

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/LA/18/3079

Property: 88 Hospital Street, Coatbridge, ML5 4DW (“the Property”)

Parties:

Mr William Queen, 2D Raebog Crescent, Airdrie, ML6 6SL (“the Applicant”)

**Excel Sales and Lettings, 26 Cadzow Street, Hamilton, ML3 6DG (“the
Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member) and David Fotheringham (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent failed to comply with paragraphs
70, 90, 91, 93, 94 and 110 of the Letting Agent Code of Practice and orders the
Respondent to vary its repairs procedures within 28 days, to require that:-**

- 1. Attempts are made within two days of all non-emergency repairs being
intimated to the Respondent to arrange for contractor attendance;**
- 2. The Respondent provides updated information to the tenant at every
stage of the repairs process on the progress of the repair, including
information on the timescales for completion;**

3. **Where any delay to carrying out a repair occurs, the Respondent must immediately advise both the tenant and the landlord of the stated reason for that delay; and**
4. **A process for checking all work carried out by contractors and pursuing contractors to remedy defects in inadequate work is included.**

Findings in Fact

The Tribunal makes the following findings in fact:-

1. During the period 4 May 2018 until 4 October 2018 the Applicant was the tenant of the Property.
2. The Respondent is a letting agent.
3. The Respondent was the letting agent instructed to manage the Property immediately prior to the commencement of the Applicant's tenancy, and throughout the duration of it.
4. On 4 May 2018, the Respondent provided the Applicant with an inventory detailing the condition of the Property and its contents ("the Inventory"), and requested that the Applicant return a signed copy of the Inventory to the Respondent within 7 days.
5. The Applicant did not return the Inventory to the Respondent or take issue with its content.
6. The Respondent did not remind the Applicant that he required to return the signed Inventory to the Respondent.
7. The Respondent has revised its procedures to provide reminders to tenants when inventories are not returned.
8. On 11 May 2018, the Applicant advised the Respondent that (i) the kitchen cabinet door in which the boiler was located would not close, (ii) the hot water tap in the kitchen was making a "hammering" noise, (iii) the cold tap would not turn off completely, (iv) the kitchen window did not close properly, and (v) the shower screen in the bathroom kept opening.
9. The Respondent had in place written procedure and processes for tenants to notify it of any repairs and maintenance required, including target timescales for carrying out routine and emergency repairs.
10. On 14 May 2018 the Respondents arranged for a contractor to attend at the Property on 15 May 2018 to attend to the repairing issues raised by the Applicant;
11. At or around 3:35pm on 15 May 2018, the contractor called the Respondent to cancel his attendance due to an overrunning commitment elsewhere. The Respondent contacted the Applicant immediately to notify him of the cancellation;

12. On 21 May 2018, the Respondents contacted the contractor to arrange for him to attend at the Property. The contractor undertook to check his diary and arrange attendance that week.
13. On 22 May 2018, the Respondents received a telephone call from the Applicant. During that call, the Respondents advised the Applicant that they had received a complaint about him from one of his neighbours. The Applicant became upset and angry during that call. As a consequence of his demeanour, the Respondent was unable to discuss access for repairs with him at that time.
14. On 1 June 2018, the Applicant emailed the Respondent to seek to arrange access for the repairs. He claimed that he had left three voice messages for the Respondent. The Respondent did not receive any messages from the Applicant. The Respondent contacted the contractor to try to arrange access. He was unable to attend that week.
15. On 4 June 2018, the Respondent contacted a different contractor and arranged for him to attend the Property on 8 June 2018 to assess the need for repair.
16. On 12 June 2018, the Respondent received a quotation from the contractor for the required repairs. The contractor was instructed to proceed to carry out the repairs based on that quotation. Access was arranged with the Applicant for 14 June 2018.
17. On 14 June 2018, the contractor attended at the Property. The Applicant was present. The Applicant was distressed. The Applicant, in a fit of rage, took a photograph frame off the wall and threw it to the ground. The Applicant apologised to the contractor for his conduct and then left the Property to calm down. The contractor left the Property without carrying out the repairs. The contractor contacted the Respondent to advise that the Applicant had been behaving in a volatile manner. The contractor refused to return to the Property. He told the Respondent that he believed that the Applicant was under the influence of alcohol and/or drugs. The Respondent tried without success to contact the Applicant. The Respondent left voicemail messages for the Applicant to call the Respondent.
18. On 16 June 2018, the Applicant emailed the Respondent to ask that the repair works be rearranged.
19. On 19 June 2018, the Respondent advised the Applicant that it would contact the contractor to rearrange the works.
20. On 20 June 2018, the Respondent contacted the contractor to rearrange the works. The contractor refused to rearrange the works.
21. On 27 June 2018, the Applicant emailed the Respondent seeking to have the repairs attended to. The Respondent arranged for a third contractor to attend at the Property on 28 June 2018. That contractor did not turn up.
22. On 28 June 2018, the Respondent arranged for a fourth contractor to attend at the Property on 30 June 2018. The Applicant requested that a blind be fitted over the window in the bathroom.

23. The Applicant was not present when the contractor arrived on 30 June 2018, and the contractor left. Access was rearranged for 2 July 2018.
24. On 2 July 2018, the contractor attended at the Property. The contractor prepared a quotation and was instructed to proceed to repair the Property. Access for that purpose was arranged for 4 July 2018.
25. On 3 July 2018, the Applicant reported that the kitchen sink was leaking. Arrangements were made for the contractor to fix the leak on 4 July 2018.
26. The contractor attended at the Property on 4 July 2018 and carried out some repairs. He required parts for certain repairs and undertook to return when he had them. The repairs were completed by 18 July 2018.
27. On 19 July 2018, a new roller blind was fitted in the Property covering the bathroom window. The Applicant contacted the Respondent to compliment the blinds and draw attention to a kitchen cabinet door that had not been repaired. The Respondent contacted the contractor who said that the need for repair had not been obvious and had not been drawn to his attention. The contractor undertook to attend at the Property the following day.
28. On 20 July 2018, the contractor attended at the Property and attended to all repairs that were made known to him. He contacted the Respondent to advise that the issue with the kitchen cabinet door was a new issue which was not present when he was last at the Property.
29. On 16 August 2018, Helen Smith of the Respondent attended at the Property for the regular inspection. At that inspection, the Applicant drew attention to damage within the Property that he claimed had resulted from a homophobic attack on him by one of his neighbours. The Applicant spoke about that incident repeatedly during the inspection. Helen Smith took photographs of the said damage at the Applicant's request. The Applicant drew attention to what he claimed was an inadequate repair to the shower screen. The shower screen had been sealed to the bath. The Applicant has mobility difficulties and found it difficult to get in and out of the bath when the shower screen was so fixed. The issue with the shower screen was noted in the report subsequently prepared by Helen Smith. No other damage was noted in her report.
30. On 28 August 2018, the Applicant gave notice to terminate his tenancy with effect from 4 October 2018.
31. The Respondent did not require the contractor who carried out the repairs to return to the Property to attend to the shower screen issue referred to at the Property inspection on 16 August 2018.
32. On 4 October 2018, the Applicant telephoned the Respondent to advise that he had moved out of the Property and posted the keys through the letterbox. He told the Respondent that he had attempted to give the Property a final Hoover, but that the electricity appeared to have been disconnected. The Respondent confirmed that the final inspection would be carried out later that day. The Applicant did not request to be present at the final inspection.
33. The Respondent did not make the Applicant aware of the Letting Agent Code of Practice.

34. Since the Applicant ceased to be the tenant of the Property, the Respondent has altered its procedures for checking-in new tenants such that all new tenants are emailed a link to the Letting Agent Code of Practice.

Findings in Fact and Law

The Tribunal makes the following findings in fact and law:-

1. The Respondent failed to comply with paragraphs 70, 90, 91, 93, 94 and 110 of the Letting Agent Code of Practice.

STATEMENT OF REASONS

1. This application called before the Tribunal on 18 January 2019 for a Hearing to determine whether the Respondent had failed, when dealing with the Applicant, to comply with paragraphs 70, 86, 87, 88, 90, 91, 93, 94, 101, 103, 105 and 110 of the Letting Agent Code of Practice ("the Code").
2. The Applicant was personally present, and was supported by his friend, Mr Sean Fagan. The Applicant presented his own case, and gave evidence on his own accord. The Respondent was represented by Mrs Joann Smith, who also gave evidence on behalf of the Respondent. Evidence was also taken from Miss Helen Smith, an employee of the Respondent.
3. Broadly, the Applicant's complaints fall under five heads: (i) failure to remind him to return the inventory of items in the property; (ii) failure to adequately deal with repairs; (iii) failure to allow him to participate in a final inspection; (iv) failure to properly manage the tenancy deposit; and (v) failure to make the tenant aware of the Code ("the Heads of Complaint"). The Applicant seeks that the Tribunal make a Letting Agent Enforcement Order against the Respondent requiring a change to their policies and procedures, and also an award of compensation for his losses.
4. Before considering the substance of this application, it is worth noting that in written representations prior to the Hearing both parties made reference to circumstances involving the Applicant that went beyond the scope of matters which the Tribunal is able to consider within the confines of this particular application. In particular, the Respondent made reference to certain complaints which had been made against the Applicant by neighbours, and the Applicant also made allegations of anti-social behaviour, including homophobic attacks against him and Mr Fagan, by certain of his neighbours including those who had complained against him. It appeared that the Applicant wished to consider whether the Respondent had acted appropriately by failing, in his submission, to make him aware of the complaints made

against him. However, such a contention did not appear to the Tribunal to fall within the parameters of the Applicant's original complaint or application, which was limited to whether or not the Respondent had complied with paragraphs 70, 86, 87, 88, 90, 91, 93, 94, 101, 103, 105 and 110 of the Code.

5. Given the emotive nature of the matters referred to, the Tribunal is grateful to the parties for their focus on relevant matters when giving evidence and making submissions.

Legislation

6. In terms of the Housing (Scotland) Act 2014:-

“48 Applications to First-tier Tribunal to enforce code of practice

- (1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.
- (2) A relevant letting agent is—
 - (a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
 - (b) in relation to an application by a landlord, a letting agent appointed by the landlord,
 - (c) in relation to an application by the Scottish Ministers, any letting agent.
- (3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.
- (4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.
- (5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.
- (6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.
- (7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.
- (8) A letting agent enforcement order—
 - (a) must specify the period within which each step must be taken,
 - (b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.
- (9) References in this section to—
 - (a) a tenant include—
 - (i) a person who has entered into an agreement to let a house, and

- (ii) a former tenant,
(b) a landlord include a former landlord.”

7. In terms of the Letting Agent Code of Practice (Scotland) Regulations 2016:-

“1. Citation and commencement

These Regulations may be cited as the Letting Agent Code of Practice (Scotland) Regulations 2016 and come into force on 31st January 2018.

2. Letting Agent Code of Practice

The Letting Agent Code of Practice, which is set out in the Schedule, has effect.”

8. In terms of the Code:-

“SECTION 4 Lettings

Moving in (inventory/check-in)

...

70.

You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant does not, you must inform them, in writing, that you will nevertheless regard it as correct.

...

SECTION 5 Management and maintenance

Carrying out repairs and maintenance

...

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.

87.

If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents, if that is part of the service) and for giving contractors access to properties for emergency repairs.

88.

You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies.

...

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.

94.

You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.

...

SECTION 6 Ending the tenancy

...

Inventory/check-out

101.

Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit unless there is good reason not to. For example, evidence of violent behaviour.

...

103.

If the tenant wishes to be present during the check-out visit, you must give them reasonable notice of the arrangements unless there is good reason not to be present (see also paragraph 101).

...

Tenancy deposits

105.

Where you manage the tenancy deposit on behalf of a landlord you must take reasonable steps to come to an agreement with the tenant about deposit repayment. Where agreement is reached you must make a claim to the relevant Tenancy Deposit Scheme.

...

SECTION 7 Communications and resolving complaints

Communications

...

110.

You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.”

Discussion

9. At the Hearing, the Tribunal considered each of the Heads of Complaint in turn. This decision follows the same format.

Head of Complaint (i): The Inventory Issue

Evidence: William Queen

10. The Applicant gave his own evidence, with some assistance from the Tribunal. The Applicant advised the Tribunal that he is the former tenant of the property at 88 Hospital Street, Coatbridge, ML5 4DW (“the Property”). The Respondent was the letting agent of the Property when the Applicant was the tenant. The Applicant was the tenant of the Property from 4 May 2018 until 4 October 2018. He stated that he had been shown around the Property on 4 May 2018 and given both the keys to the Property and the paperwork pertaining to his tenancy by Kimberley McIntosh, an employee of the Respondent.
11. The Applicant spoke to being given paperwork about his tenancy, but did not recall being directed to an inventory of items by Ms McIntosh, nor did he recall being told that if he did not return the inventory disputing the condition of the Property that he would be deemed to have accepted the Property was in good condition. The Applicant explained that he had other matters on his mind at the time, including setting up a new home, but that he did not think that the conversation had taken place. The Applicant confirmed that he had not received any reminder from the Respondent thereafter regarding his failure to return a signed inventory.
12. The Applicant referred to the inventory prepared by the Respondent following the Applicant’s removal from the Property. He stated that, in respect of the damage to the kitchen door, that had been damaged by his neighbour, Martin Christie, who the Applicant alleged had forced access to the Property, punched and kicked the door (thereby causing a dent in the said door), and thereafter assaulted him by, amongst other things, throwing him against the door of a kitchen cupboard. The cupboard door was also, he said, damaged during that attack. The Applicant advised that Mr Christie was the subject of criminal prosecution in respect of that incident, but had been found not guilty of the attack in those proceedings. The Applicant stated that, in respect of

apparent damage to a bedroom door, that damage had pre-existed his moving in.

13. The Applicant referred to a report by Helen Smith of the Respondent following an inspection of the Property on 16 August 2018. In particular, the respondent referred to the generally positive comments within the report as to the condition of the Property. He stated that, although there was reference to the garden requiring some cutting, that was a reference to the grassed area, not the hedge. He had referred to a repair issue, which was that the shower door had been unevenly “glued”, and that was noted in the inspection report. He had mentioned to Miss Smith that he was having issues with his neighbours, and in particular that he had been subjected to a campaign of homophobic abuse. He drew Miss Smith’s attention to the damage to the kitchen door and kitchen cupboard door. He also made express reference to the dent on the bedroom door. Miss Smith took photographs of the damage. None of this appeared in the report.

Evidence of Joann Smith

14. Mrs Smith spoke to the Respondent’s procedures in place in May 2018 when checking in new tenants. According to Mrs Smith, that procedure was to provide paperwork to tenants at property on the date of moving in, and to draw specific attention to certain pages of that paperwork that were of importance, including the inventory. Tenants were told that the inventory represented a statement of the condition of the property and that this required to be signed and returned within seven days. Tenants were told that, if the inventory was not returned within seven days, then the condition of the property was deemed to be as set out in the inventory.
15. Mrs Smith candidly accepted that the Code required that tenants be reminded to return the inventory and that no reminder had been sent to the Applicant when he failed to do so. On that basis, she accepted that there had been a failure to comply with paragraph 70 of the Code. However, Mrs Smith advised the Tribunal that the Respondent’s policies had been updated since the Applicant’s complaint such that now, if the inventory is not returned within seven days, a reminder is issued to the tenant by email. If the inventory is still not returned, a further reminder is issued, stating that the property will be deemed to be in the condition stated in the inventory if it is not returned. No further reminders are issued thereafter. Mrs Smith submitted that this policy, which warned tenants of the importance of the inventory on three separate occasions in total, represented reasonable steps, as required by paragraph 70.

Evidence of Helen Smith

16. Miss Smith gave evidence largely in relation to the inspection on 16 August 2018. She said that she recalled the inspection. It was unusually long, in that an inspection is typically five to ten minutes, due to the non-invasive nature of the regular property inspection carried out by the Respondents. It was generally, she said, a quick "look-round". However, the 16 August inspection took about thirty minutes. That was partly because of the questions which the Applicant was asking, but mostly because he was recounting the attack that he had allegedly suffered within the property. Miss Smith remembered being shown the damage to the kitchen door and the kitchen cupboard door. She remembered being shown the shower screen and told the Applicant's issue with that. She remembered taking photographs of those items. She remembered suggesting that the garden required tending, but could not recall whether she specified that it was the grass only that required to be cut or whether it was a general comment on the garden, which was the tenant's sole responsibility to tend. She remembered discussing the Applicant's issues with the neighbours, and in particular the discarded rubbish and couch to the rear of the property which belonged to an upstairs neighbour. She had no recollection of being shown damage to the bedroom door.
17. When asked why only the shower screen was noted on the inspection when these other issues had been noted and photographed, Miss Smith was unable to provide an adequate answer. She seemed to suggest that there was ample evidence gathered during the inspection.

Decision

18. In light of the submissions made on behalf of the Respondent, it is clear that the Respondent failed to comply with paragraph 70 of the Code. The Code requires that steps are taken to remind tenants of the need to check the inventory, and no such reminder was issued on this occasion.
19. The Tribunal notes that the Respondent has, since the Applicant's tenancy commenced, changed their policies and procedures in a number of ways (which changes, it was suggested by the Respondent, had been implemented following the issues encountered during the Applicant's tenancy). In particular, there is now a process whereby the inventory is provided to the tenant and its content discussed with the tenant, and then a further two reminders are sent to the tenant to return the inventory. Had such a change in policy not already been implemented, the Tribunal would have required, as part of the Letting Agents Enforcement Order, that the Respondent implement the new policy and procedure. Having already done so, the Tribunal has determined that no further steps are required at this time.

Head of Complaint (ii): Failure to adequately deal with repairs

20. The Applicant contends that the Respondent failed to comply with paragraphs 86, 87, 88, 90, 91, 93 and 94 of the Code. Those allegations of failure to comply all arise out of the repairing issues that arose during the Applicant's tenancy. Those issues are set out within the timeline produced by the Respondent with its written submission. Whilst the Applicant took issue with some of the entries in that timeline (in particular, the reasons given for contractors failing to attend), he did not appear to dispute the dates on which (i) repairs were notified, (ii) the dates when he was told that contractors would be attending, (iii) the dates when contractors actually attended, or (iv) that the works were completed by 18 July 2018, save for the shower screen which the Applicant contended had been inadequately repaired. Accordingly, the Tribunal proceeds on the basis that the timeline is an accurate statement of the dates on which those incidents took place.

Evidence of William Queen

21. The Applicant first took issue with the timescales for the repairs, some of which took six weeks. He said that he found Kimberley McIntosh difficult to deal with. He recalled that when he had taken issue with certain issues requiring repair, she had told him that he had accepted the Property in that condition.

22. The Applicant said that repairs were reported by email or telephone, but that he had worked that out himself; the Respondent had not given him any information on how to do that. When asked whether the tenancy agreement had contained details of how to report complaints, the Applicant accepted that he had not read the tenancy agreement in full and could not be sure what it said in that regard. He contended that the tenancy agreement was unusually long.

23. The Applicant drew attention to an email from the Respondent dated 21 September 2018 which set out arrangements for emergency repairs over the bank holiday weekend. In particular, he took issue with the statement in that email that boiler breakdowns were not an emergency. However, the Applicant accepted that his boiler did not break down during his tenancy.

24. The Applicant spoke of contractors not turning up on occasions when they were supposed to. He suggested that it was the obligation of the Respondent, in terms of the Code, to provide him with the telephone numbers of contractors who were due to attend at his Property in order that he could contact them. The Respondents had not done so.

25. The Applicant was directed to the various comments in the Respondent's written submissions whereby it was suggested that contractors had refused to

return to the Property due to the Applicant's behaviour. The Applicant candidly accepted that he had, on one occasion, behaved poorly. He explained that on that occasion (which we took to be the contractor's attendance on 14 June 2018) he had been "on the verge of a mental breakdown". He had recently experienced further homophobic abuse and was very upset. He said that, in the presence of the contractor, he had taken a picture frame off of the wall and had thrown it to the floor, causing it to smash. He insisted that he had then composed himself, apologised to the contractor, and left the Property to calm down. He said that the contractor had indicated that he would continue to work whilst the Applicant was gone. When the Applicant returned, the contractor had left the Property. The repairs had not been carried out.

26. The Applicant denied that he had been intoxicated during the attendance of any contractor. He said that he enjoyed a sherry in the afternoon or the occasional glass of wine, but that he did not drink alcohol to excess. He had never smoked a cigarette, let alone taken drugs. He therefore took exception to the suggestion by either contractor that he had been under the influence of drugs or alcohol during their visits. He suggested that the second contractor who attended had been asked a lot of questions about what repairs were going to be carried out and may have been unhappy about some of them, but stopped short of suggesting that the contractor had made an excuse not to return.
27. The Applicant noted that the Respondent appeared to be using his anger as an excuse for not dealing with the repairs. The Applicant conceded that he had a temper, but stated that he had only begun to express anger towards the Respondent after the issue with his tenancy deposit arose, which was after the termination of his tenancy.
28. The Applicant accepted that the works were ultimately completed. However, the shower screen works were not satisfactory. The shower screen had been glued to the bath unevenly, and inhibited his ability to get in and out of the bath. The Applicant advised that he was disabled, and that his mobility was restricted. He told the Tribunal that he had made the Respondent aware of this issue, including at the inspection on 16 August 2018, but that no further up work was instructed.

Evidence of Joann Smith

29. Mrs Smith adopted the Respondent's written submission, including the aforementioned timeline, as her evidence. She sought to elaborate on certain matters. She spoke of the difficulties the Respondent had experienced when trying to arrange for the repairs to be carried out. The landlord of this property

typically instructed her own contractor to carry out repairs, but he was unwell. The Respondent therefore assisted by instructing the repairs.

30. Mrs Smith accepted that the process for reporting repairs was to contact the Respondent by email or telephone. Where the Respondent was arranging the repairs, the Respondent would act as the liaison between the tenant and the contractor. It was not the Respondent's practice to give the contractor's telephone number to tenants, although it would provide the tenant's telephone number to a contractor if the tenant requested that it do so for the purposes of having the contractor call ahead of the visit to confirm an arrival time. Mrs Smith submitted that the Code did not require that letting agents give contractor's telephone numbers to tenants.
31. Mrs Smith advised that the Respondent has timescales within which repairs required to be carried out. For emergency repairs, those are instructed immediately with a target completion date of as soon as possible, depending on the nature of the repair. For example, if the boiler broke down in the winter, the target timescale for repair is 24 hours, whereas in summer the target timescale for repair is 48 hours. For non-emergency repair, the target is seven days. Sometimes those timescales cannot be achieved due to parts being required, but in those cases the Respondent provided clear information to tenants and landlords regarding that. Emails are sent to tenants in advance of all holiday weekends providing the emergency repair details, including an out-of-hours number for the Respondent and contact details for others (e.g. local authority anti-social behaviour team, Police Scotland, Scottish Fire Service). Full guidance on repairs is available on the Respondent's website, but Mrs Smith accepted that details of the repairing timescales specifically may not have been provided to the Applicant.
32. Mrs Smith spoke to the difficulties that the Respondent had trying to find contractors willing to carry out the work due to the Applicant's behaviour when they were in attendance. She also spoke of the difficulties that her staff had experienced when trying to deal with the Applicant by telephone. He was, she said, angry, aggressive and abusive on the telephone to her staff, to the point that they ultimately stopped dealing with him by telephone.

Decision

33. The Tribunal is satisfied that the Respondent had and has in place written procedures and processes for tenants and landlords for the notification of repairs and maintenance, and that those procedures include target timescales for routine and emergency repairs. It follows that the Respondent has complied with paragraph 86 of the Code.

34. The Tribunal is satisfied that the Respondent had and has procedures in place for dealing with emergency repairs. It follows that the respondent had complied with paragraph 87 of the Code.
35. At paragraph 88 of the Code, letting agents are required to give tenants “clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies”. The requirement to supply contact details is not prescriptive in its terms. It leaves to the discretion of the letting agent what contact details are “relevant”, and ought therefore to be supplied. The examples given are stated as guidance; not direction. The Tribunal accepts that it is an appropriate and reasonable policy for a letting agent to adopt that it shall be the sole point of contact for arranging repairs, such that the tenant does not have the ability to contact the contractor directly. The Tribunal can envisage situations where a tenant may take it upon themselves to contact the landlord’s contractor directly and arrange for attendance to carry out a repair that had not been raised through the letting agent. That would be an unpalatable outcome, which could lead to dispute over appropriateness of the instruction, and liability for payment for the works carried out. For those reasons, the Tribunal has determined that the Respondent has complied with paragraph 88 of the Code.
36. However, the Tribunal has determined that the Respondent did not deal with the repairs promptly in this case. The Tribunal accepts that the Applicant’s behaviour in the presence of the contractors who did attend the Property contributed to the delay in this case. However, there were periods of delay which seemed to the Tribunal to be entirely within the Respondent’s control to avoid. For example, it is not clear why the Respondent did not try to rearrange the cancelled contractor appointment on 15 May 2018 until 21 May 2018. Nor is clear why, even if unable to deal with the Applicant by telephone, the Respondent did not try to arrange access by email. The Respondent does not appear to have written to the Applicant during the period 22 May 2018 until 1 June 2018 explaining that his behaviour was unacceptable and resulting in the repairs being delayed. Had they done so, that may have tended to suggest that the reason for the delay was the Applicant’s intolerable behaviour. It may also have had a moderating effect on the Applicant. However, in absence of any real evidence that the reason for the delay was the Applicant’s behaviour towards the Respondent, the Tribunal finds that his behaviour towards the Respondent in May 2018 was not the cause of the delay. The Respondent did not inform the Applicant of the action it intended to take or the likely timescale. Nor did the Respondent inform the Applicant about the reason for the delays as they arose.

37. It follows that the Tribunal finds that the Respondent failed to comply with paragraphs 90, 91 and 93 of the Code.

38. The final complaint under this Head of Complaint is under paragraph 94. It seems clear that, after the works were completed on 18 July 2018, the Applicant took issue with the repair to the shower screen. The Respondents appear to have accepted that there was an issue with that repair, and it was noted expressly in the report prepared following the 16 August 2018 inspection. However, it does not appear that the Respondent pursued the contractor to remedy the defects in that work. Accordingly, the Tribunal finds that the Respondent failed to comply with paragraph 94 of the Code.

Head of Complaint (iii): Failure to allow the Applicant to participate in a final inspection

Evidence of William Queen

39. The Applicant advised that he moved out of the Property approximately one week prior to the termination date. He had found alternative accommodation. He recalled that, on the Tuesday before his tenancy was due to come to an end, he attended at the Property to clean it. He recalled hoovering all of the rooms, cleaning the refrigerator and dusting throughout. He recalled that there was an issue with the washing machine in the Property, but that he had only ever used his own washing machine. He also recalled his nervousness at returning to the Property due to the ongoing issues he was experiencing with his neighbours. He said that on the Thursday before his tenancy was due to end, he returned to the Property to give it a final check over, but found that he was unable to clean further due to the gas and electricity having been turned off. He said that he then telephoned the Respondent and spoke to Kimberley McIntosh. He told her that there was no power in the Property, but that he had already cleaned it. He said to Ms McIntosh that he wished to be present at the check-out inspection. Ms McIntosh told him that he could not be there and that it was not the Respondent's policy to allow tenants to be present at check-out inspections. The Applicant stated that, on reflection, it may have been that the Respondent's employees were afraid of having him at the check-out inspection due to his having been angry and the complaints that they had received.

40. The Applicant said that the check-out inspection inventory was ridiculous. He took issue with the extent of cleaning and damage noted therein. He compared the final inventory to the report that followed the 16 August 2018 inspection, and said that they were incomparable. His focus appeared to be on the contents of the check-out inventory within the context of the ongoing dispute over his tenancy deposit.

Evidence of Joann Smith

41. Mrs Smith explained that the Respondent's policy was to send all tenants due to remove from properties a letter setting out the standard that the Respondent expects to find the let property in at check-out. There is a policy allowing tenants to give back keys early if they move out earlier than the final date of the tenancy. Tenants can be present at check-out inspections if they want to be.
42. In the Applicant's case, Mrs Smith relied upon an entry in the Respondent's case management system dated 4 October 2018 and timed at 10.22am which stated that the Applicant had called to say (i) that he had moved out, (ii) that he had tried to clean the Property but found the power disconnected, (iii) that he did not know whether there was any credit left in the meter, and (iv) that he had not requested to be present at the check-out inspection. Mrs Smith said that, if the Applicant had requested to be present, then the Respondent would have made arrangements to allow his attendance, including having multiple employees of the Respondent attend the inspection.

Decision

43. This particular complaint requires that the Tribunal first determine whether the Applicant requested that he be allowed to attend the check-out inspection. Having heard the parties, the Tribunal prefers the evidence of the Respondent in that regard. The contemporaneous note from the Respondent's system is clear in its terms. The Applicant's evidence that he carried out a thorough clean of the Property, including hoovering throughout, and then returned two days later to the Property, which he no longer resided in and had been empty for those two days, to hoover and generally clean again is not credible.
44. The Tribunal therefore finds that the Respondent complied with paragraphs 101 and 103 of the Code.

Head of Complaint (iv): Failure to properly manage the tenancy deposit

45. At the Hearing, having considered the correspondence further and accepted that the Respondent, having failed to reach agreement with the Applicant, had referred the disputed tenancy deposit to the Tenancy Deposit Scheme holding the deposit for dispute resolution, the Applicant withdrew this head of complaint.

Head of Complaint (v): Failure to make the Applicant aware of the Code

46. This complaint was ceded by the Respondent ahead of the Hearing. The Applicant's only further comment on this complaint was that having the Code at an early stage would have assisted him in knowing what he was entitled to.

This in turn would have altered how he dealt with both the repairing issues and his neighbour issues.

47. In response, Mrs Smith submitted that the Respondent's procedures had changed to ensure that this oversight did not happen again. She explained that the Code had only been in place for a few months prior to the commencement of the Applicant's tenancy. The issues experienced during the Applicant's tenancy had highlighted to the Respondent failings in its procedures with regard to the Code, which had now been addressed. In respect of paragraph 110, the Respondent now operated a system whereby tenancy documents are delivered to tenants electronically for electronic signature. Once tenancy documents are electronically signed, an email is generated which includes a link to an electronic copy of the Code.

48. Given the Respondent's concession, the Tribunal finds that the Respondent failed to comply with the Code. Since the date of the Hearing, the Respondent has, following a Direction of the Tribunal dated 18 January 2019, produced a copy of its current policies, including for the provision of information about the Code. The Tribunal would have granted an order requiring that the Respondent alter its procedures to ensure that all new tenants are made aware of the Code. However, the Tribunal is satisfied that the Respondent's new procedures adequately ensure future compliance with paragraph 110 of the Code.

Order

49. Accordingly, the Tribunal finds that the Respondent has failed to comply with paragraphs 70, 90, 91, 93, 94 and 110 of the Code. The Tribunal is therefore required by section 48(7) to make a Letting Agent Enforcement Order. In terms of section 48(8), that Order must specify the period within which each step must be taken and may provide that the Respondent pay compensation to the Applicant for any loss he has suffered.

50. The Tribunal has determined that the Respondent ought to vary its repairs procedures within 28 days, such that:-

- a. Attempts are made within two days of all non-emergency repairs being intimated to the Respondent to arrange for contractor attendance;
- b. The Respondent provides updated information to the tenant at every stage of the repairs process on the progress of the repair, including information on the timescales for completion;
- c. Where any delay to carrying out a repair occurs, the Respondent must immediately advise both the tenant and the landlord of the stated reason for that delay; and

- d. A process for checking all work carried out by contractors and pursuing contractors to remedy defects in inadequate work is included.

51. The Applicant submitted that he had suffered loss in the form of his costs of removing from the Property. He said that, had the Respondent complied with the Code, he would have been able to take steps to mitigate the hateful behaviour he experienced during the tenancy. He accordingly moved the Tribunal to make an order for payment by the Respondent of compensation. That was somewhat inconsistent with the terms of the Application, which linked his loss to his tenancy deposit. He has not "lost" his tenancy deposit, which is currently the subject of the dispute resolution process with a regulated tenancy deposit scheme.

52. However, in any event, the Tribunal has determined that any loss suffered by the Applicant has not been caused by any failure of the Respondent that is the subject of this Application. Accordingly, the Tribunal refuses the Applicant's motion to include an order for payment of compensation.

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.

Legal Member/Chair

Andrew Upton

6 FEBRUARY 2019

Date