



## **CASE REVIEW**

**[REDACTED]**  
**[REDACTED] AGAINST**

**ACORN LIMITED**

Reference: [REDACTED]

28 April 2020

**COMPLAINT BY [REDACTED]  
AGAINST ACORN LIMITED**

**BACKGROUND**

This case concerns the complaint by [REDACTED] (the Tenants and Complainants) against Acorn Limited (AL) raised in connection with the performance of their branch in Greenwich, London whilst attempting to let [REDACTED] Leyland Road, London, SE12 8DW (the Property).

I will consider the specific complaints within the TPO Complaints Form and, where relevant, the information in the Case History (although I may not necessarily comment on it in my Review). The Complainants have already been sent a copy of the Agent's submission letter dated 23 January 2020 and their response will be taken into account in reaching my findings.

**THE ISSUE**

The issue that I have been asked to examine concerns the Property not being ready for the Complainants to move into.

The Complainants have stated that it was agreed that a list of works would be completed before their tenancy start date but their requests had either not been started or were not finished. The Complainants say they allowed a further six days for the works to be completed but it became clear that this would not be possible and so asked to be released from the contract. The Agent has refunded back the tenancy costs but the Complainants consider that they have incurred additional expenditure such as storage, accommodation and perishable food wastage, which they wish to be reimbursed for.

AL's response is to confirm that most of the works had been completed and the Property was habitable for the Complainants to move into. The Complainants added more items to their list of requirements on the tenancy start date and their contractor was unable to meet the deadline the Complainants wanted. AL accepted that there were some outstanding issues and agreed for the tenancy to be rescinded and refunded back all the tenancy costs to resolve the complaint.

**OMBUDSMAN'S FINDINGS**

Firstly, I must emphasise that the Tenancy Agreement is an agreement between the Tenants and the Landlord. It is the Landlord who would agree any required repairs or works needed. An Agent's responsibility, under the Code, is to ensure that they act in accordance with their Landlord client's instructions, whilst treating the Tenant fairly. I would expect an Agent to promptly forward on any pre-tenancy requests to the Landlord

and then act in accordance with the instructions that they receive from the Landlord, keeping both parties updated along the way.

I have taken into account the various arguments and counter arguments presented by the Complainants and AL. I shall make it clear to both parties that the fact I have not alluded to the fine detail of every point raised does not mean that I have not considered those points. The points that I have chosen to highlight are those that I consider best represent my overall reflection of this case and which also provide the underlying principles of my decision.

It is not disputed that the Complainants made some pre-tenancy requests for works to be completed before they moved into the Property. From reviewing the correspondence, the Complainants emailed their pre-tenancy requests in detail to AL on 18 February 2019 as there was not enough space on AL's offer form. AL sent an offer confirmation letter on the same date which confirmed within the negotiation section "*Two bathrooms to be repaired. Garden fence to be repaired*". This narrative did not fully cover all the Complainants' requests but it is possible the offer confirmation letter was sent before the Complainants had provided their detailed list.

On 20 February, AL replied back to the Complainants' emailed request list to say: "*All agreed with the Landlord*". On 13 March, AL sent a detailed email regarding some specifics to the tenancy which included adding a pet clause for three rabbits and also clarified that the detailed list of pre-tenancy requests would be completed. The tenancy start date was agreed as 30 March 2019, which was subsequently changed to 1 April. I am satisfied that it was a reasonable expectation from the Complainants to believe that all the works would be completed for the tenancy start date.

In respect of the requests that needed to be completed, AL have provided a copy of a quotation from their contractor dated 18 March 2019 and also an email from the Landlord approving the cost to evidence that the works had been agreed. However, I have noticed a discrepancy. While the quotation does breakdown and supply a cost for most of the pre-tenancy requests made by the Complainants, it does not include any costs for repairs to the fence. The Complainants had requested the following:

*"The fencing in the back garden needs to be repaired so that it is structurally sound and there are no gaps."*

AL have provided a separate quotation for fence and gate repairs but it is dated 21 May 2019, which was more than two months later and after the let had been cancelled. Within an internal email contained within their company file, AL have made reference to the Complainants being aware that the fence would not be completed until after their first week in the Property. There is no evidence that AL had any conversation with the Complainants to advise that the fence would not be repaired before they moved in. The only documented conversation regarding a request that was not going to be completed in time related to a bathroom window. Within an email dated 28 March 2019, AL advised the following:

*"Following on from my earlier emails, I have been to the property myself today to check on the contractors. I can definitely assure you both the works are looking good and the*

*contractors have confirmed that they will be finished tomorrow and the cleaning is being done tomorrow afternoon. However, there is one small issue that the window in the main bathroom has not been replaced and the issue lies with the window manufacturers. They sent the window however it was the wrong size and therefore would not fit into the space. The contractors have said that the correct window will be with them early next week (either Monday or Tuesday) and they will be able to install it once received. They will work around yourselves and if you could confirm a date that would be best for the works to be done."*

There is no mention of the fence. Within their submission letter, AL have commented that the repair to the fence and garden gate did not happen as they were in a very poor condition so new fence panels and a gate were installed afterwards. As AL were aware that the Complainants had multiple pet rabbits which they would be keeping in the garden, this was a key repair to ensure that their pets did not escape and the photographs provided show it in a very dilapidated state. No substantiation has been provided that AL sought quotations for the fence repair work prior to 21 May, advised the Landlord that repairs to the fencing had been requested or that AL told the Complainants that the job was larger than expected and would be delayed. It is also evident that no action was taken after the fencing concern was re-raised as an issue on the date that the Complainants were due to move in.

In respect of the cleaning, the Complainants had requested a full professional clean including the carpets. While the previous Tenants were responsible for a professional clean when they had vacated, AL arranged for the cleaning to co-incide with the end of the contractor's works and the day before the Complainants were due to move in. The Complainants have provided some photographs to show areas where there was still builders dust but AL have provided me with a copy of the inventory and schedule of condition completed on 30 March which shows the property to be in a clean condition, with the exception of the curtains and some carpet stains which could not be removed. I am satisfied that, on the whole, the Property was clean with a few missed areas.

AL state within their submission letter that they arranged for the cleaners to return to the Property to address any missed areas but they were turned away by the Complainants. The Complainants have refuted this allegation saying that the cleaners did not re-attend. There is also a disagreement where AL say their contractor was completing some outstanding works at the Property on 3 April but the Complainants say they were removing some items from the garage to put into storage but the contractor was not there. Where information that has been provided to the Office is incomplete, inconsistent or contradictory (as some of it is here), I cannot conclude with any certainty exactly what was discussed. The only satisfactory way the truth can be decided upon exactly what happened is within a Court of Law.

Turning now to the works required on the bathrooms, the Complainants had asked for all the sealant to be replaced and any sign of damp/mildew to be removed. It appears that the Landlord was planning on some bathroom refurbishment anyway and the quotation approved was for a new shower, fan, basin and toilet with new tiles, sealant and paint within the ensuite bathroom. The main bathroom was to have a new shower and fan, replacement window, replacement sealant throughout and to be repainted. This is over and above what was requested by the Complainants.

The Complainants have provided photographs to show that the new ensuite had been fitted but some areas had not been finished as skirting board was missing, the sealant had not been replaced, the flooring room divider was missing as was part of a light switch fitting. It appears that the contractor ran out of time to complete the final parts. Nevertheless, I consider it likely that the contractor and AL would have been in contact and AL should have known that a few areas needed further attention, especially as these are noted in the inventory. AL had an obligation to make the Complainants aware of any works that had over run or that would not be fully completed before they moved into the Property. The telephone conversation from 28 March regarding the bathroom window had indicated that the contractor would be fully finished.

On the tenancy start date of 1 April and after looking around the Property (and in addition to the pre-tenancy requests previously agreed that remained outstanding), the Complainants provided a further list of issues that they wanted to be resolved which included replacing the spotlights in the kitchen, repainting a bedroom, repairs to wardrobe doors that were falling off and tidying to the garden. A further quotation was sought, which the Landlord agreed to, but the timescales for some of the issues to be resolved did not suit the Complainants and it was agreed that the tenancy would be cancelled and the Complainants would be fully refunded.

The Complainants wanted to end the Tenancy Agreement on the basis that the Property was not to the standard that had been agreed upon. AL's stance is that the Property was not uninhabitable, the Landlord had agreed to the additional works so the Complainants could have moved in. I would agree with both parties in certain respects. The Property was not uninhabitable and was clean in most area (and areas which were not could have been easily and quickly resolved). The sealant and mould issues were very minor in small areas and the light fittings and bathroom window would not have had any detrimental affect in the short term. However, the fencing not being fixed was a larger problem due to the Complainants' pets which meant they would not be able to leave their hutches.

Nevertheless, I consider it likely that AL knew that all the pre-tenancy requests would not be completed in time (or should have double checked with the contractor due to the volume of works) but did not divulge the information to the Complainants prior to their Tenancy Agreement starting. Instead AL had implied on 28 March that everything was on track. I accept that on occasion jobs may take longer than originally anticipated or contractors let an Agent down but better communication may have avoided this situation occurring. More specific discussions should have been undertaken and expectations should have been set with the Complainants to confirm what requests could feasibly be completed before the tenancy started. No conversations were had just before the tenancy start date to see whether the Complainants wished to further amend their tenancy start date and delay their move in until the Property was fully ready.

I also consider that there was a missed opportunity to remedy some issues that would not have been noted until the previous Tenants had vacated, such as the damaged wardrobe doors and stained curtains. There is no evidence that any issues raised from the previous Tenants' check out were raised to the Landlord for resolution before the Complainants were due to move in. While AL did not view the Property as being in a poor condition and I agree that it was not uninhabitable, I can fully understand why the Complainants were distressed as their tenancy requests had not been fully met. I do not consider that AL have

provided a service consistent with fairness, integrity and best practice in line with paragraph 1e of the TPO Code of Practice for Residential Letting Agents. AL's conduct in this case has fallen short of best practice and is contrary to the principles of the Code.

I, therefore, support this complaint.