

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision on Homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/PF/17/0129

**Flat 0/1, 2 Abbey Place, Paisley, PA1 1EG
("the Property")**

The Parties:-

Mr David Ross, residing at the Property
("the Applicant")

Link Housing Property Management Services, Watling House, Callendar Business
Park, Falkirk, FK1 1XR
("the Respondent")

Tribunal Members:

Graham Harding (Chairman and Legal Member)
David Hughes Hallett (Ordinary Member) (Housing)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having made such enquiries as it saw fit for the purposes of determining whether the Respondent has complied with the Code of Conduct for Property Factors as required by Section 14 of the 2011 Act determined unanimously that in relation to the Applicant's application the Respondent has complied the Code of Conduct for Property Respondents but has failed to carry out its Property Factors duties.

In all the circumstances of the case, the Tribunal did not consider it necessary to make a Property Factors Enforcement Order.

The Tribunal make the following findings in fact:

- 1 The applicant is the owner of the property known as Flat 0/1 2 Abbey Place, Paisley, PA1 1EG. There are ten flats located in the block in which the property is located.
- 2 The Respondent was appointed as Property Factor of the common parts of the building within which the property is situated following their construction in about 2011.

- 3 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 from the date of its registration on 01 November 2012.
- 4 The block of flats in which the Applicant's flat is located is part of a wider development. The Respondent was appointed by the developers, Westpoint Developments (Scotland) Limited in 2011.
- 5 Electricity charges for lighting to the common stairwell are divided equally between each flat within the block in accordance with the Deed of Conditions by Westpoint Developments (Scotland) Limited registered 27 May 2011.
- 6 Following the Respondent's appointment the electricity supplier rendered accounts to the Respondent for all of the other blocks in the development but not for block 2.
- 7 The Respondent's written records with regards to not being billed for common electricity charges is incomplete. It is likely however that the Respondents were aware of the situation for a number of years prior to the Applicant being contacted by the Respondent by letter dated 18 September 2015.
- 8 The Respondents complained to the electricity suppliers for the failure to provide bills for the electricity used in the block and sought to have the bill restricted. The suppliers, British Gas, refused to restrict the bill and the Respondents made a complaint to the Ombudsman Services. The Ombudsman did not restrict the supplier's charges but partially found in favour of the Respondents and awarded £50 in compensation which was credited by the suppliers to the outstanding charges for electricity.
- 9 The Respondents have apportioned the charges applicable to each proprietor in the block according to the date on which they took entry to their properties. The daily rate was calculated by dividing the total bill outstanding by the number of days since the Respondents were appointed. No account was taken for any alteration in the cost of electricity over that period.
- 10 The total amount charged by the electricity supplier by 21 July 2016 in the sum of £5,160.86 reflects the electricity used in the block from 2011. Had the Respondents received regular bills from the suppliers the Applicant would have had to pay a share of the amount broadly equivalent to the share now outstanding. The Applicant would have been billed on a quarterly basis and would not have been faced with having to meet an exceptional charge of about £400.
- 11 The Respondents have offered to allow the Applicant to make payment of the outstanding amount over a period of two years without penalty if required.
- 12 The Applicant complained to the Respondent. The Respondent answered the Applicant's complaint in its stage 2 response letter to the Applicant dated 21 November 2016.

Following on from the Applicant's application to the First-tier Tribunal (Housing and Property Chamber) which comprised documents received in the period of 03 April 2017 to 14 July 2017 the convener with delegated powers under Section 18(a) of the Act referred the application to a Tribunal on 28 July 2017.

Introduction

In this decision the Tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure as "the 2016 Rules".

The Tribunal had available to it, and gave consideration to, the application by the applicant as referred to above, representations submitted by the Respondent by way of correspondence dated 29 August 2017 together with Inventory of Productions contained therein and the oral submissions made by the Respondent's representatives Lorna Dunsmore and Ronni MacMenemy at the Hearing. The Applicant did not attend the Hearing.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 1.1a/D/m and n, 2.5 and 7.1 of the Code. The Applicant also complained that the Respondents had not properly carried out its duties.

The Code

The elements of the Code relied upon in the application are as follows:-

Section 1.D.m

The written statement should set out the timescales within which you will respond to enquiries and complaints received by letter or email.

Section 1.D.n

The written statement should set out the timescales for response when dealing with telephone enquiries.

Section 5

You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep Applicants informed if you require additional time to respond. Your response time should be confirmed in the written statement.

Section 7.1

You must have a clear written complaints resolution procedure which sets out a series of steps, within reasonable timescales linking to those set out in the written statement,

which you will follow. The procedure must include how you will handle complaints against contractors.

The Property Factors Duties

The Applicant in his application stated that "The Factor is responsible for the communal supply in billing for the block. Residents are not in control to change supplier or issue bills. This is solely done through the Respondents and so Link Housing has failed to provide an adequate service in this situation."

The Hearing

The Respondents referred to the written statement of services lodged as production 20 which set out the Respondent's communication arrangements at Section 7. The Respondents submitted that this Section complied with the Code and it had dealt with the Applicant's complaint in accordance with the timescales provided in the written statement of services. The Respondents also submitted that they had also complied with Section 2.5 of the Code and had kept the applicant and other homeowners involved of the steps that they were taking with regards to the complaint to British Gas and the Ombudsman.

With regards to the handling of the Applicant's complaint the Respondent was of the view that the Applicant had failed to provide sufficient details as to the specific nature of his complaint and that any enquiries by the Applicant had been dealt with timeously.

The Respondents explained that since it was appointed as Factors, there had been a significant change of personnel. There was a paucity of written records with regards to calls made by other homeowners with regards to the lack of billing for common electricity charges. The Respondents accepted that there had been shortcomings in their communications with homeowners between 2011 and 2015 but that since that time new procedures had been put in place and the Applicant had been kept properly informed. The Respondent's position was that the Applicant had not incurred any loss and was being properly billed for the electricity used. The Respondents had taken all possible steps to try to have the bill reduced by British Gas including taking the matter to the Ombudsman Services. The Respondents had met the total cost of the outstanding bill and were not charging the Applicant any additional charges beyond his share calculated from the date on which he purchased the property. As far as the Respondent was concerned there was no significant difference between the electricity charged to the homeowners in block 2 compared with the charges levied on the other blocks. The Respondents representative Ms Dunsmore said that she could understand why the Applicant felt aggrieved but the Respondents had been clear about the steps that they had taken to put matters right. No late payment fees had been added to the common electricity charges. She thought that the Applicant had every right to bring the application but that the Respondents could not have done more. The Respondent had compiled a new Landlord Supply Handover Procedure to ensure that the issues that had arisen in Block 2 would not occur in the future. The Respondents had gone to considerable expense to challenge the bill by British Gas. The Respondents were a social enterprise and the profits used from the property management services was applied to provide affordable housing. In all the

circumstances, it would not be appropriate for the Respondents to meet the common charges as proposed by the Applicant.

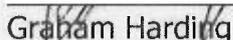
Reasons for Decision

The tribunal was satisfied that the Respondent's written statement of services complied with the Code. Given the lack of documentary evidence prior to 2015, whilst it was possible that the Respondent had not complied with its own written statement of services at that time, the tribunal felt that since 2015 there had been no breach of these provisions in the Code. The tribunal felt however that it should have been apparent to the Respondents as early as 2012 that there was an issue with regards to the billing for the common electricity charges in block 2 and the Respondent ought to have taken steps more quickly to identify the issue and have it resolved long before 2015 and therefore in that respect the Respondent was in breach of its duties. Despite being in breach of its duties, the Respondent was largely correct in submitting that the Applicant was not being asked to pay for electricity that had not been used. Although the Applicant had been presented with a large bill for the earlier years electricity, the Respondent had taken reasonable steps to minimise any inconvenience to the Applicant by permitting payment over a period of two years with no penalties. Given that the issue had now been addressed by the Respondents; the Applicant had not incurred any additional charges; and was being given time to make payment of his share of the common electricity charges for the period from 2012 to 2016 over a period of two years, the tribunal was of the view that there was no need to make a Property Factors Enforcement Order. The tribunal recommends that the Property Factors write to the Applicant and the other Applicants in the block setting out the steps that they have taken to ensure that this issue will not happen again in the future. With regard to the Applicant's complaint that the Respondent had failed to adhere to the timescales provided in the Statement of Services the Tribunal was of the view that the Applicant's representations in this regard sought to reply on correspondence between the Respondents and other homeowners and not between the Applicant and the Respondent. The Tribunal concluded that the Applicant's complaints had been dealt with by the Respondent timeously.

Appeals

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.

G Harding


Graham Harding

Legal Member and Chair

26 October 2017

Date

