

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/23/1217

Re: Flat 1/3 10 Archerhill Square, Glasgow G13 4TD

Parties:

Mr Kashif Naeem, 223 Auldhouse Road, Glasgow G43 1DF ("the Homeowner")

**Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow G1
1HL ("the Factor")**

Tribunal Member:

**Graham Harding (Legal Member)
Elizabeth Dickson (Ordinary Member)**

DECISION

The Factor has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with sections OSP1, OSP2, OSP3, OSP6, 2.1, 2.4, 2.6, 2.7, 3.1, 4.6, 5.3, 6.6, 6.9, 6.10 and 6.11 of the Code.

The decision is unanimous.

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 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 and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

Background

1. By application dated 14 April 2023 the Homeowner submitted an application complaining that the Factor was in breach of Sections OSP1, 2,3, 4, 5, and 6,

1B(4)(5), D(13)(14)(15) and E(17), 2.1, 2.3, 2.4, 2.6, 2.7, 3.1, 3.2, 3.4, 4.6, 5.3, 5.8, 5.9, 6.2, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11 and 7.1 and had failed to carry out its property factors duties. The Homeowner submitted a copy of letters of complaint in support of the applications. In particular the Homeowners complained that the Factor had (i) failed to provide information in a clear and easily accessible way; (ii) failed to provide evidence that work had been carried out; (iii) failed to respond to emails requesting information; (iv) failed to provide invoices for electricity and other services; (v) had an inadequate complaints portal; (vi) failed to tender for work; (vii) failed to resolve small issues; and provide information regarding common repairs; (viii) failed to seek the homeowner's consent for repairs; (ix) failed to deal with the Homeowners complaints and requests for information regarding the use of City Building (Glasgow) as its choice of contractor; and (x) threatened the Homeowner with court action in respect of properties he did not own.

2. By Notice of Acceptance dated 11 May 2023 a legal member of the Tribunal with delegated powers accepted the applications and a Case Management Discussion ("CMD") was assigned.
3. A CMD was held by teleconference on 26 July 2023 and the Tribunal heard submissions from the Homeowner. The Factor did not attend and was not represented. The Tribunal having not received any written representations or other communication from the Factor determined to issue a Notice of directions and assign a hearing.
4. The Tribunal issued Directions to the parties requiring the Homeowner to provide an indexed and paginated Inventory of Productions containing all the documents he intended to rely on at the hearing and which supported the claims made in his written representations submitted to the Tribunal. The Tribunal also directed that the Factor provide:-
 - a) A written explanation as to why they did not submit written representations or attend the Case Management discussion on 26 July 2023 if they intend to oppose the Homeowner's application.
 - b) Written representations summarising any submissions they wish to make in opposition to the Applicant's claims.
 - c) A representative to attend the hearing if they intend to oppose the Homeowner's application.
 - d) An indexed and paginated Inventory of Productions containing all the documents they wish to rely on at the hearing should they intend to oppose the Homeowner's application.
5. By email dated 25 October 2023 the Homeowner submitted an indexed and paginated Inventory of Productions.

Hearing

6. A hearing was held at Glasgow Tribunals Centre on 9 November 2023. The homeowner attended in person. The Factor did not attend and was not represented. The Tribunal noted that intimation of the hearing and the Notice of Direction had been sent to the Factor by recorded delivery post and delivered and signed for on 11 August 2023. The Tribunal was therefore satisfied that the Factor was aware of both the place, date and time of the hearing and that they knew of the terms of the Notice of the Direction. The Tribunal noted that in terms of the Notice of Direction the Factor was only obliged to provide written representations if they intended to attend the hearing and oppose the Homeowner's application. However, the Tribunal continued to hear oral submissions from the Homeowner in order to be satisfied as to the sufficiency of evidence.
7. The Homeowner said he had been begging the Factor to open dialogue and that he did not think the issues were complicated but he had failed to get any substantive response from them. He said that whilst the Factor had provided correspondence celebrating the first full year of its Customer First Centre it was just rhetoric and they were empty words.
8. The Homeowner explained that his quarterly invoice referred to a charge for a lift pump. He said that he had been to the property and there is no lift pump. He said he had asked for copies of the bills that included the lift pump and had not been provided with them. He said he was receiving a bill for a lift pump that does not exist.
9. The homeowner said that the building in which his flat was located had four storeys and about 30 flats. He said there were three buildings in the area and he was charged 1/146 of the cost for the concierge and cleaning service. He said he had been told that the concierge was there to resolve issues and that other duties were hedge trimming and grass cutting but he said there was no grass and no hedges.
10. The Homeowner referred the Tribunal to the Factor's Written Statement of Services and to the charges that were made. He queried what was a core service and what was a secondary service. He said he was being charged £92.00 per quarter for the concierge and £47.00 for the Factor and £40.00 for buildings insurance.
11. The Homeowner said that he had queried who managed and serviced the CCTV system at the development and had not received a suitable response. He spoke of work carried out by Equan and that he had asked for evidence for the charge but had not been provided with that. The Homeowner went on to say that it appeared that there was no charge for the CCTV maintenance

or evidence that the lift was being maintained and queried if this was a mistake.

12. The Homeowner said that at one point he had been told that he should apply to the Information commissioner but that when he had he had been told they did not have jurisdiction and he queried if this had been a tactic on the part of the Factor or incompetence.
13. The Homeowner said that he had paid the Factor's charges for one year but had then started to ask questions but discovered it was difficult to obtain answers. He said that the specialist teams tended to answer his queries selectively or not reply at all.
14. The Homeowner said that he had been sent bills for properties that he did not own and had been threatened with court action for not paying them.
15. The Homeowner said he had asked for a meeting with a manager but nothing had happened.
16. The Homeowner said that the Factor's online complaint system was inadequate as it only allowed 512 words which was insufficient.
17. The Homeowner said that he had unpaid charges of between £2500.00 and £3000.00 and the Factor had taken him to the Sheriff court. Those proceedings were currently paused pending the determination of his application to the Tribunal.
18. The Homeowner confirmed he was looking for compensation and for the issues complained about to be resolved.

Findings in Fact

19. The Homeowner is the owner of the property which is a flat in a block of about 30 flats ("the development") most of which are owned by the Factor or its parent company the Wheatley Group.
20. The Homeowner requested information from the Factor on a number of occasions between 2021 and 2023 and did not receive any or adequate responses.
21. The Homeowner's complaints to the Factor on 4 October 2021 was not upheld.
22. A complaint by the Homeowner to the Factor on 15 March 2022 was upheld.
23. The Factor responded to the Homeowner's email query dated 27 February 2023 by email dated 20 March 2023.

24. The Factor employs City Building (part of the Wheatley Group) and in-house staff at the development.
25. The Factor has provided limited information to the Homeowner in respect of information requested by him.

Reasons for Decision

26. The Tribunal was surprised and disappointed that the Factor decided not to participate in the proceedings. However, given the explicit wording of the Notice of Directions issued to the Factor the Tribunal could only conclude that the Factor had taken the decision that it did not wish to challenge the merits of the application by the Homeowner. It therefore follows that subject to being satisfied that there was merit in the Homeowner's application the Tribunal should find that the various breaches of the Sections of the Code to have been established and that the Factor had failed to carry out its property factors duties.
27. The Homeowner was clearly concerned that as one of a tiny minority of private owners in a development owned almost entirely by the Factor or its parent group, he had very little say about decisions on the management of the development. The Tribunal found the Homeowner to be a credible and reliable witness.
28. Although there may well be a simple explanation in response to the Homeowner's requests for information the Factor has not either been able or bothered to provide the information requested within a reasonable period of time.
29. It did appear to the Tribunal that some information had been provided to the Homeowner as regards the choice of insurance provider but even that did not provide a full explanation or confirm the position beyond April 2023.
30. The Factor has failed to provide any information as to why it employs its own contractor, City Building, rather than putting contracts out to tender. The Tribunal considers that it is important that the Factor can show the Homeowner that he is getting value for money when employing a company owned by its parent group. The Tribunal considers that the Factor should therefore generally tender for repairs rather than simply employ City Building.
31. The Homeowner has endured a substantial degree of stress and inconvenience as a result of the Factor's admitted breaches of the Code and its failure to carry out its property factors duties. He has been threatened with court action in respect of properties he does not own and the Factor has raised Court proceedings against him as a result of his refusal to pay factoring fees and charges in protest at the Factor's failure to deal with his complaints.
32. The Tribunal was therefore satisfied that the Factor was in breach of Sections OSP1, OSP2, OSP3, OSP6, 2.1, 2.4, 2.6, 2.7, 3.1, 4.6, 5.3, 6.6, 6.9, 6.10 and

6.11. The Tribunal did not find that the Factor had failed to carry out its property factors duties as no separate intimation of any such failure was intimated to the Factor in terms of Section 17 of the 2011 Act.

Proposed Property Factor Enforcement Order

The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice.

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.

Graham Harding Legal Member and Chair

20 November 2023 Date