



**Decision 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/21/3143

Re: 2/1, 117 Berkeley Street, Glasgow, G3 7HR
("Property")

Parties:

**Miss Georgia Binnie, 2/1, 117 Berkeley Street, Glasgow, G3 7HR
("Applicant")**

**Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL
("Respondent")**

Tribunal Members:

Pamela Woodman (Legal Member and Chair) and Linda Reid (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/LA/21/3143 took place at 10am on Wednesday 23 March 2022 by telephone conference call ("**the CMD**"). Neither the Applicant nor the Respondent was present, or represented, at the CMD. The clerk to the Tribunal was Mollie Yeats.

Background

1. The Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("**the Tribunal**") under section 48 of The Housing (Scotland) Act 2014 ("**2014 Act**") and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("**HPC Rules**") which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 95 (*Application to enforce letting agent code of practice*) of the HPC Rules.
2. The following paperwork accompanied the application form:
 - a. Copy chain of e-mail correspondence (with no attachments), including e-mails from the Applicant dated 25 October 2021 and 16, 18, 23 and 28 November

2021 (addressee not shown on most) and responses from Mark Kennedy (apparently of the Respondent) on 23 and 28 November 2021;

- b. Copy “Letting Agent Code of Practice Notification Letter” from the Applicant to the Respondent dated 14 December 2021 (“**Notification Letter**”) which referred to paragraph 108 of the Code and stated that the reason why the Applicant believed that the Respondent had not complied with the Code was:

“I lodged a complaint on 7 November after receiving no response to my emails/calls regarding damage done to my walls by contractors who were replacing my heaters. I received no correspondence at all after 24 hours, 2 days or 5 days (as set out in your complaints procedure). I then called Lowther after 5 working days and was promised a call back, I did not receive one. Since then I have tried to call/email to no avail and the problem is still outstanding.”

- c. Copy Post Office Ltd. certificate of posting dated 14 December 2021 to building 25 at postcode G11HL. Upon checking the reference on the certificate of posting on the Royal Mail online tracker, the Tribunal was satisfied, on the balance of probabilities, that the post had been delivered on 15 December 2021 at around 9.16am and signed for by MCCALL. The Tribunal noted (having checked the details on the Companies House website) that the address to which the post was addressed was the Respondent’s registered office address.

3. The additional paperwork was provided with the case papers:

- a. Copy e-mail correspondence dated 7 January 2022 between the Tribunal’s administration team and the Applicant requesting further information in the context of section 48(4) of the 2014 Act and requesting a copy of the tenancy agreement.
- b. Copy private residential tenancy agreement between the Applicant and Miss Fiona Mcgregor Cameron (together as the tenant) and Lowther Homes Limited (as the landlord) with a commencement date of 7 July 2021 and purporting to have been signed on behalf of the landlord on 6 July 2021 (“**Tenancy Agreement**”).
- c. Further chain of e-mail correspondence, including e-mails from the Applicant dated 13 November and 2 and 10 December 2021 and e-mails from Vicky Aitken (apparently of the Respondent) dated 26 November 2021.

4. A notice of acceptance of the application was issued by the Tribunal dated 19 January 2022 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 17 December 2021 and 11 January 2022.

5. The Respondent and the Applicant were each respectively sent a letter by the Tribunal’s administration team dated 31 January 2022 confirming that the application had been received, intimating the date of the CMD and providing further information about making representations.

6. No written representations had been received by the Tribunal in response to the letter of 31 January 2022 as at the date of the CMD from either the Respondent or the Applicant.

The Application

7. In the (undated but signed) application form received by the HPC administration team on 17 December 2021, the Applicant stated that she was the tenant of the Property and that the Respondent was the letting agent with letting agent registration number LARN1903007.
8. In the application form, the Applicant confirmed that she had notified the Respondent of their failure to comply with paragraph 108 in section 7 of the Letting Agent Code of Practice (“**Code**”).
9. Paragraph 108 is in the following terms:

“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.”

Relevant legislation

10. In terms of section 48 (*Applications to First-tier Tribunal to enforce code of practice*) of the 2014 Act:

“(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.”

Findings of fact

11. The Property (along with other properties) was registered under title number GLA67516 and the registered proprietor of the Property was the Respondent.
12. The Tenancy Agreement stated that the landlord was the Respondent.
13. The Tribunal found that this was consistent with the Respondent being the registered proprietor of the Property.

14. The relationship between the Applicant and the Respondent was one of tenant and landlord.
15. In this particular relationship with the Applicant in relation to the Property, the Respondent was not a “relevant letting agent” in terms of section 48(2)(a) of the 2014 Act.

Reason for decision

16. In this particular relationship with the Applicant in relation to the Property, the Respondent was a landlord and not a “relevant letting agent” and, accordingly, the Code did not apply and so could not be enforced against the Respondent.

Observation

17. The Tribunal noted that the Respondent was registered as a letting agent and so, where it was acting in the capacity of a letting agent on behalf of a third party landlord, it would be subject to the Code. With this context in mind and by way of observation only based on the evidence provided to the Tribunal (which the Respondent had the opportunity to challenge but did not do so):
- a. it was of great concern to the Tribunal that the Respondent appeared to be failing to communicate with the Applicant as its tenant; and
 - b. had the Code applied (which it did not for the reasons given above), the Tribunal would have found the Respondent to be in breach of paragraph 108 of the Code.

DECISION

The application to enforce the Code against the Respondent in respect of the Property under case reference FTS/HPC/LA/21/3143 was refused. Nothing in this decision precludes the Applicant from applying to the Tribunal under any other HPC Rule which may be relevant to the relationship between a tenant and a landlord and applicable to the circumstances.

RIGHT OF APPEAL

In terms of Section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

██████████

23 March 2022

Chair

Date