

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

David McGaw, 5 Bute Place, Fort William PH33 6UT (“the Applicant”)

James Gibb Residential Factors, Bellahouston Business Centre, 428 Paisley Road West, Glasgow G51 1PZ (“the Respondent”)

**Re: Property at 342 Victoria Road, Glasgow G42 7RP
 (“the Property”)**

Tribunal Reference: FTS/HPC/23/2449

Tribunal Members:

John McHugh (Chairman) and Elizabeth Dickson (Ordinary (Housing) Member).

DECISION

The Respondent has failed to carry out its property factor’s duties.

The Respondent has failed to comply with its duties under section 14 of the 2011 Act.

The decision is unanimous.

We make the following findings in fact:

- 1 The Applicant is the owner of Flat 2/2, 342 Victoria Road, Glasgow G42 7RP (hereinafter "the Property").
- 2 The Property is located within a traditional tenement consisting of shop units on the ground floor and flats above (hereinafter "the Block").
- 3 The Respondent is the property factor responsible for the management of common areas within the Block.
- 4 The property factor's duties which apply to the Respondent arise from a Written Statement of Services. The duties arose with effect from 1 October 2012.
- 5 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from 23 November 2012. From 16 August 2021, it was under a duty to comply with the updated 2021 Code.
- 6 The Block contains a common close which provides access to the flats in the Block including to the Property.
- 7 The close has a common entry door to the street. A door entry system is present.
- 8 The Respondent is responsible for arranging the maintenance of these.
- 9 In December 2021 the Applicant reported to the Respondent his concern that the common close doorway was in poor condition.
- 10 On 10 February 11 and 15 February 2022 the Applicant expressed to the Respondent his concerns at the delays in progressing the door works and that the Respondent had advanced inappropriate works to the door entry buzzer panel.
- 11 The Respondent did not reply. The Applicant made a further complaint by email of 24 May 2022.
- 12 During June 2022, the Applicant asked for a copy of the Respondent's Complaints Procedure. He requested that the Respondent treat the charges related to the door entry buzzer system works as being disputed.
- 13 The disputed charges continued to appear on invoices and the Applicant sent a further email complaint dated 7 October 2022.
- 14 The Applicant met a representative of the Respondent on 9 December 2022 to agree the future actions required regarding the repairs.
- 15 On 23 February 2023 the Applicant sent a further email complaining of lack of progress.
- 16 On 14 April 2023 the Applicant submitted a detailed formal complaint regarding the delayed repairs, the failure to respond to his emails and the disputed charges.
- 17 The complaint was not responded to and between May and July the Applicant submitted further emails of complaint culminating in intimation of his intention to apply to the Tribunal on 11 July 2023.
- 18 He intimated his application on 24 July 2023.
- 19 The Applicant's complaint was then passed to the Respondent's Alasdair Wallace who responded promptly. Mr Wallace provided a detailed response to the Applicant on 25 August 2023. The response did not satisfy the Applicant's concerns.
- 20 The Applicant has, by his correspondence, including by his email of 11 July 2023, informed the Respondent of the reasons why he considers the Respondent has failed to carry out its property factor's duties and its obligations to comply with its duties under section 14 of the 2011 Act.
- 21 The Respondent has unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

Hearing

A Case Management Conference took place by telephone conference on 11 January 2024.

It was agreed by the parties at the CMD that the application would be determined without the need to refer the matter to a hearing at a later date.

The Applicant represented himself. The Respondent was represented by its Alasdair Wallace, Operations Manager; Lorraine Stead, Regional Director; and Jamie Millar, Senior Development Manager.

Introduction

In this decision we refer to the Property Factors (Scotland) Act 2011 as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as revised with effect from 16 August 2021 as “the Code” and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Respondent became a Registered Property Factor on 23 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the Applicant and the Respondent.

The documents before us included the Respondent’s Written Statement of Services and its Customer Complaints Procedure.

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicant complains of failure to carry out the property factor's duties.

The Applicant relies upon the Written Statement of Services as the source of the property factor's duties.

The Code

The Applicant complains of failure to comply with the Code.

The Applicant complains of breaches of Sections: 2.7; 6.4 and 7.1 and Overarching Standards of Practice 6 and 11 of the Code.

The elements of the Code relied upon in the application provide:

"Section 2: Communication and Consultation..."

... 2.7 A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale...

...Section 6 : Carrying Out Repairs and Maintenance

6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work...

...Section 7: Complaints Resolution

Property Factor Complaints Handling Procedure

7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.*

- *The complaints process must, at some point, require the homeowner to make their complaint in writing.*
- *Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.*
- *How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.*
- *Where the property factor provides access to alternative dispute resolution services, information on this...*

...Overarching Standards of Practice

...OSP6. You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective...

...OSP11. You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure."

The Matters in Dispute

The Applicant complains in relation to the following issues:

- (1) The Respondent's delay in attending to repairs or replacement of the close door, the close window and the common door entry system including the imposition of charges for an unsuitable door entry panel.
- (2) The Respondent's handling of the matter including a lack of adequate communication and failure to respond to his complaint.

We deal with both aspects together below.

Background

The Block is a traditional tenement with retail units on the ground floor and six residential flats above. The flats are accessed via a common close which has a door to the street. A door entry system is present.

The Applicant is the owner of a second floor flat within the Block.

The Respondent is the property factor responsible for the management of common areas within the Development including the close.

In December 2021 the Applicant reported his concern to the Respondent regarding the condition of the common entry door. He reported that it was in poor condition. It was

insecure; the tiled areas nearby were in poor condition and the door entry system was inadequate. He considered that a replacement of the door, the entry system buzzer panel and works to the tiled wall areas around the door were required.

No progress was made. The Applicant chanced upon a painter on 13 January 2022 who had been instructed to repaint the door. He advised the painter that that was unnecessary as replacement of the door was intended. During January and February 2022, the Applicant sent further emails to the Respondent's Development Manager on the topic of the front door area.

By email of 10 February 2022 the Applicant expressed his dissatisfaction at the lack of progress and threatened to escalate the matter. In the absence of a reply acceptable to him, on 11 February 2022, he wrote to Jason Millar, the Respondent's Senior Development Manager to set out his concerns. These included that work had been done to the door entry system when it should have been done as part of the broader intended works to the door area.

By 15 February 2022, a new door entry buzzer panel had been installed and the Applicant emailed Mr Millar to complain that his earlier communications on the matter had been ignored. The Applicant expressed his lack of satisfaction and indicated an intention to withhold payment of sums due to the Respondent. The Applicant sent a further email on the topic on 20 February 2022.

The Respondent did not reply to the Applicant. The Applicant emailed Mr Millar again on 24 May 2022 to complain and to threaten that he would consider with the other owners within the Block the possibility of a change of factor.

On 16 June 2022 the Applicant emailed the Respondent asking for a copy of its Complaints Process. This led to a further exchange of emails with the Respondent's Development Manager in which discussion took place regarding progressing the door works and the Applicant's concerns about charges for the door entry system works. By email of 22 June the Respondent's Development Manager confirmed that the charges totalling £87.73 would be marked as "in dispute" and a late payment charge credited.

On 14 July 2022 the Respondents wrote to all owners in the Block suggesting that a meeting be held. By September 2022 a meeting had not occurred and the Respondent's Development Manager advised that there had been difficulty in finding a contractor.

The amounts agreed to be disputed continued to appear on the Applicant's invoice. He issued an email complaining about this and the lack of progress with the repairs to Jason Millar on 7 October 2022. He threatened a formal complaint and involving the Respondent's ombudsman.

Mr Millar and the Applicant met at the Block on 9 December 2022.

On 23 February 2023, the Applicant emailed Mr Millar to complain again about the disputed charges continuing to appear on invoices and the lack of progress with repairs. Again, he threatened a formal complaint and ombudsman involvement.

On 14 April 2023 the Applicant made a detailed formal complaint by email. He complained about the lack of progress of the door and window repairs; the continued failure of the Respondent to reply to his emails; and the unsatisfactory door entry panel.

The Respondent received no response to his complaint.

On 15 May and 1 June 2023 he again complained about the disputed charges appearing on his invoice.

On 4 July 2023 the Applicant emailed Mr Millar complaining about the disputed charges, the failure to advance the door and window repairs and the failure to respond to his formal complaint.

On 11 July 2023 the Applicant emailed a complaint to Mr Millar regarding the disputed charges and referring to the Respondent's obligations under Section 6.9 of the Code.

On 24 July 2023 the Applicant intimated to the Respondent his application to the Tribunal.

Alasdair Wallace responded by email of 15 August 2023. He acknowledged and apologised for the failure to deal with the complaint formally. Having investigated the complaint, Mr Wallace wrote to the Applicant on 25 August 2023, apologising, recognising that there had been failings. Mr Wallace suggested a future course and offered £150 as compensation.

The Applicant did not find the offer acceptable.

The last position in correspondence regarding the disputed charges (which by that time were £53.99) was expressed in the Applicant's email of 1 September 2023 to Mr Millar in which he again requested the issue was dealt with.

Breaches of the Code/Property Factor's Duties

There is very little, if anything, in factual dispute between the parties. The Respondent accepts the history of the matter. Mr Wallace has evidently attempted to resolve the complaint quickly when it came to his attention but the Respondent offers no justification for the earlier failures other than that a Development Manager who was initially responsible is no longer with the Respondent.

We find the Respondent's failure to advance the door and window repairs and to keep homeowners informed of progress to constitute a breach of Clause 6.4 of the Code and OSP 6.

We find the Respondent's continued failures to respond to the Applicant's emails to constitute a breach of Code Section 2.7 and OSP 6 and 11.

We find the Respondent's failure to deal with the Applicant's formal complaint in accordance with its own Customer Complaints procedure to constitute a breach of Code Section 7.1 and OSP 11. It also constitutes a breach of their obligation under their own Customer Complaints Process which requires a Stage 1 response within ten days.

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. We have a wide discretion as to the terms of the PFEO. The terms of the PFEO reflect that the Applicant has been put to considerable effort over a sustained period in advancing his legitimate concerns.

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.

JOHN M MCHUGH

CHAIRMAN

DATE: 17 January 2024