

Housing and Property Chamber

First-tier Tribunal for Scotland



Section 48 Housing (Scotland) Act 2014 and Letting Agent Code of Practice (Scotland) Regulations 2016.

Chamber Ref: FTS/HPC/PF/19/ 3278

Flat 1/2, 27 Fotheringay Road, Glasgow, G41 4NL (“The Property”)

The Parties:-

**Mr Rognvald Livingstone, 29 Brooklea Drive, Giffnock, Glasgow, G46 6AR
 (“the Applicant”)**

**1st Lets (Glasgow) Ltd, a Company incorporated under the Companies Acts (SC542691), and having its Registered Office at 2 Calder Street, Glasgow G42 7RT
 (“the Respondent”)**

**Tribunal Members:
 Martin J. McAllister, Solicitor, (Legal Member)
 Mary Lyden, (Ordinary Member)
 (the “tribunal”)**

Decision

The Respondent has failed to comply with Sections 40,101,105,108 and 112 of the Letting Agent Code of Practice.

The Tribunal determines that a Letting Agent Enforcement Order in terms of Section 48 (7) of The Housing (Scotland) Act 2014 as follows:

The Respondent is ordered to pay the sum of Two Thousand Two Hundred Pounds (£2,200) compensation to the Applicant within twenty eight days of intimation of this Decision.

Background

1. This is an application by Mr Rognvald Livingstone in respect of his tenancy of the Property and the actings of the Respondent in respect of its obligations to comply with the Letting Agent Code of Practice. The application alleges that the Respondent has failed to comply with a number of sections of the Code. The application is dated 14th October 2019 and the matter was remitted to the

tribunal for determination on 13th November 2019. A Hearing was fixed for 10th January 2020 and a case management discussion was held on that date and evidence was not heard.

2. The Respondent submitted written representations on 6th December 2019 and the Applicant submitted written representations on 9th December 2019. The Respondent submitted further written representations on 9th January 2020. Subsequent to the case management discussion, a Direction was issued and parties submitted further representations. A Hearing was scheduled but had to be postponed because of the coronavirus restrictions. A Hearing was held on 21st September 2020 at which evidence was led but the Hearing was adjourned because of lack of time. A further Hearing was held on 26th November 2020 when the evidence was concluded and there was a Hearing to consider submissions on 13th January 2021.
3. At the Hearing on 21st September, certain concessions were made by each party and at the Hearing on 21st January 2021, Mr Livingstone indicated that he was restricting his application to certain alleged breaches of the Code. The original application sought to make a case that individuals be introduced as parties notwithstanding the fact that the Respondent is a limited company. It also suggested that the Respondents should be held responsible for the acting of 1st Lets UK Ltd, the previous letting agents to the Respondents. Mr Livingstone stated that his application would be limited to the acting of 1st Lets Glasgow Ltd from 23rd January 2019. He did not entirely withdraw his position with regard to individuals having culpability.
4. On 13th January 2021, Mr Livingstone said that he was asking the tribunal to focus on certain breaches of the Code and, upon clarification being sought, said that he wanted the tribunal to make findings that the Respondents have breached the following sections of the Code: 16,20,23,26,40,41,85,86,90,101,105,107,108,112,120,124 and 125.
5. On 21st September 2020 Ms Simpson, for the Respondent, conceded that they had not provided a copy of its complaints procedure and had also failed with regard to following a complaints process. She also conceded that the Applicant had not been provided with the Respondent's letting agency registration number.
6. In the application, and in subsequent representations, there had been reference to a failure of being advised of the transfer of letting agent and also matters concerning the handling of data. On 13th January 2021, Mr Livingstone withdrew these aspects of his application.

7. Findings in Fact

7.1. The Applicant was a tenant in the Property from 19th December 2013 to 14th July 2019.

- 7.2. The Respondent was letting agent in respect of the Property from 23rd January 2019 to 14th July 2019.**
- 7.3. The Applicant paid a tenancy deposit of £825 at the commencement of the tenancy.**
- 7.4. The tenancy deposit which was paid on 19th December 2013 was not lodged with an approved tenancy deposit scheme by the landlord of the Property or the letting agent.**
- 7.5. The Respondent paid the sum of £825 to the Applicant in December 2019.**
- 7.6. The Applicant contacted the Respondent after 14th July 2019 making enquiries about return of the tenancy deposit.**
- 7.7. The Respondent did not advise the Applicant that the tenancy deposit had not been lodged with an approved tenancy deposit scheme.**

8. Findings in Fact and Law

- 8.1. The Respondent did not ensure that its letting agent registration number or the fact that its application for inclusion in the register was pending was included in its documentation , as required by Section 40 of the Letting Agent Code of Practice.**
- 8.2. The Respondent did not allow the Applicant an opportunity to be present at a check- out visit at the termination of the lease, as required by Section 101 of the Letting Agent Code of Practice.**
- 8.3. The Respondent did not take reasonable steps to come to an agreement with the Applicant about tenancy deposit repayment, as required by Section 105 of the Letting Agent Code of Practice.**
- 8.4. The Respondent did not respond to enquiries and complaints within reasonable timescales, as required by Section 108 of the Letting Agent Code of Practice.**
- 8.5. The Respondent did not have a clear written complaints procedure as required by Section 112 of the Letting Agent Code of Practice.**

The Hearings on 21st September 2020, 26th November 2020 and 13TH January 2021

9. The Hearings were held by audio conference because of the public health crisis. At each Hearing, the Applicant and Ms Joanna Simpson of the letting agent participated. Ms Simpson had advised, at the case management discussion, that she was personal assistant to Mrs Aslam, a Director of the Respondent and had full authority to conduct matters on its behalf. Mr Livingstone and Ms Simpson gave evidence and had the opportunity to cross examine each other.

Preliminary Matters

10. Both parties made written representations and the Applicant lodged written submissions prior to the Hearing on 13th January 2021.

Matters Agreed

11. Tenancy of the Property commenced on 19th December 2013 and terminated on 14th July 2019. The Respondent assumed responsibility as letting agent for the Property on 23rd January 2019. The letting agent prior to 23rd January 2019 had been 1st Lets (UK) Ltd. The Applicant received a cheque from the Respondent for the sum of £825. The deposit paid by the Applicant at the commencement of the lease was £825.

Issues

12. The Applicant had helpfully set out his representations in a structured manner and the tribunal found it useful to follow that when considering the alleged breaches of the Code. Before doing so, it considered that it would be helpful to set out parties' overarching position on certain matters.

The 1st Let Companies

13. In the application and written representations, there was reference to the letting agent prior to 23rd January 2019. At the Hearing on 21st September 2020, Ms Simpson was invited to provide information on the 1st Lets companies. Ms Simpson said that 1st Lets (UK) Ltd and 1st Lets (Glasgow) Ltd (hereinafter referred to "UK" and "Glasgow") operated from the same premises but did so separately. She said that Glasgow was incorporated in 2016. The tribunal noted that the notepaper of Glasgow showed that the same telephone number was used by both and that it stated that the company was established in 1995. Ms Simpson said that this was a printing error. She said that the computer systems and staff of the two companies were separate. Ms Simpson said that she had never been employed by UK. She said that Mr Nadim Iqbal, no longer

a Director of Glasgow, had been a Director of both companies. Mr Livingstone said that, over a period of time, Mr Iqbal had been a director, had not been one and had then been reappointed.

14. Ms Simpson said that UK was dissolved on 22nd January 2019. Ms Simpson said that, prior to its dissolution, UK had written to all the landlords of properties it managed and suggested that they consider instructing Glasgow to manage the properties in place of UK. She said that, in cases where landlords instructed Glasgow, tenants were written to by the Respondent and advised of the situation. Mr Livingstone said that he got no such intimation but that he had received an email on 14th January 2019 which gave details of a new bank account where the rent was to be paid. Mr Livingstone said that, on re-reading the email, he realised that it had been sent by Glasgow but that, at the time, he did not realise the significance and that this meant that there had been a change in letting agent. Mr Livingstone agreed that, after 23rd January 2019, it was Ms Simpson who he contacted on any matter such as repairs.
15. Mr Livingstone said that he understood that the process undertaken by UK to bring about its dissolution had been flawed and that he understood that steps are being taken to restore it to the Company Register.

Notice to Quit and Termination of Lease

16. Ms Simpson said that the Landlord had contacted her and advised that she wanted vacant possession of the Property so that she could have it for her own use. She said that, at that time, the Respondent had no contract with the Landlord. She accepted that the rent for the Property was being paid into Glasgow's bank account. Ms Simpson said that she arranged for the Notice to Quit to be served and that, subsequent to that, Mr Livingstone contacted the office and indicated that, for various reasons, he would like to stay in the Property. The Notice to Quit, which was before the tribunal, was dated 30th January 2019. Ms Simpson said that the landlord had relented and had withdrawn the Notice to Quit. Ms Simpson said that the Landlord's change of mind had been after she, Ms Simpson, had made representations about the Applicant's personal circumstances and his need for the Property.
17. Documentation before the tribunal showed that the Applicant gave notice of his departure from the Property and that the tenancy was terminated on 14th July 2019.
18. Ms Simpson said that the Property was not let after the Applicant's departure and that Glasgow thereafter had no relationship with the Landlord as a letting agent for her. She referred to a green file which contained all the details of the tenancy and she said that this had been given to the Landlord by UK and that it was only after the Tribunal process had commenced that the file had been given to Glasgow by the Landlord.

Breach of tenancy conditions

19. The representations of the letting agent dated 9th January 2020 raised issues of the credibility of the Applicant. Ms Simpson said that Mr Livingstone was running a business from the Property which was in contravention of the tenancy agreement. She referred the tribunal to documents from Companies House which she had submitted and which showed that the Applicant had used the Property as the registered office of a limited company. Mr Livingstone said that it was a family company and that he had simply used the Property as the registered office.

The Deposit

20. Parties agreed that the deposit paid by the Applicant was £825. Mr Livingstone said that he received a cheque for £825 from Glasgow in December 2019. Ms Simpson said that this had been paid to the Respondent by Glasgow because it did not want tenants to be out of pocket and she said that this had been paid from the Respondent's own funds. Mr Livingstone said that he had tried to get information on where the deposit had been lodged and that this had not been forthcoming from the Respondent. Ms Simpson said that she had no information on the whereabouts of the deposit but had established, some time after the termination of the lease, that it had not been lodged with one of the approved tenancy deposit schemes. She said that Glasgow assumed the management of four properties which had previously been managed by UK and she said that she had no information on the deposits for these properties and that Mr Iqbal had dealt with that aspect himself. She said that she had no information on what steps, if any, the Respondent had taken to secure any deposits on assuming the management role from UK. On 13th January 2021, Ms Simpson said that the Respondent had still not recovered from the Landlord the sum of £825 which it had paid to the Applicant. She said that Glasgow had paid £825 to the Respondent because it, and she in particular, did not want him to be out of pocket while she attempted to solve the question of the whereabouts of the deposit. Ms Simpson said that it had been intended to recover this from the Landlord but had not yet been successful in doing so. She said that she had assumed, when Glasgow assumed the responsibility of collecting rent for the Property, that the deposit would have been lodged in an approved scheme. Mr Livingstone made reference to letters which he had been sent at the time of termination of the lease which referred to his deposit and the mechanism for its return. Ms Simpson said that these were standard letters and had been sent when she had thought that the deposit was lodged in a deposit scheme. She said that it was only when she checked matters during the lease termination process that she found that there was no trace of it.
21. Mr Livingstone had lodged copies of communications from the three Scottish tenancy deposit schemes which evidenced that the deposit had not been lodged with any of them. He referred the tribunal to Applicant's production A5 which is an email from Glasgow to him dated 31st July 2019 which states "*.....we can confirm that we are happy to refund you the full deposit of £825 back to your account can you please confirm that once payment is received you are happy that all matters have been resolved and no further action will be taken regarding the tenancy at flat1/2, 27 Fotheringay Road.*" The tribunal was

also referred to Ms Aslam's letter to the Respondent dated 15th October 2019 (Respondent's production 33-35). Part of the letter dealt with the deposit and stated that, in relation to the deposit not being released, "*this was on the request of the Landlord requesting clarification regarding damages outwith normal wear and tear.....there was damage caused to the property..... you also waited until you had successfully moved out of the property and then sent quite a substantial list of issues that you had experienced over your term as a tenant.....*" Ms Simpson said that, at the time, Ms Aslam must have assumed that the deposit could be accessed.

Management of the Property

22. Mr Livingstone was clear in stating that he believed that the Respondents had assumed certain responsibilities as letting agents for the Property. Ms Simpson accepted that, when UK ceased to have involvement with the Property, Glasgow had the rent paid to it and that it then passed it on to the Landlord. She said that Glasgow had tried to have the Landlord enter into a contract with it but that she had refused. Ms Simpson explained that Glasgow hoped to "have the full management of the Property" but that this was not achieved. Ms Simpson said that Glasgow has three types of contract with landlords. The first is that it collects rent and passes it on to landlords after a deduction of 5% commission. The second type of contract is a full management contract where Glasgow deals with arranging repairs to the let property and would have authority to get any repairs done where the cost was under £50. She said that the charge for such a contract would be a commission of 10% of the rent paid. She said that the third type of contract would be where a finder's fee is paid and Glasgow would be responsible for finding a tenant and setting up the lease with the landlord and thereafter taking responsibility for collecting the rent and dealing with repairs etc. Ms Simpson said that there was no signed contract but that Glasgow collected rent for the Property and passed it to the landlord. She said that she had been a contact for the Applicant in respect of repairs and that sometimes the landlord was unresponsive when matters were reported to her. She said that it would be fair to say that the landlord was somewhat reluctant to continue with the tenancy because she wanted vacant possession of the Property and that this seemed to impact on the level of her responsiveness to repairs. Ms Simpson said that she was aware that there were children in the Property and she felt a duty of care to the Applicant and his family. She said that she did not want them to suffer. She said that, on some occasions and without authority from the landlord, she would authorise Glasgow's inhouse maintenance team to carry out repairs because it was the right thing to do. She said that Glasgow has not been reimbursed for some of these repairs. She said that the landlord had challenged Glasgow about some of the repairs which it had undertaken and for which costs had been deducted from the rent before transmission to the Landlord.
23. Ms Simpson was referred to Applicant's production A4 which is a letter from Glasgow to the Respondent dated 16th May 2019 which deals with matters concerning the Respondent's departure from the property. She said that this was a standard letter and she conceded that Glasgow should have sent a different letter in situations where it did not have full management of a property.

24. Ms Simpson was referred to the Respondent's production 33-35 which was a letter from Ms Aslam, a Director of Glasgow, dated 15th October 2019 which states inter alia *"Since 1st Lets (Glasgow) Ltd took over the management of the property, we have received no reports....."* Ms Simpson said that this referred to management in its widest sense- collecting rent and being a contact for repairs issues.
25. Mr Livingstone said that there had been significant issues with the central heating system which had resulted in additional electricity costs because of alternative heating which he had to use.
26. Mr Livingstone referred the tribunal to a letter from the respondent to the Tribunal dated 6th December 2019 wherein it is stated that *"We confirm that we were the Managing Agents of the above property from 30th January 2019 until the claimant lawfully terminated their lease, with notice given in May 2019 and vacated the property on 14th July 2019, after which the property was returned to the Landlord and our management contract ceased."* Mr Livingstone referred to other letters lodged by the Respondent where it refers to them managing the Property. Ms Simpson's evidence was that that any management which the Respondent carried out was in the widest sense and she said that it had always been hoped that Glasgow would get a contract from the landlord to fully manage the Property. She said that, during the whole tribunal process, it had been the Respondent's position that it had collected rent and dealt with responding to the Applicant in respect of repairs and that it had never sought to avoid that.
27. The Applicant's position was that the Respondent had failed to deal with the necessary safety certificates for gas and electricity. He said that, when he left the Property, there were no current certificates in place. Ms Simpson said that Glasgow had requested copies of the certificates from the Landlord and the previous letting agents but that these had not been forthcoming. She said that she only had sight of certificates when the landlord handed her the green file with the tenancy documentation in it and that this was after the tenancy had terminated. She said that the Electrical Installation Condition Report may have been current. She said that, during the tenancy, she had reminded the landlord of her responsibility to have the gas safety check carried out. Ms Simpson said that Glasgow never took on responsibility for initiating electrical and gas safety checks for any properties which it manages. She said that if a landlord instructed it to carry out such checks then it would do so. Mr Livingstone said that it was his understanding that the gas safety certificate was dated March 2017 and it would therefore not have been current for part of his tenancy.

Mr Nadim Iqbal

28. Mr Livingstone made reference to Mr Iqbal's involvement with UK and Glasgow. He said that, at various times, he had been a director of each company. He said that he had been a director of both companies at the same time and that, as director, he must have had knowledge of the issues which are the subject matter of the application. The view which Mr Livingstone set

out clearly was that Mr Iqbal, who had been involved in UK and who had, at various times, been a Director of Glasgow would be in possession of information which would not only assist his case but would also assist the tribunal in determining the application. Mr Livingstone also had concerns about a letter written by Mr Iqbal dated 22nd October 2018 and suggested that its contents were not accurate and that it was not an original version.

The Applicant alleges various breaches of the Code and it is useful to set these out:

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

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

23. You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property.

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

40. You must take all reasonable steps to ensure your letting agent registration number is included in all property advertisements or communications.

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 lettings boards within 14 days of the property being let.

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.

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.

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.

Communications and resolving complaints

107. You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act.

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.

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.

120. You must be able to account immediately to them for all money held on behalf of clients

124. You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).

125. You must pay or repay client money as soon as there is no longer any need to retain that money. Unless agreed otherwise in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.

The following adopts the headings used by the Applicant and deals with evidence and specific representations made by the Applicant and by Ms Simpson on behalf of the Respondent.

Failure to lodge the tenancy deposit in one of the approved tenancy deposit schemes and answer queries about the deposit

29. The Applicant's position was clear in his view that the Respondent had not properly dealt with the tenancy deposit of £825 and had failed to answer queries about the deposit. Mr Livingstone said that the deposit had not been lodged with one of the approved tenancy deposit schemes. The Respondent's position was also clear and that was that it never had the deposit and did not know what had happened to it. Ms Simpson said that, prior to her enquiries, she had assumed that the deposit had been appropriately dealt with by UK. She said that, at the time UK ceased trading, she assumed that the Landlord would have been advised to ensure transfer of the deposit. Ms Simpson said that she had been hampered in her enquiries because Glasgow did not have any of the paperwork pertaining to the tenancy because the documentation had been returned to the Landlord by UK.
30. Ms Simpson said that any correspondence sent to the Applicant by Glasgow which included references to a deposit were sent prior to it realising that the deposit could not be found. Mr Livingstone referred the tribunal to the letter which he had received from Glasgow dated 20th December 2019 and to the phrase "*.... Cheque for £825 as full reimbursement of the Deposit Amount held on the above property.*"

Mr Livingstone said that the fact that Mr Iqbal had been a director of Glasgow for six months during 2020 reinforced his view that he could have provided information to Glasgow with regard to the deposit. Mr Livingstone said that, as far as he is concerned, Glasgow did have the deposit and that it delayed in dealing with his requests with regard to it and its return to him. Ms Simpson said that the difficulty which Glasgow experienced was that it did not know where the deposit was.

He asked the tribunal to find the Respondent to have breached paragraphs 26, 105, 108, 120, 124 and 125 of the Code.

Errors and failures in the process for ending the tenancy

31. Mr Livingstone said that there had been errors with the notice to quit in January 2019 where the AT6 form gave the address as "c/o 1st Lets Limited" and he said that there was no such company and that the legality of the notice was questionable. It was a matter of agreement between parties that the notice to quit which had been served did not result in termination of the lease. Ms Simpson's evidence was that, after her intervention, the landlord changed her mind about evicting the Applicant and she said that she did this because Mr Livingstone had contacted her. Mr Livingstone did not dispute that, upon the notice to quit, he had contacted Ms Simpson.
32. Mr Livingstone said that he was not allowed to be involved in the final inspection of the Property after he had given notice that he wanted to terminate the tenancy.

33. Ms Simpson said that the Respondent's processes are now different and that the letter sent to a departing tenant includes an invitation to him/her to participate in the inspection.
34. Mr Livingstone asked the tribunal to find the Respondent to have breached paragraphs 20 and 101 of the Code.

Repeated failure to reply to the Applicant's emails and letters

35. Mr Livingstone had set out his position in the letter to the Tribunal dated 11th March 2020. He said that, in the period from the beginning of August 2019 to the middle of November 2019, he had sent eleven communications to Glasgow and that he only received one response which was an email from Ms Simpson dated 6th August 2019 in which she states "*I shall keep you informed of the progress of my investigation at regular intervals.*" Mr Livingstone said that he received no response from Ms Simpson or anyone else at Glasgow after 6th August 2019 other than a letter from Ms Nighat Aslam, a director, dated 15th October 2019 which has been referred to previously.
- Mr Livingstone said that, despite the statement in the email of 6th August 2019, he was not kept informed of progress. He said that the failure to respond to his enquiries extended over a period of some fifteen weeks. Mr Livingstone said that he had asked about the deposit on eleven occasions and had not been given an answer.
36. Ms Simpson disputed that there had been no response and she referred the tribunal to productions which she said demonstrated that there had been some response. Ms Simpson said that there had been 11 communications from Mr Livingstone in a period of fifteen weeks. She said that the communications were substantial and she said that she would pass each communication to the Director and that typically, a response would be drafted but, prior to its dispatch to Mr Livingstone, another communication would be received from him making additional points and/or seeking more information. Ms Simpson accepted that some of Livingstone's communications were not responded to.
37. Mr Livingstone asked the tribunal to find the Respondent to have breached paragraphs 26 and 108 of the Code.

Failure to properly maintain the Property and failure to provide a copy of the Scottish Government's "Repairing Standard"

38. Mr Livingstone's position was that it was the Respondent's responsibility to ensure that the required Gas Safety Check and Electrical Installation Condition Report were carried out for the Property and that it was culpable because these checks were not carried out.

39. Ms Simpson referred to her earlier evidence when she stated that the Respondent was not responsible for ensuring that such checks were carried out.
40. Mr Livingstone said that there were no operational working and linked smoke alarms in the Property and that there was no carbon monoxide detector.
41. Ms Simpson said that all that a letting agent could do was remind a landlord of her/his responsibility and that, in the particular case of the Property, Glasgow had received no instructions from the Landlord on the matter of detectors.
42. Mr Livingstone said that the Respondent failed to ensure that the Property was kept to a reasonable standard and he said that this extended so far as not ensuring that it was habitable. He said that the central heating system was not effective and did not work properly. He said that there was a defective gas fire in the lounge and that there had been an ongoing issue with a shower. He said that he had had to provide alternative electrical heating sources to ensure that the flat was kept warm.
43. Ms Simpson said that she always had sympathy for Mr Livingstone when he reported defects such as with the heating system and the shower and that she was always aware that there were children in the Property. She said that, with repairs to a property, Glasgow could only do what it was instructed to do by a landlord. She said that she had to press the Landlord to get any repairs done and that, on occasion, she had instructed repairs without authority because of the concern she had for Mr Livingstone and his family. She said that the Respondent had its own in-house maintenance team and that this was sometimes used. Ms Simpson said that the Landlord was "not proactive" in connection with repairs and she said that she had taken it upon herself to have tradespeople go to the Property to deal with matters reported by Mr Livingstone.
44. Ms Simpson said that some of the expenses incurred by Glasgow in having repairs carried out were deducted from rent before its transmission to the Landlord but that other expenses had not been reimbursed. She said that the Landlord had taken issue with some of the expenses which had been incurred in carrying out the repairs.
45. Mr Livingstone said that the Respondent had never provided him with a copy of the Scottish Government's "Repairing Standard." Ms Simpson indicated that she was not sure what Mr Livingstone was expecting in this regard.
46. Mr Livingstone said that the issues with the central heating system had meant that he had additional utility costs with regard to paying for electric heating and he provided details of this.
47. With regard to the issues of maintenance, Mr Livingstone asked the tribunal to find that the letting agent had breached Sections 23, 85, 86 and 90 of the Code.

Applicant's concern about the authenticity of a document submitted to the Tribunal.

48. Mr Livingstone referred to a letter addressed to him from Mr Nadim Iqbal of UK and dated 22nd October 2018 which was submitted to the Tribunal by the Respondent. He said that he never received the letter and he said that he believed that it had been written after the fact. The letter states that UK is to cease trading and that landlords and tenants are being written to. Mr Livingstone said that he had lodged emails/letters from five landlords who stated that they never got such a letter.

Mr Livingstone drew the tribunal's attention to what is stated in the letter in connection with dissolution of UK:

"We are writing to advise that, with regret, 1st Lets (UK) Ltd shall cease trading as of 22nd January 2019."

49. Mr Livingstone said that UK was removed from the Registrar of Companies on 22nd January 2019 but that it was an impossibility that that date could have been known on 22nd October 2018. He referred the tribunal to the process involved in removing companies from the Register which included notices in the Edinburgh Gazette.

50. Ms Simpson said that the copy letter had been found in the green file when it had been returned. She said that she knew nothing about information provided by the Applicant in relation to landlords indicating that they had not received a letter in similar form and she made the point that the Applicant was a tenant and that any communications with landlords would have been different. She referred the tribunal to a letter sent by Mr Nadeem Iqbal to the Tribunal and dated 20th October 2020. The text of the letter is set out in full:

"To Whoever it may concern

I have been contacted by Joanne Simpson of 1st Lets (Glasgow) Ltd in regards to a letter presented to the Tribunal within submissions and questions in regards to the validity of this Letter.

The letter was created and issued to Tenants of 1st Lets (UK) Ltd and the contents of the letters sent were in regards to the dissolution of 1st Lets (UK) Ltd giving a 3 month notice.

I was given a timescale of 3 months by the Accountant for the process to be complete, and having never dissolved a company before I took this from the date the Accountant applied for the company to be dissolved.

In retrospect I now know that this was an error on my part and should have made myself more aware of the full regulations and timescales surrounding the dissolution of a company, however as mentioned this was a process I was not familiar with. The letter was issued with no malice intended, I just wanted to ensure that all Landlords and Tenants were given enough time to make decision regarding the future of their properties and tenancies."

51. Mr Livingstone invited the tribunal to refer the matter for investigation by any relevant authority it considered appropriate.

Submissions

52. Parties asked the tribunal to take into account representations they had made during the hearing of evidence and also the written representations they had lodged.
53. The Applicant asked the tribunal to consider the written submissions he had lodged prior to 13th January 2021.
54. Mr Livingstone said that his written submissions were based on the position advanced by him that the Respondent was acting as letting agent, was managing the Property and, in doing so failed to comply with the Letting Agent Code of Practice. He asked the tribunal to accept that the various activities carried out by the Respondent in relation to the Property evidenced that it had been managing the Property
55. Mr Livingstone described the whereabouts of the tenancy deposit to be a “mystery” which he considered Mr Iqbal would be able to answer. He submitted that the issue of the deposit and its non- inclusion in the list of deposits “handed over” by UK to Glasgow should have been apparent when Glasgow started managing the Property.
56. Mr Livingstone asked that the tribunal consider carefully the issue of the letter purported to be sent by Mr Iqbal on 22nd October 2019 and to consider referring the matter for further consideration.
57. Mr Livingstone said that, in arriving at any determination, he would want the tribunal to take into account the increased utilities costs he had borne and also interest charges incurred by him because of the delay in repayment of the tenancy deposit.
58. Ms Simpson said that she disputes that the Respondent purposely breached the Letting Agents’ Code. She said that it was dealing with the Property on a rental only basis.
59. Ms Simpson said that she did not consider that the Respondent had any liability with regard to the deposit. She said that it would have been paid to UK. She said that she had been shocked when it was discovered that the deposit was not with an approved tenancy deposit scheme. Ms Simpson said that the Respondent had paid the sum of £825 to the Applicant from its own resources and that it had not yet received reimbursement from the Landlord.
60. Ms Simpson said that all communications with Mr Livingstone had been conducted in a timely fashion when he was a tenant in the Property. She said that she believed that the Applicant was well aware of the change of letting agent.

61. Ms Simpson asked the tribunal to accept, from the evidence, that the Respondent had dealt fairly with the Applicant during his tenancy and that she had acted in a caring manner and responded to his needs.
62. Ms Simpson said that she believed the reason that the application had been brought was because of the influence of Ms McKibbens who had been a manager with UK until its dissolution. She said that Ms McKibbens had been on long term sick leave from October 2017 to the dissolution of UK. She said that Ms McKibbens was the responsible manager in UK for part of the period where Mr Livingstone had concerns about the actions of UK. Ms Simpson alluded to an Employment Tribunal case involving Ms McKibbens and she said that she believes that she is trying to sabotage the Respondent and that Mr Livingstone has become involved in this. Ms Simpson said that Mr Livingstone would have dealt with Ms McKibbens when he was a tenant in the Property.
63. Ms Simpson said that she has always been open, transparent and fair with the Applicant. She said that she always responded to any requests for repairs.

Discussion and Determination

64. The tribunal considered the evidence and representations in relation to the overarching themes contained in the application. Mr Livingstone was credible. Ms Simpson was credible although, in some instances, the tribunal considered that she was selective in providing the evidence which she did especially around the issue of the tenancy deposit. It appreciated that she had been put in a somewhat difficult position being an employee instructed by the Respondent to represent it.

Ms McKibbens

65. Ms Simpson referred to Ms McKibbens in her submissions. No evidence was led with regard to her involvement with the Applicant or her employment with UK. It was noted that a copy of an Employment Tribunal Decision had been lodged and that Ms McKibbens was present as an observer at meetings of the tribunal to consider the application. In arriving at its Determination, the tribunal took no regard of the Employment Tribunal Decision or Ms Simpson's submissions in regard to Ms McKibbens. It considered them to be irrelevant.

Notice to Quit and Termination of Lease

66. Mr Livingstone took issue with the terms of the Notice to Quit which had been served on him. It was accepted by Ms Simpson that the wrong details of the agent had been on the documentation. On receipt of the Notice to Quit, Mr Livingstone went to Ms Simpson and made representations to her. The tribunal considered that any defect in the documentation did not cause prejudice to the Applicant. He knew who had sent it and reacted accordingly.

Breach of Tenancy Conditions

67. The tribunal considered the Respondent's position in relation to the Property being used as an address for a limited company to be spurious and not worthy of consideration.

Mr Nadeem Iqbal and the Letter of 22nd October 2019

68. The tribunal required to determine the application before it. The Respondent in that application is 1st Lets (Glasgow) Ltd. It has a legal personality independent of its directors and shareholders. To some extent, this had been recognised by Mr Livingstone and he had modified his original position in this regard. Mr Iqbal was, at various times, an officer of both 1st Lets (Glasgow) Ltd and 1st Lets (UK) Ltd and undoubtedly would have been a useful witness. He did not give evidence.
69. The letter of 22nd October 2019 had been written by UK. The tribunal had no reason to doubt the evidence of Ms Simpson with regard to her finding it in the green file which she referred to. It had no way of knowing who had placed it there or when. It was within judicial knowledge that a certain date for dissolution of a limited company could not be given in advance. It seemed to the tribunal to be stretching credibility that Mr Iqbal could have accurately stated on 22nd October 2019 that the company would cease to trade on 22nd January 2020 and that this would coincide with the date of its removal from the Register of Companies. His letter to the Tribunal of 20th October 2020 did nothing to advance his credibility in this regard.
70. The letter was written by UK and, although it had been lodged by Glasgow in the tribunal proceedings, it was not proved that there had been any bad faith in it doing so. The tribunal did not consider that it should refer the letter to any other body for investigation. That is a matter for the Applicant.

Management of the Property by the Respondent

71. The tribunal accepted that Glasgow did not have a management contract with the landlord of the Property. It did not consider that to be particularly relevant. What was relevant is what the Respondent did in relation to the Property and whether or not it complied with the Code. In considering such matters a tribunal requires to have regard to distinguishing between the responsibilities of a letting agent and those of a landlord. Any letting agent is an agent of a landlord and can only do what is within the terms of that agency.
72. The tribunal accepted Ms Simpson's evidence with regard to the EICR and gas safety certificate. It was entirely credible that a letting agent does not accept responsibility for such matters unless directed to do so by a landlord. In this case, Ms Simpson said that she had reminded the owner of her obligations with regard to the provision of these certificates.

73. The tribunal accepted the evidence of Ms Simpson in respect of her responding to Mr Livingstone when he had raised issues with regard to maintenance issues with regard to such things as the shower and the heating system. She had reported matters to the Landlord and sometimes took it upon herself to initiate repairs without specific authority from the Landlord. Ms Simpson's evidence on why she did this was compelling- that she considered that she had a duty of care to Mr Livingstone and his family. This was accepted by the tribunal.
74. The repairing standard which Mr Livingstone referred to is defined in the Housing (Scotland) Act 2006. Any landlord is obliged to ensure that a house meets the repairing standard at the outset of a tenancy and also during it. The tribunal considered that Mr Livingstone could have easily accessed details of the repairing standard and that there was no obligation on the letting agent to provide him with a copy.
75. Mr Livingstone said that there were defects with the Property. He chose not to submit an application to the Tribunal for it to determine whether the Landlord was maintaining the Property to the repairing standard. He could have done so during his tenancy in terms of the Housing (Scotland) Act 2006.
76. The tribunal did not find that, in respect of management of the Property and dealing with repairs, the Respondent had breached any sections of the Code.

The Tenancy Deposit

77. The tribunal considered this to be the most serious aspect of the application.
78. Section 120-123 of the Housing (Scotland) Act 2006 set out a statutory framework for tenancy deposit schemes.
79. The Tenancy Deposit Schemes (Scotland) Regulations 2011 provided regulations governing tenancy deposits and the obligations on landlords to place such deposits in any one of three approved tenancy deposit schemes and to provide certain information to tenants. The tribunal had regard to these Regulations and the fact that such obligations are to be complied with by landlords.
80. Section 105 of the Code deals with 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.

The tenancy commenced on 19th December 2013. Glasgow did not come into being until 2016. The Applicant's position is that Glasgow had his deposit of £825 and it neglected to give him information in relation to the deposit.

81. It seemed to the tribunal that the purpose of the tenancy deposit scheme is two-fold. It is to protect the deposit and it is also to provide a mechanism of mediation and determination with regard to repayment of a deposit at the end of a tenancy where there is a dispute.

82. The tribunal accepted the evidence of Ms Simpson when she stated that she had assumed that the deposit was with one of the approved tenancy deposit schemes and that she only found this not to be the case after the tenancy came to an end. After the termination of the tenancy, Mr Livingstone enquired about the return of the deposit. No information on the deposit was given to him but there were communications from Glasgow about the possible return of the deposit and referencing problems with the Property which had come to light after his departure. On 24th July 2021, Glasgow emailed the Applicant and referred to various issues with the Property such as cleanliness and condition of paintwork. It states:

"We are currently in contact with your landlord to see how she wishes to proceed. She has sent us in photographs for reference. We will have to discuss this further with you, and the landlord and then we can come to a decision. Until then, we are completely within our rights to hold your deposit until such matters are dealt with."

83. In Glasgow's letter to the Applicant on 15th October 2020, it states that

"In relation to the Deposit amount not being released to you, this was on the request of the Landlord requesting clarification regarding damages outwith normal wear and tear..... However in this instance and as a gesture of goodwill, I would request that you consider my offer of £1,000 to satisfy this case, that is inclusive of the full Deposit amount along with a nominal amount in relation to any inconvenience this process may have caused you and your family and would hope that this would be accepted to avoid a long drawn out process and allow yourself and your children move forward....."

84. In its letter of representation to the Tribunal dated 6th December 2019, the Respondent stated:

"In regards to the Deposit held on the property, the Landlord had requested that a dispute be raised against the return of full amount to the Claimant due to the Landlord Reporting that the walls of the property had been drawn upon and that the properties cleanliness upon vacate was not to their satisfaction.....We have offered to return the Deposit to the Claimant, in full with no deductions and our company has borne the liability and costs to make good the damage and cleaning left by the Claimant upon vacate prior to completion of handover to the Landlord."

85. In its undated representations to the Tribunal (Respondent Production 57), the Respondent states that tenancy deposits were seamlessly transferred where Glasgow took over properties where management contracts were signed in respect of properties previously managed by UK. The representations state:

“In relation to this case and checking over the printout, the applicant’s deposit was not lodged with My Deposits Scotland by 1st Lets (UK) Ltd upon creation of the Tenancy in December 2013 or at anytime afterwards for reasons unknown.”

86. In terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011, a landlord has an obligation to pay a tenancy deposit to the administrator of an approved tenancy deposit scheme within thirty working days of the commencement of the tenancy.

87. It is useful to set out the provisions in the 2011 Regulations which relate to sanctions.

9.- (1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for Scotland for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than three months after the tenancy had ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal for Scotland-

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

88. The application before the tribunal is not one under the 2011 Regulations but their existence is important. It is accepted by the Respondent that the tenancy deposit was not lodged with any tenancy deposit scheme. It is therefore the case that the Applicant would have been able to submit an application to the Tribunal under Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 seeking an order under Regulation 10 of the 2011 Regulations had he been aware that the tenancy deposit had not been lodged with a tenancy deposit scheme. Such an application could only be made no later than three months after the end of the tenancy. He could therefore only have submitted an application prior to 13th October 2019.

89. There was no dispute between the evidence of the Applicant and the Respondent in relation to the Applicant’s desire for return of the deposit after the tenancy had terminated. The Applicant said that he has asked about return of the deposit on eleven occasions. It is also clear from the evidence that the landlord had an issue about return of the deposit because of the condition of the Property.

90. It appeared to the tribunal that a responsible letting agent, having knowledge that there was an issue with return of a deposit would have considered the dispute mechanism used by the tenancy deposit schemes. In this case, it was clear that most of the communications Mr Livingstone had with the Respondent after the termination of the tenancy was in relation to return of his deposit. The Respondent should have made enquiry about the deposit and reported to the

Applicant. In its letter to the Tribunal of 6th December 2019, the Respondent stated that *“the Landlord had requested that a dispute be raised against the full amount to the Claimant.*

91. It is not clear when the Respondent found that the deposit had not been lodged with a tenancy deposit scheme but, when a dispute about its return had been identified, it should have been aware at that time and, having discovered that the deposit had not been lodged with a scheme, it had a duty to communicate this to the Applicant since it would have known of the time restraints applicable to any application to seek an order under the 2011 Regulations. The tribunal considered that the interaction of owners of UK and Glasgow may have led Glasgow not to communicate this important information to the Applicant and it also noted that the date of the letter to the Applicant offering to settle the deposit matter was two days after the latest date that the Applicant could have submitted an application under Rule 103 of the 2017 Regulations.
92. The tribunal could not understand why, on 24th July 2019, the Respondent stated to the Applicant “.....we are completely within our rights to hold your deposit until such matters are dealt with.” The tribunal considered that it is clearly not within the power of a letting agent to “hold” a deposit.
93. The tribunal considered that the Respondent had failed in communicating with the Applicant in respect of matters relating to the tenancy deposit and in failing to take reasonable steps to come to an agreement with the tenant about repayment of the deposit.

Communication and Complaints Process and Letting Agent Registration Number

94. The tribunal accepted that there had been a number of communications from Mr Livingstone which had not been responded to by the Respondent. It did have some sympathy with Ms Simpson’s position that, just when the Respondent might be on the point of responding, yet another email would arrive from Mr Livingstone. Nevertheless, responses to his requests were poor particularly with regard to the tenancy deposit where delay was prejudicial to him.
95. The Respondent accepted that there was no complaints process and that the details of letting agent registration number (or that it was pending) was not included in its documentation.

Moving Out procedure on termination of tenancy.

96. The Respondent accepted that the Applicant had not been given the opportunity to be present at the inspection on termination of the tenancy and Ms Simpson had said that its procedures had now been changed.

Disposal and Determination

97. The tribunal determined that the Respondent had breached Sections 40, 101, 105, 108 and 112 of the Letting Agent Code of Practice.

It considered each section of the Code which the Applicant had invited it to make a determination.

Overarching standards of practice

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

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

23. You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property.

The tribunal did not consider that the Respondent had breached these sections of the Code. It had no evidence before it that the business was not conducted in a way which was not compliant with all relevant legislation and no evidence was led which supported that it did not apply its policies and procedures consistently and reasonably. In relation to Section 23, the tribunal did not consider that the Respondent's staff did anything wrong in connection with the maintenance of the Property and, in particular, in relation to safety checks and certificates.

Marketing and advertising

99. 40. You must take all reasonable steps to ensure your letting agent registration number is included in all property advertisements or communications.

It was accepted by the Respondent that it had not complied with this section of the Code. No letting agent registration number was included. The application for inclusion in the register was pending and this information was not disclosed on relevant documentation.

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 lettings boards within 14 days of the property being let.

No evidence was led on this aspect and the tribunal made no finding.

Carrying out repairs and maintenance

100. **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.*

The tribunal accepted that the Respondent did deal with responding to repairs intimated by the Applicant. There was an issue about the Landlord's willingness to undertake repairs. No evidence was led by the Applicant to indicate that he ever had any difficulty in notifying the Respondent about repairs and maintenance. The tribunal did not find that the Respondent had any responsibility for initiating safety checks or certification.

Inventory/check out

101. **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.*

The parties agreed that the Applicant had not been given the opportunity to be present at the check-out visit. The Respondent is in breach of this section of the Code.

Tenancy Deposits

102. **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.*

The Respondent thought that it managed the tenancy deposit because, until a certain point (the date of which is unknown) it assumed that the deposit was one which had transferred from the previous letting agent. It wrote to the Applicant more than three months with a proposal to pay the deposit to him. It took an unreasonable time to come to any agreement and is in breach of this section of the Code.

Communications

103. 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.*

Complaints resolution

104.112. *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.*

There was no written complaints procedure and the Respondent is in breach of this section of the Code.

The Respondent did not respond to enquiries and complaints within a reasonable timescale and, in relation to the tenancy deposit, the Applicant was prejudiced. The Respondent is in breach of this section of the Code.

Client Accounts

105. 120. *You must be able to account immediately to them for all money held on behalf of clients*

124. *You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).*

125. *You must pay or repay client money as soon as there is no longer any need to retain that money. Unless agreed otherwise in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.*

There was no evidence that the Respondent was ever holding money belonging to the Applicant. The Respondent thought that the deposit was held in a tenancy deposit scheme and when it discovered that it was not, it still did not hold any money due to the Applicant.

Disposal

106. Other than in relation to communication, the findings of breaches of the Code are relatively minor.

The Respondent's failures to respond to the Applicant were significant, particularly in relation to the deposit. If it had responded timeously about the deposit, the Respondent, on discovering that the tenancy deposit had not been lodged in a tenancy deposit scheme by the Landlord, could have submitted an application to the Tribunal under Rule 103 of the 2017 Rules. The tribunal was not considering an application under Rule 103 but, in considering an appropriate disposal considered that it was appropriate to take into account a loss of opportunity in making such an application. In an application to the Tribunal under the Tenancy Deposit Regulations, the only discretion is to the level of award to be paid and this could have been up to three times the amount of the deposit. It is entirely possible that a tribunal, in considering such an application, would have taken into account the fact that the deposit had been unprotected throughout the term of the tenancy- a period of five and a half years. Balanced against that was the fact that the Applicant could have made enquiry of the tenancy deposit schemes earlier and could have submitted an application prior to the end of the three months period from the end of the tenancy. The tribunal had some sympathy with the fact that the Applicant would have been entitled to expect that the tenancy deposit had been properly dealt with at the outset of his tenancy.

The tribunal considered it appropriate that compensation should be paid to the Respondent in respect of the breaches of the Code and that, in all the circumstances, a sum of Two Thousand two hundred pounds (£2,200.00) is reasonable.

**Martin J. McAllister
Legal Member
19th February 2021**

