

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

In an Application under section 48 of the Housing (Scotland) Act 2014

By

Nina Paterson, 13 Ormonde Avenue, Netherlee, Glasgow G44 3QU (“the Applicant”)

G4 Properties, 52 Albert Road, Glasgow G42 8DN (“the Respondent”)

**Re: 0/1, 1306 Paisley Road West, Glasgow G52 1DB
 (“the Property”)**

Chamber Ref: FTS/HPC/LA/20/0718

DECISION

The Respondent has failed to comply with the Code.

The decision is unanimous.

We make the following findings in fact:

- 1 The Applicant is a former joint tenant of 0/1, 1306 Paisley Road West, Glasgow G52 1DB ("the Property").
- 2 The owner of the Property is Hermeet Dilbar.
- 3 The Respondent is the letting agent employed by the owner to deal with the letting and management of the Property to the Applicant.
- 4 The Respondent operated at the material times as a professional letting agent.
- 5 The Respondent acted as letting agent in respect of the tenancy of the Property.
- 6 The Respondent was under a duty to comply with the Letting Agent Code of Practice contained in the Schedule to The Letting Agent Code of Practice (Scotland) Regulations 2016.
- 7 The tenancy began on 14 August 2018 and ended on 9 February 2020.
- 8 A valid EICR showing the electrical installation at the Property as satisfactory was obtained prior to the tenancy commencing.
- 9 No Carbon monoxide alarm was present at the beginning of the tenancy.
- 10 The gas cooker had not been connected at the start of the tenancy.
- 11 A hole was present in the bathroom floor/skirting at the start of the tenancy. The Respondent effected a repair when it was later reported.
- 12 Manuals for the appliances were not provided at the start of the tenancy.
- 13 The Respondent's inspection at the beginning of the tenancy did not include the outside walls.
- 14 No copy of the 2019 landlord's gas safety certificate was provided to the Applicant.
- 15 The only inspection of the Property by the Respondent during the tenancy was in October 2018.
- 16 An open vent was discovered in the exterior wall during the course of the tenancy. The Respondent effected a repair.
- 17 The washing machine developed a leak during the course of the tenancy. The Respondent effected a repair.
- 18 Mould was present in the bathroom during the course of the tenancy. The Respondent re-painted but the problem recurred.
- 19 The smoke alarms produced a Chirping sound at one point during the tenancy. The Respondent effected a repair.
- 20 The Respondent dealt with maintenance issues reported to it within a reasonable time.

- 21 The Applicant has, by its correspondence, including that of 14 February 2020, notified the Respondent of the reasons why she considers that the Respondent has breached its obligation to comply with the Code.

Hearing

A hearing took place by telephone conference on 25 November 2020.

The Applicant was present and represented by her father, Graham Paterson.

The Respondent was represented by its Mark King and Imran Haq.

Introduction

In this decision we refer to the Housing (Scotland) Act 2014 as “the 2014 Act”; the Letting Agent Code of Practice contained in the Schedule to The Letting Agent Code of Practice (Scotland) Regulations 2016 as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the Applicant and the Respondent.

REASONS FOR DECISION

The Legal Basis of the Complaints

The Code

The Applicant complains of failure to comply with Sections 16-18; 20; 21; 24; 26; 27; 73-75; 85; 86; 90; 91; 93 and 108 of the Code.

The elements of the Code relied upon in the application provide:

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

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

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

...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...

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...

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

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

...73. If you have said in your agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this Code.

74. If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also

paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).

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

...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.

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...

...90. Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.

91. You must inform the tenant of the action you intend to take on the repair and its likely timescale...

...93. If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible...

...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.... "

The Matters in Dispute

Factual Background

The Applicant complains of:

1. Failure to carry out inspections
2. Failure to provide a carbon monoxide detector
3. Faulty Smoke Alarms
4. Electrical Faults
5. The presence of a hole in the bedroom wall
6. Dampness issues in the bathroom
7. A hole in the bathroom floor/skirting
8. Issues with the fridge-freezer
9. A leak from the washing machine
10. The cooker not having been connected to the gas supply
11. Failure to provide a landlord's gas safety certificate after the 2019 inspection
12. Complaints not being dealt with within reasonable timescales
13. Manuals for appliances were not provided at the start of the tenancy

Failure to carry out inspections

The Applicant complains that only a single inspection of the Property took place in the duration of the tenancy (in October 2018). The Respondent agrees that this was the case. The Applicant considers that more regular inspections would have provided an opportunity for the Applicant to report maintenance issues to the Respondent. The Applicant referred to an email by Mr King in which he responded to the Applicant's complaint saying that inspections are normally carried out on a 6-8 month frequency. Mr King explained that there is no set inspection regime; the frequency of inspections is determined by agreement with the landlord and there is never a commitment to tenants in relation to frequency of any inspections. In this case, Mr King said there was a good relationship with the tenants, rent was being paid on time and there was regular contact so he had not seen any reason to follow up with inspections after the one in October 2018. We have not identified evidence of a breach of the Code in this respect.

Failure to provide a carbon monoxide detector

The Landlords Gas Safety Certificate confirmed the presence of a working CO alarm in the Property on 5 June 2018. Mr King confirmed that the Property was empty having been refurbished and that the Applicant and her flatmate were the first tenants after the inspection on 5 June 2018. The parties agree that the landlord's

gas safety inspection on 24 May 2019 noted the absence of a CO alarm and that the Respondent immediately replaced it. The Applicant advises that no CO alarm was present at the beginning of the tenancy. The Respondent cannot say absolutely that it was but cannot explain how it came to be missing. We accept the evidence that the CO alarm was present in June 2018 but that it was absent at the beginning of the tenancy. We consider the absence of the CO alarm to constitute a breach of the Code.

Faulty Smoke Alarms

The Applicant complained that the smoke alarms produced an intermittent loud noise some months into the tenancy. She reported this to the Respondent. The handyman provided by the Respondent changed the batteries but, according to the Applicant, advised her that there was a problem with the connection of the alarms. The Respondent does not accept this and maintains that the only issue was with the battery having run out. We accept the Respondent's evidence that there was no problem with the connection or installation of the smoke alarms. We therefore have not identified evidence of a breach of the Code in this respect.

Electrical Faults

An Electrical Installation Condition Report (EICR) dated 18 May 2018 was obtained prior to the tenancy commencing. It noted the installation as "Satisfactory".

On Friday 6 December 2018 the Applicant came home to find representatives of SSE on her doorstep. They advised her that they were there to carry out a health and safety inspection of the Property and that they had been considering forcing entry. They advised that they had been trying to contact the tenant for some time without success.

The Applicant allowed the SSE representatives entry. They carried out an inspection and left a Notice (not provided to the Tribunal) which recommended that work was required to the electrical installation to avoid potential danger. In particular, earthing was missing from sockets. The Applicant was alarmed and telephoned her father who went to the Respondent's office and met with Mr Haq. Mr Haq could not provide an electrician over the weekend but it was agreed that an electrician would call on Tuesday 10 December.

Mr Haq advised that this did in fact happen and the repairs are carried out.

Mr Paterson advised that the Applicant was unaware of whether the works had been completed since there was no communication from the Respondent or the electrician

until the following week. Mr Paterson said that the Applicant was very concerned during that week because she did not know whether the works had been done or the property was safe.

Mr King did not accept this. He felt sure that there would have been communication with the tenants. The Tribunal asked why if there was concern at the level suggested by Mr Paterson, the Applicant had not instituted her own enquiries of the Respondent. It was Ms Paterson's recollection that she did in fact do so by telephoning the Respondent who confirmed that the works had been completed. She could not recall when that was. After further discussion, she recalled that she had called the next day. She had not therefore been without information about the works for the rest of the week as Mr Paterson had originally stated.

We find no evidence of the Respondent having failed to deal with the complaint reasonably or of any failings in respect of the problems with the condition of the installation being known to the Respondent at the beginning of the tenancy. We have therefore not identified evidence of a breach of the Code in this respect.

The presence of a hole in the bedroom wall

The Applicant had found her bedroom cold but had originally simply put this down to the property being old and draughty. When she had had wi-fi installed, the installer advised her that there was a hole from the bedroom to the outside rear which was the source of the problem.

Parties agreed that the "hole" was in fact a vent which appeared to be missing a grille, possibly as a result of weathering. The Applicant considers this should have been noted and dealt with at the beginning of the tenancy. The Respondent's response was that it was not certain that the problem was there at the beginning of the tenancy. If the problem had been known about, the Respondent would have addressed it prior to the tenancy beginning. However, the Respondent had been unaware of the issue. The Respondent regarded itself as not being responsible for dealing with issues relating to the common parts of the building. It considered those to be the responsibility of the factor.

We do not accept that that is correct since the landlord must provide a property which meets the repairing standard and that includes the common parts. The Respondent confirmed that the external condition of the property is not noted on the inventory. However, the Respondent does accept that it would report any problems with common parts to the building factors, however it does not look for such problems. In any event, the hole was fixed internally by the Respondent's handyman with the outside work left to the factor. We found no evidence that the hole was

present at the start of the tenancy or that its presence should have been evident to the Respondent at that time. We have not identified evidence of a breach of the Code in this respect.

Dampness issues in the bathroom

The Applicant experienced mould growth in the bathroom. The bathroom has no mechanical ventilation but had an opening window. The Respondent arranged repainting with paint designed to resist condensation. The Applicant reported that the problem recurred quickly and paint peeled. She kept the bathroom window closed in the winter so as to avoid heat loss and, she said, on the advice of the Respondent's handyman.

There was insufficient evidence to allow the Tribunal to deduce the cause of the damp conditions in the bathroom which may signal the presence merely of condensation or may indicate a greater problem. We have therefore not identified evidence of a breach of the Code in this respect.

A hole in the bathroom floor/skirting

A hole was present in the bathroom floor/skirting. The Applicant advised that she reported it and it was repaired. The Respondent did not accept that the hole was present at the beginning of the tenancy; the Applicant thinks it was. Mr King explained that the Property had been refurbished prior to the Applicant moving in and the photos which were taken at that time (which the Tribunal has not seen) did not show the hole. The parties agree that the hole was repaired by the Respondent's handyman.

We prefer the evidence of the Applicant and find that the hole was present at the start of the tenancy.

Issues with the fridge-freezer

When the Applicant moved in, no manuals were provided for appliances. The Applicant experienced problems with the freezer becoming too cold and freezing up and had to defrost it. She contacted Mr King. Mr King sought advice from the manufacturer and advised the Applicant of the appropriate setting for the thermostat control. Despite this the Applicant continued to experience problems although she advised that she did not make further reports to the Respondent. We do not consider these circumstances to constitute of a breach of the Code.

A leak from the washing machine

In June 2019 a leak developed from the washing machine connection. The Respondent's handyman carried out a repair. He advised the Applicant that the machine had not been properly connected. He addressed this. We have not identified evidence of a breach of the Code in this respect.

The cooker not having been connected to the gas supply

The Applicant found that the cooker was not working. Parties agree that the new cooker had not been connected at the time the Applicant moved in. The Applicant reported that it was not working and after some investigations by the Respondent the cause of the problem became apparent. We consider there to have been a breach of the Code in this respect.

Failure to provide a landlord's gas safety certificate after the 2019 inspection

The Applicant complains that no certificate was provided. The Respondent advises that its contractor who carried out the inspection had advised that a copy of the certificate had been left. The Respondent advised that it has since revised its practices to avoid a repeat of such an event. We accept the Applicant's evidence that no copy of the certificate was provided and we consider there to have been a breach of the Code in this respect.

Complaints not being dealt with within reasonable timescales

Although the Respondent complained of a general delay in responding to maintenance issues although she did not highlight particular delays in relation to particular items. The lodged correspondence showed no evidence of either delay in dealing with reports or of the Applicant having to pursue the same maintenance issues repeatedly. On the contrary, the documents lodged seem to show reasonable responses and no contemporaneous complaints by the Applicant of delays. We consider there to have been no breach of the Code in this respect.

Manuals for appliances not provided at the start of the tenancy

The Applicant complained that appliance instructions were not available which made it more difficult for her to know how to deal with the issue which was experienced with the fridge-freezer. The Respondent accepted that the manuals were not provided but it had assisted with the problem in relation to the fridge-freezer. We do not consider the absence of appliance manuals to have been a breach of the Code.

The Code

We consider that the following issues constitute breaches of the Code:

Failure to provide a carbon monoxide detector

The presence of the hole in the bathroom floor/skirting

The cooker not having been connected to the gas supply

Failure to provide a landlord's gas safety certificate after the 2019 inspection

These amount to breaches of Code Sections 16; 21 and 85.

We identify no breach of the Code in respect of the following issues: carrying out inspections; faulty smoke alarms; electrical faults; the presence of a hole in the bedroom wall; dampness issues in the bathroom; issues with the fridge-freezer; the leak from the washing machine; the provision of manuals or the period of time taken to deal with maintenance issues.

LETTING AGENT ENFORCEMENT ORDER

In terms of section 48(7) of the 2014 Act we will make a letting agent enforcement order (“LAEO”). The terms of the LAEO are set out in the attached document.

We have a wide discretion as to the terms of the LAEO we may make. In this case, we consider it appropriate to order the Respondent to make a payment to the Applicant of £150. This reflects the fact that the identified breaches are relatively limited.

APPEALS

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.

JOHN M MCHUGH

CHAIRMAN

DATE: 3 December 2020

