

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 17 of the Property Factors (Scotland) Act 2011 by

Parties: Easilet Investments Ltd, 104 Belgrove Street, Glasgow G31 1AA
("the Applicant")

Cumming Turner & Watt, 40 Carlton Place, Glasgow G5 9TS ("the Respondent")

Property address: Flat 3/2, 664 Alexandra Parade, Dennistoun, Glasgow G31 3LH ("the Property")

Chamber ref: FTS/HPC/PF/22/3836

Tribunal Members:

Mark Thorley (Chairman)
Andrew McFarlane (Ordinary)(Surveyor) Member)

Decision

The respondent has failed to carry out its property factor duties.
This decision was unanimous.

Findings in Fact

1. The applicant is the owner of the property at Flat 3/2, 664 Alexandra Parade, Dennistoun, Glasgow G31 3LH (hereinafter referred to as "the property").
2. The respondent is the property factor responsible for the management of common areas within the property of 664 Alexandra Parade, Dennistoun, Glasgow G31 3LH.
3. The respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from 1 November 2012. From 16

August 2021 it was under a duty to comply with the updated 2021 Code. The applicant has complained that the respondent has failed in their responsibilities as factor as they failed to complete rot works required in the roof space, obtained funds for the work which were never completed and never returned, and failed to provide a complaints procedure or a response to emails. As at 2 July 2020 the respondent confirmed to the applicant that they were “happy for these works to come through ourselves”.

4. As at the date of the hearing the work required to be undertaken has not been.
5. No breakdown of costs incurred and funds provided has been provided by the respondent to the applicant.
6. Correspondence sent by the applicant to the respondent has been unanswered.
7. The respondent has unreasonably delayed in attempting to resolve the concerns raised by the applicant.

Hearing

A case management conference took place by teleconference on 24 February 2023. The respondent had indicated that he acknowledged there was works to be done as a result of which the case management conference was continued until 6 June 2023.

On 6 June 2023 the work had not been concluded the result of which was that a hearing was set down for 12 October 2023 originally as an in-person hearing but subsequently as a teleconference hearing.

On 5 October 2023 the tribunal received a letter from Mr Watt of the respondents. In terms of that correspondence it was acknowledged that work to deal with the rot still had not been undertaken. The respondent was now willing to meet the shares for the common and private works in flat 3/1. The respondent had also indicated that they would fund, in the hope of being reimbursed later, the share of common works for which other owners had not subscribed. There is reference to water ingress and he was anxious to resolve matters as soon as possible to the various common parts and private rot works. In addition Mr Watt indicated that he was unable to attend the hearing on 6 October 2023.

The hearing took place by teleconference. The applicant was represented by Mr Friel.

Introduction

The legislation that applies here is the Property Factors (Scotland) Act 2011, and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

The respondent is subject to this legislation and to the Code.

Reasons for decision

Property Factors duties. The applicant complained of a failure on behalf of the respondent to carry out various duties.

The Code

The applicant complains of a failure to comply with the Code.

In particular –

Section 2: Communication and consultation

2.5 - He must respond to enquiries and complaints received by letter or email within a proper timescales and to deal with enquiries and complaints as fully as possible, and to keep homeowners informed if you require additional time to respond. The response time should be confirmed in a written statement (Section 1 refers).

Section 6: Carry out repairs and maintenance

6.1 – 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 estimated timescales for the completion, unless you have agreed with the group of homeowners a cost threshold below which jobs specific progress reports are not required.

6.9 – You must pursue the contractor or supplier to remedy defects in any inadequate work or service provided. If appropriate you should obtain a collateral warranty from the contractor.

Section 7: Complaints resolution

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

7.2 When your inhouse complaints procedure has been exhausted without resolving the complaint, the final decision shall be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the Homeowner Housing Panel.

Matters in dispute

The applicant complains in relation to the following issues:

1. The respondent's failure to complete rot works required in the roof.
2. The respondent's failure to account for funds obtained in respect of works.
3. The respondent's failure to provide complaint procedure and respond to emails.

We will deal with all these matters together.

Background

The applicant has complained to the respondent certainly since June 2020 in respect of rot works required to be undertaken to the roof space of the property. Correspondence has been lodged with the application. Accordingly it is now more than three years since the applicant was seeking urgently that the respondent instruct rot work. To date that has not been undertaken. The applicant has made complaints to the respondent regarding their failure to undertake this work. Correspondence was not answered. A request for a complaints procedure was made but none was provided.

The applicant sets out that they have had no accounting for monies paid. Again this does not appear to be disputed by the respondent.

The applicant gave evidence at court. The respondent indicated (the day before the hearing) that he was unable to attend. No specific reason was given.

The tribunal accepted the evidence of the applicant.

Property Factor Enforcement Order

We propose to make a Property Factor Enforcement Order (PFEO). The terms of the proposed PFEO are set out in the attached document. The award made recognises the significant failure in terms of time of the works being undertaken.

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.

Chairman:

19 North

Date:

12 October 2023