**Case Study - Dispute over Tenant Referencing**

**Key Topics** – Tenant Referencing, Terminating Agreements, Complaints Handling

**Award: -** £512.64

**Case Details**

The Landlord instructed the Agent to let his property which included finding a suitable Tenant. He completed all sections of the ‘Landlord’s Instruction Form’ – a document designed by the Agent to help lay out the Landlord’s criteria for choosing an appropriate Tenant. However, when the Agent sourced a prospective Tenant, the Landlord had his reservations. The Tenant in question had a child which was one of the restrictions that he had stipulated on the instruction form.

The Landlord and Agent were then engaged in a telephone conversation during which the relationship between the parties began to break down. The Landlord insisted that his reluctance to rent to a family with a child had been previously outlined on the instruction form. On the other hand, the Agent claimed that no such instructions had been received and they had fulfilled their contractual obligations. Both parties maintain that the other was belligerent and uncooperative.

During the conversation, the Landlord agreed he would proceed with the tenancy but would like the Agent to run additional checks and the property to remain on the market in case a more suitable applicant could be found.

The Agent then pointed out that the Landlord’s request to undertake further referencing, including meeting the prospective Tenant, was contrary to their terms and conditions. They also affirmed that their terms permit them to “reserve” the property for the prospective Tenant and withdraw the property from being advertised until the Tenant was accepted or rejected from the process.

After the conversation ended, the Landlord sent an email to outline his position as above but received no reply. Shortly after, the Landlord received a letter from the Agent informing them that they had dis-instructed themselves, following what they perceived to be unreasonable behaviour.

The Landlord was deeply dissatisfied with the Agent’s response. He raised a complaint with the Agent but this was not responded to until 10 days later. He believed this had materially disadvantaged his position because he would need to instruct a new Agent and the delay in renting the property amounted to loss of income. He decided to escalate his complaint to the Property Redress Scheme.

**Evidence**

From the Complainant: Copy of the signed agency agreement, Letter and e-mail correspondence. From the Agent: Copy of signed agency agreement, copy of their Terms and Conditions.

**Head of Redress Findings**

Following a thorough review of all the evidence provided, the Head of Redress concluded that:

1. Regardless of whether the instructions from the Landlord were initially received, the Landlord made his position clear in later correspondence. His request was not deemed unreasonable by the scheme and his email presented an opportunity for the parties to negotiate. However the Agent did not respond to the Landlord’s email or attempt to source an alternative Tenant.
2. The terms and conditions quoted by the Agent were found to actually relate to prospective Tenants, not their Landlord clients. In the absence of any T&C’s relating to an agreement between the Landlord and the Agent, there was no evidence that the Landlord was made aware of the Agent’s conditions relating to the marketing of the property or their rules on referencing.
3. Rather than come to a mutually acceptable resolution with the Landlord, the Agent terminated the contract with little explanation and without due regard to their clients interest. In the absence of a complaints procedure, the Landlord was delayed further in finding a new Agent to find a Tenant.
4. The Head of Redress calculated that the period whilst the Agent was under instruction and the subsequent delay following the contract termination due to the Agent’s poor complaint handling equated to 24 days lost rent. The Agent was instructed to financially compensate the Landlord for this loss. In addition, the Agent was advised to revise their Landlord Instruction Form to include their terms and conditions and to put in place a robust complaint process.

**Key Points from the Case**

* It is absolutely not best practice to ignore or fail to respond to a complaint and Agents should have an internal complaints procedure that meets industry standards.
* Terms and Conditions should be clearly outlined and made available to the client in full before any agreement is signed.
* Even when terminating an agreement, an Agent must make a full explanation to their client and justify why they are unable to fulfil their contractual obligation.