

COMPLAINANT: DW

ACCOMMODATION PROVIDER: FRESH STUDENT LIVING

PROPERTY: QUEBEC HOUSE, KINGSTON UPON THAMES

DW complains on behalf of her son, who was the tenant, that there was a breach of the Code of Standards in regard to the disruption caused by building works.

I can summarise the complaint by quoting part of an email sent on 7th March 2016 by DW to Mellissa Brown, Operations Manager for London and the South: *...the main body of our complaint is over the excessive noise and disruption you have created by doing a major refurbishment to the building...at no stage prior to signing the tenancy agreement were we informed that this major refurbishment work would be taking place during the course of the tenancy...advising your tenants a month before works started was not sufficient...had we been notified that you were intending to carry out such a major refurbishment at this most crucial time of year [early February through to May 2016], C would not have rented at Quebec House.*

DW relies on Sections 3.0 and 9.0 of the Code.

SECTION 3: MARKETING PRIOR TO LETTING PROPERTY TO TENANTS

Managers will ensure that

3.0 All property details are reported accurately without misrepresentation to prospective tenants. This will include details provided in brochures and websites. Where a development is being promoted in a University prospectus then the organisation will request the University to make clear if the operator of the scheme is not the University and will also request the University to state clearly the management organisation charged with both tenant and building responsibilities;

9.0 Within four weeks of receipt of any written complaint from a tenant (or their representative) they rectify any breach of this Code of Standards or, where any allegations are contested, enter into correspondence with the tenants or their representative;

Before I analyse the complaint I want to make clear that I can only consider whether there have been breaches of the Code; and where there are such breaches, what the consequences should be. I cannot adjudicate on contractual disputes nor can I make any orders about compensation. For those matters the complainant's remedy is through the courts.

The substance of the complaint and the reply from the accommodation provider are set out in an exchange of emails. The parties have had a full opportunity to deal with the issue and the points raised by the other side. DW produced medical evidence

which stated that the medication C was prescribed for anxiety had to be doubled *due to recent accommodation conflict*. DW also produced a copy of the planning application made by Fresh Student Living on 28th July 2015. Permission was granted for the works on 1st October 2015.

I have considered all the written evidence very carefully. I am not going to set it out here in any detail - the emails are clear and straightforward. UNIPOL has produced a succinct summary which can be read in conjunction with my decision.

DW complained in an email of 14th February 2016, where she described a number of problems. I quote part of this email in relation to the disruption: *I am pretty sure that it is a requirement to notify tenants of any impending work prior to their signing a Tenancy Agreement as this will then give them the option to find something else if this is going to be inconvenient. Nothing was ever said and the first we were to hear about such disruptive work was on the 5th February 2016 after the work had started by means of an e-mail from the manager of the block announcing "We're Having a Makeover"!*

The Operations Manager replied in some detail to the original complaint in an email of 2nd March 2016. The email starts: *Please accept my sincere apologies that you are unhappy with the current situation and I would like to address your concerns and help resolve or rectify any outstanding issues*. It goes on to deal with the problems raised by the complainant, with detailed responses regarding the refurbishment, the Code of Standards, anti-social behaviour management (including the use of drugs), the washing facility and residential accommodation assistants/wardens. The Manager makes the point that they had not been made aware of the problems until DW raised them in her complaint.

The email concludes: *Your request for a refund has been denied as we believe we have given the Quebec residents adequate notice of the refurbishment and the refurbishment is something that the residents will benefit from...*

Following receipt of the medical evidence Fresh Student Living agreed to release C early from his tenancy. An offer of some rent refund was made, but the matter was not resolved at that stage. It appears that C lost opportunities to take up alternative accommodation because of this.

I broadly accept DW's evidence on the issue of misrepresentation and I am satisfied that both the above sections of the Code have been breached. The nub of the complaint is, in DW's own words: *had we been notified that you were intending to carry out such a major refurbishment at this most crucial time of year, C would not have rented at Quebec House*. In my opinion that is an example of what reporting details *without misrepresentation* is meant to ensure: that prospective tenants make a decision whether to rent or not based on full and accurate information. Although the application for planning permission had not been granted before the start of the tenancy, there is evidence of Fresh Student Living's intentions to refurbish: they must have known this would be disruptive.

The Code is a broad set of standards to ensure good management and sections are not to be analysed in too technical or legalistic a way as if they were legislation. The

sentence *All property details are reported accurately without misrepresentation to prospective tenants* means **tenants should be told exactly what they are getting**. I read *without misrepresentation* to include full disclosure, such that prospective tenants know what to expect. It seems clear that Fresh Student Living intended to carry out a refurbishment, which was bound to affect the tenants' living conditions. Prospective tenants should have been warned before they agreed to rent. In my view, not to have informed them of this was a breach of Section 3.

I quote again part of the initial response to the request for a refund: *Your request for a refund has been denied as we believe we have given the Quebec residents adequate notice of the refurbishment and the refurbishment is something that the residents will benefit from...*The complaint, under the Code, is not about adequate notice but about accurate information before the tenancy is entered into. I regret to say that I think the response misses the point of the complaint.

Fresh Student Living agreed to a refund after medical evidence had been received. There was some delay in resolving the issue. The last piece of correspondence I have is a letter from Fresh Student Living to DW dated 27th May 2016 which states that they have agreed to release C from his tenancy agreement early, with some refund. The letter ends: *To release your son from his tenancy we do need vacant possession and are unable to process a refund until C has fully moved out of the room.*

There was clearly an impasse here: Fresh Student Living required vacant possession before any refund; C needed the refund to pay towards the new accommodation. I find Section 9 is also breached as they did not rectify the breach of Section 3 within 4 weeks of receipt of the complaint.

In mitigation, I accept that refurbishment is not always easy to manage. Further, Fresh Student Living did not quibble with the medical evidence and agreed to release C, though there has been some delay in bringing the matter to a conclusion. I hope it has now been sorted out.

I uphold the complaint.

As Chair and following consultation with the Vice-Chairs I have decided that Fresh Student Living's membership of the Code should not be suspended. The complaint was not brushed aside. I did see evidence of an attempt to get to grips with the issues and I would rather Fresh Student Living remained in the Code, committed to avoiding similar problems in future.

If the National Codes Administrator can be given an assurance by senior management that lessons will be learnt from this complaint and from what I have written, there should be no further action.

JOHN MARTIN
CHAIR OF THE COMPLAINTS TRIBUNAL

4th July 2016

