CMD. Having upheld, the Respondent's preliminary plea that the grounds for the Application had not been established, the Tribunal refused the Application.
29. The decision is unanimous.

#### **Appeal**

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.



Signed



Karen Moore, Chairperson

18 August 2023

