Housing and Property Chamber
First-tier Tribunal for Scotland

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

Decision on Homeowners Application: Property Factors (Scotland) Act 2011 ("the Act")

Decision under Section 19(1)(a) of the Act

Chamber Ref: FTS/HPC/PF/18/1769

Flat 0/1, 56 Minerva Way, Glasgow, G3 8GA ("The Property")

The Parties:-

Miss Sairah Akbar, residing at Flat 0/1, 56 Minerva Way, Glasgow, G3 8GA represented by Mr Fariad Akbar, also residing at Flat 0/1, 56 Minerva Way, Glasgow, G3 8GA ("the Applicant")

Park Property Management Limited, a Company incorporated under the Companies Acts (Company Number SC413993) and having their registered office at 11 Somerset Place, Glasgow, G3 7JT ("the Respondent")

Tribunal Members:

Mr E K Miller (Legal Member)
Mr D Godfrey (Ordinary Member)

Decision

The Tribunal determined that the Respondent had (a) breached Sections 2.5 and 7.1 of the Code and (b) failed in their property factor's duties as defined in Section 17(1)(a) of the Act in that they had failed to comply with their complaints procedure timescales contained within their written statement for services

The decision was unanimous.

Background

1. In this Decision the Property Factors (Scotland) Act 2011 is referred to as "the Act"; The Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-Tier Tribunal for Scotland (Housing & Property Chamber) (Procedure) Regulations 2016 as amended as "the Regulations".

2. The Respondent became a registered property factor on 13 March 2013 and its duty under Section 14(5) of the Act to comply with the Code arises from that date.

3. On 10 October 2018 a Convener of the Tribunal acting with delegated powers under Section 18(a) of the Act considered that there was no longer a reasonable prospect of the dispute between the Applicant and Respondent being resolved. Accordingly, the matter was referred to the Tribunal for determination. A Notice of Referral and Hearing was sent to all parties on 17 October 2018.

Hearing

4. A hearing was held at the Glasgow Tribunal Centre, 20 York Street, Glasgow on 7 December 2018. The Applicant was present and was accompanied by her representative, Mr Fariad Akbar. The Respondent was present and represented by Mr Paul McDermott.

Preliminary Matter

5. Although not raised as a specific preliminary matter on jurisdiction, the Respondent, throughout his submission, raised a point as to the validity of the timing of the application by the Applicant to the Tribunal. It is therefore appropriate to address this point first within this decision.

6. The Respondent produced a helpful timeline of correspondence between the parties relating to the Property. This commenced on 14 June 2017 and ran until 22 October 2018.

7. The principal point raised by the Respondent was that the majority of the correspondence regarding the Applicant's complaint did not come from the Applicant herself but rather from Mr Fariad Akbar. Mr Akbar was her brother and was resident at the Property.

8. The Respondent highlighted that the first formal complaint came via an email on 7 March 2018 from Mr Akbar. An acknowledgment and response to the complaint was sent to Mr Akbar the following day. On 22 March 2018 Mr Akbar again emailed looking to progress the complaint. A holding response was again sent to him on 23 March 2018 by the Respondent but no further follow up communications took place by the Respondent.

9. A further round of communication took place starting with an email on 12 April 2018 from Mr Akbar in relation to another complaint. This was not responded to. A further formal complaint was sent on 8 May 2018 by Mr Akbar. This was acknowledged by the Respondent. No substantive response was, however, issued to Mr Akbar.

10. In due course the Applicant applied to the Tribunal and on 28 August 2018 she emailed the Respondent a copy of her application form to the Tribunal. This was acknowledged by the Respondent on 30 August 2018. No substantive response was sent by the Respondent and no further correspondence appears to have taken place between the parties.

11. The position of the Respondent was that they received many emails from different people in relation to their factoring services. Not all of these were from homeowners and it was not uncommon from Tenants. Their position was that a homeowner was only entitled to apply to the Tribunal after having exhausted the complaints process. The Respondent took the view that the complaints process had not been exhausted. In essence their submission was that the complaints process had not started as the correspondence had come not from the Applicant but rather from her brother Mr

Akbar. As he was only a tenant of the Applicant he had no standing in relation to the complaints process.

12. The Tribunal agrees that it is the case that only a homeowner rather than a tenant can apply to the Tribunal in terms of the Act. A tenant has no particular standing in the complaints process nor can they apply to the Tribunal. However, the position here had to be looked at in the round. The party emailing the Respondent had the same surname as the Applicant. The Respondent responded several times to his complaints and advised they were dealing with them. At no point did they say that their intention was not to deal with the matter as he was not the homeowner. At no point did the Respondent seek to establish who Mr Akbar was and in what capacity he was emailing them. Had they done so, they would readily have found out that Mr Akbar was his sister's representative in the matter.

13. The Tribunal took the view that it was unreasonable of the Respondent to respond to correspondence from the Applicant's representative and indicate that the complaint was being treated formally and then turn up on the day of the Tribunal to argue that the complaints process had not been adhered to or even started. The Tribunal took particular note of the email from the Homeowner of 28 August 2018 with a copy of the Application to the Tribunal. This was acknowledged by the Respondent. If the Respondent had genuinely held the view that they had not known who Mr Akbar was or what he was complaining about or if they had no previous idea that there had been a complaint via the Applicant or her representative then they ought to have raised it at that stage.

14. It was disingenuous both to the Applicant and to the Tribunal to turn up on the day to state that the Applicant had not been through the complaints process given that they had not acted in any way, shape or form to indicate that they were not accepting all the previous emails from Mr Akbar and to claim that they were unaware of who Mr Akbar was. Any responsible factor ought not to have responded to the emails and treated them as a complaint if they had been in doubt as to who they were responding to.

15. In the view of the Tribunal the Respondent knew, or ought to have known by taking reasonable steps to ascertain Mr Akbar's identity and position, that he was the representative of the Applicant. On that basis the Tribunal was satisfied that the complaint had been validly made by a representative of the Applicant and that it was competent for it to hear the substantive issues.

16. As a secondary point, the Respondent also submitted that the Applicant's representative had failed to comply with the complaints process set out on their website. Mr Akbar had been emailing admin@parkpm.co.uk whereas complaints correspondence should have gone to support@parkpm.co.uk. This request was highlighted in a response to Mr Akbar on 8 March 2018 by the Respondent.

17. The Tribunal considered this point and did not consider that it was a fundamental issue that meant that the complaints procedure had not properly been followed by the Applicant's representative. Some earlier correspondence from the Respondent did not indicate that the support@parkpm.co.uk address should be used. The Applicant's representative acknowledged that he had been told this at one point and apologised that he had not used this. He accepted that the more recent correspondence from the Respondent did indicate that the support@parkpm.co.uk address should be used.

18. The Tribunal did not view this as fundamental. It was not beyond the wit of any organised factor that if an email comes in to one part of the organisation that it should

be forwarded on to the correct part. In any event, when the Applicant's representative had emailed on 8 May 2018 at 10.10am with an email heading "Planned Complaints Referral to Homeowner Housing Panel" (which had been sent to the admin email address) it had been forwarded on internally to the support email address at 13.09am the same day. Accordingly it had reached the appropriate person and the Tribunal did not view this level of questioning over detail as fundamentally undermining the process that the Applicant's representative had gone through. Accordingly the Tribunal was satisfied that it had jurisdiction to proceed.

Turning then to the substantive issues of the Applicant's complaint:-

Complaint under Section 2.5 of the Code

"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 Homeowners informed if you require additional time to respond. Your response time should be confirmed in the written statement".

19. The Applicant's submission was the Respondents had failed to comply with the timescales within their complaints process and written statement and also generally to respond within the prompt timescales set out by 2.5 of the Code. The Respondent's submission in response was primarily around the fact that the emails had come from the Applicants brother rather than the Applicant herself. This point has been addressed already within this decision.

20. The Tribunal was satisfied that there had been a breach of Section 2.5 of the Code. As highlighted in relation to the preliminary matter set out above, the Tenant had emailed on 7 March 2018. An acknowledgment was sent on 8 March in relation to that initial formal complaint. The Tenant had chased for an answer on 22 March and a holding response only was given on 23 March. By the Respondent's own admission they had then issued no follow up communications or correspondence to the Applicant or her representative. The Respondent's complaints procedure as set out in their written statement of services stated contained a 28 day timeframe for investigation and resolution of the complaint and this was missed.

21. A similar situation arose in the second round of correspondence in May with Mr Akbar emailing on 8 May 2018 and a holding response issued on 11 May 2018. No material response was sent thereafter. Given the Respondent's failure to indicate that they were not progressing with the complaint or to take any steps to identify in what capacity Mr Akbar was representing the Applicant, the Tribunal was of the view that they had failed to comply with Section 2.5 of the Code. The Tribunal also found this to be a breach of their property factor's duties as defined in the Act as they had failed to comply with their written statement of services.

Section 7.1 of the Code

"You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against Contractors".

22. The Tribunal was satisfied that this section of the Code had been breached. As set out in the information relating to Section 2.5 of the Code above, the Respondent had failed to respond and to follow their timescales. Whilst the Respondent did have a clear written complaints resolution procedure and timescales set out in their written statement, they did not follow these. Accordingly they had breached the code.

Section 6.1 of the Code

"You must have in place procedures to allow Homeowners to notify you of matters requiring repair, maintenance or attention. You must inform Homeowners of the progress of this work, including estimating timescales for completion, unless you have agreed with a group of Homeowners a cost threshold below which job-specific progress reports are not required."

23. There were a number of issues in which the Applicant felt the Respondent had failed to properly manage the larger development of which the Property formed part. However, in essence, at the Hearing three main areas were highlighted.

24. The first of these was in relation to car parking at the Property. The development was located near a Park and Ride scheme and it was not uncommon for third parties to try and use parking within the development to then utilise the local public transport. The Applicant's sister had attended at the Property on a couple of occasions and had had stickers placed on her car advising she was not entitled to park there. She had been approached and intimated by a resident. One of the stickers indicated that she had been reported to the Respondent. The Applicant's sister had parked in her sister's or visitor's car parking space on both occasions. As she was an invited guest she had done nothing wrong in this regard.

25. The Respondent indicated that they were aware of the complaint in this regard but they were adamant that the person putting stickers on the cars and who had approached the Applicant's sister was not any member of staff. Their understanding was that it was an irate resident who had become annoyed with people illegitimately using the parking spaces and then taken matters in to their own hands. They had advised the Applicant to contact the police in this regard.

26. The Tribunal was satisfied that there was nothing to suggest that the Respondent had been involved in these incidents. Mr McDermott assured the Tribunal that no member of the Respondent had been involved or encouraged the irate resident to behave in this way. The Tribunal had no reason to doubt the Respondent's assertions in this regard. It was unfortunate that these incidents had occurred but it was not the fault of either the Applicant or the Respondent. Accordingly the Tribunal did not view the Respondent as failing in this regard.

27. The second area of dispute was in relation to the block entrance door in which the Property was located. The self-closing mechanism had been broken and the door was difficult to open as it kept catching on the carpet. The Respondent highlighted that there were some practical issues regarding this. The door opened inwards but the floor level within the entrance rose relatively sharply. Accordingly the door would start to catch on the carpet. The one method of dealing with this was to shave the bottom of the door in order that it could open inwards further before catching on the carpet. However the level of the rise within the entrance was such that this would mean when the door was properly shut there would be a gap at the bottom of the door. The Respondent acknowledged that this was not an ideal situation. The Respondent indicated that they had further works carried out to try and rectify matters. The Applicant accepted at the Hearing that the situation was better than before although not ideal.

28. In the circumstances the Tribunal did not take the view that there had been any fundamental breakdown in service on the part of the Respondent. The door opening inward when combined with the rise in the floor entrance internally was a bad design.

The Respondents would need, as part of their general obligations, need to monitor the issue and carry out repairs as and when required.

29. The final area of principal dispute was in relation to the security entry system. The Applicant had complained over a number of months that the video entrance system did not work well. She could not properly see who was being identified on the camera on the screen in her flat. The buzzer also worked intermittently An attempt had been made to repair this. The Applicant's position was that she had been advised by an engineer that a new external panel was required. The Respondent's position was that a new panel was not required and that it was an internal fault that was the responsibility of the Homeowner.

30. In the circumstances, the Tribunal found it difficult to determine exactly what the position was. The Respondent did not produce on the day any evidence from an engineer as to what the source of the problem was or whether it was a fault in the external part at the block entrance or the internal part within the Property. Both parties gave a different version of what the engineer had reported was required. In the circumstances the Tribunal was satisfied that the appropriate action would be for the Respondent to obtain an engineer's report on the entry system and to carry out any works that were required by the engineer's report to improve matters in relation to the external parts of the system. If the report highlighted that the defects were in the part of the system located within the Property then that was the Applicant's responsibility. If it were in the external part then this was a communal cost. Any external costs should to be billed to residents in the normal manner subject to any appropriate authority that was required being obtained from other residents.

As a result of the foregoing and the breaches of Sections 2.5 and 7.1 of the Code as well as the failure to adhere to the timescales within the written statement of services (being a breach of the Property Factors' Duties), the Tribunal determined that a PFEO would be required in the circumstances.

The Tribunal was of the view that the Applicant should be reimbursed factors fees charged by the Respondent to reflect the trouble they had been put to and to reflect the failures on the part of the Respondent. The first formal complaint had been made on 7 March 2018 and the hearing was held on 7 December 2018. That reflected a fair period in the eyes of the tribunal for which reimbursement should be made. For the avoidance of doubt, the Tribunal's meaning of "factors fees" relates to that element charged by the Respondent for their services. It does not include costs levied against the Applicant as part of communal charges for cleaning, repairs or the like.

Property Factors Enforcement Order ("PFEO")

The Tribunal then considered the terms of a PFEO.

The Tribunal proposes to make the following PFEO:-

1. "Within 30 days of service of the PFEO on the Respondent, the Respondent shall reimburse the Applicant all factoring fees levied by the Respondent against the Applicant's account from 7 March 2018 until 7 December 2018.

2. Within 30 days of service of the PFEO on the Respondent, the Respondent shall obtain a report from a suitably qualified engineer on the condition of the security monitoring system at the larger development of which the Property forms part and shall carry out any works recommended by such report, subject always to obtaining any required authority from other proprietors within the development."

A copy of the proposed PFEO is contained in the accompanying notice under Section 19(2)(a) of the Act.

Appeals

A homeowner or property factor 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.

E Miller

Legal Member and Chair

4/2/19 Date