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/22/3455
FTS/HPC/PF/22/3750
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Re: 64 and 66 Montrose Avenue, Carmyle, Glasgow G32 8BY ("the Properties")

Parties:

Miss Elizabeth Maguire, 64 Montrose Avenue, Carmyle, Glasgow G32 8BY ("the First Applicant")

Mrs Donna Moore, 66 Montrose Avenue, Carmyle, Glasgow G32 8BY ("the Second Applicant")

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

Tribunal Members:
Graham Harding (Legal Member)
Mike Links (Ordinary 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(5) of the 2011 Act in that it did not comply with sections 2.5, 3.3, 6.1, 6.3, 6.4 and 6.8 of the 2011 Code and OSP 1, 2, 5, 6, 8 and 11 and Sections 2.1, 2.7, 3.1, 3.2, 3.4, 6.1, 6.7, 6.12, 7.1 and 7.2 of the 2021 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 2011 Code" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors July 2021 as “the 2021 Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as “the Rules”

The Respondent became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

1. By email dated 19 September 2022 the First Applicant submitted applications complaining that the Factor had failed to carry out its property factors duties and was in breach of Sections 1.1aBc, aDl, aDn, 2.5, 3.3, 6.1, 6.3, 6.4 and 6.8 of the 2011 Code and OSP 1, 2, 5, 6, 8 and 11 and Sections 1.5B(4), 1.5D(14), !.5D(15), 2.1, 2.7, 3.1, 3.2, 3.4, 6.1, 6.4, 6.7, 6.12, 7.1 and 7.2 of the 2021 Code. By email dated 24 October 2022 the Second Applicant submitted applications complaining in similar terms. The Applicants submitted written statements outlining their complaints together with copies of correspondence between the parties. In particular the Applicants complained that the Respondent had (i) failed to respond to telephone calls and emails; (ii) failed to timeously deal with roof repairs; (iii) instruct inadequate roof repairs causing further damage to the Second Applicant’s property. They submitted that these failures demonstrated a failure on the part of the Factor to carry out its property factors duties to a reasonable standard and were also breaches of both Codes.

2. By Notice of Acceptance dated 8 December 2022 a legal member of the Tribunal with delegated powers accepted the First Applicant’s applications and a Case Management Discussion (“CMD”) was assigned.

3. A CMD was held by teleconference on 9 March 2023. The First Applicant attended in person and the Respondent was represented by Mrs Vicky Aitken. The Tribunal queried why the Respondent had not submitted any written representations in advance of the CMD and Miss Aitken explained that due to internal delays the case papers had not reached her in sufficient time to prepare written submissions. Miss Aitken went on to say that the Respondent agreed that there had been failings on its part.

4. The Tribunal noted that the Respondent appeared to have accepted there had been failings and that it had offered to refund the common charges applied to the Applicant’s account since 2019 and to refund the payment of £521.22 the Applicant had paid in respect of a roof repair if she withdrew her applications. The Tribunal also noted that the Applicant had previously wanted to be in a position to be able to proceed to re-roof the portion of roof above her flat as consent for re-roofing the whole property was not forthcoming but that the position had now changed as consent had been obtained. The Applicant confirmed that this was the case but that she had not accepted the

Respondent's offer as her complaint had not been about money but that she wished the Respondent to be held to account. She said she wanted to be sure that what had happened to her did not happen again either to her or to anyone else.

5. The Tribunal queried with Miss Aitken if the Respondent fully accepted all of the alleged breaches raised by the Applicant in her applications and Miss Aitken confirmed that this was the case. She also confirmed that in addition to the offer to refund the £521.22 and the common charge payments since 2019 it had now been agreed that the Respondent would waive its 12% management fee in respect of the re-roofing and gutter works that had now been agreed.

6. In light of the concessions made by the Respondent the Tribunal adjourned the CMD to a further CMD.

7. By Notice of Acceptance dated 3 May 2023 a legal member of the Tribunal with delegated powers accepted the Second Applicant's applications and a CMD was assigned.

8. A CMD was held by teleconference on 18 July 2023. The Second Applicant attended in person. The Respondent was not present or represented. The Tribunal noted that the Second Applicant had suffered internal damage to her property as a result of water ingress for which she held the Respondent liable. The Tribunal determined that the First and Second applicants' applications should be conjoined and also issued Directions to the Respondent.

9. A Case Management Discussion ("CMD") was held by teleconference on 7 September 2023. Both Applicants attended in person. The Respondent was represented by Mrs Vicki Aitken.

10. The Tribunal noted that there had been no response to its Direction of 18 July 2023. Mrs Aitken explained that she had been in hospital and had only received the direction the previous week. She explained that another person in the organisation had failed to deal with the matter in her absence. She confirmed however that the Respondent was willing to make the same ex gratia payment to the Second Applicant as had been made to the First Applicant. The Tribunal indicated that it expected to receive confirmation from the Respondents within the following ten days that the payment had been made.

11. There then followed some discussion with regards to the ongoing works at the properties and the Tribunal noted that it was intended that there would be a final inspection by the Respondent's Compliance Officer, James McCairns, the following week to confirm that all the repairs had been completed satisfactorily.

12. The Second Applicant advised the Tribunal that she was in the process of obtaining quotes for the internal repairs required to her property and would

submit these together with photographs as soon as possible. She explained that although previous repairs had been carried out to the roof there had been a massive tear in the lead flashing that had resulted in water ingress and she said she could not understand how this had been missed by the previous contractors.

13. The Tribunal noted that it did appear that progress was finally being made and therefore in the circumstances it was appropriate to continue the CMD one more time to allow the repairs to be completed and also to allow the Second Applicant to consider the loss and damage sustained and to submit any further written representations in this regard. These should be lodged with the Tribunal as soon as possible and no later than one month prior to the next CMD to allow the Respondent two weeks to respond

14. A further CMD was held by teleconference on 23 November 2023. Both Applicants attended in person and Mrs Aitken represented the Respondent. The Tribunal noted that the external repairs had been completed to the Applicants' satisfaction. The Tribunal also noted that it was agreed that the Respondent would meet the cost of the internal repairs to the Second Applicant's property using her preferred contractor. There was also discussion on what further sanctions should be imposed on the Respondent with both Applicants submitting that the Respondent should meet the whole cost of the roof repair. The Tribunal determined to continue the applications to a further CMD to allow the Second applicant's internal repairs to be completed and to consider further submissions.

The Case Management Discussion

15. A CMD was held by teleconference on 6 March 2024. Both Applicants attended in person and Mrs Aitken represented the Respondent.

16. The Second Applicant confirmed that the internal repairs had been satisfactorily completed and that the whole cost had been met by the Respondent.

17. The Tribunal sought to establish the age of the properties and was told that they were probably about eighty years old. In response to a further query, the Tribunal was told that some of the other houses in the area have had their roofs replaced but others had not. The Second Applicant was of the view that the roof to her property would not have needed to have been replaced if proper repairs had been carried out at an earlier date and for this, she held the Respondent responsible. She spoke of there being a lack of attention on the part of the Respondent which had exacerbated the problem with the roof and referred to the size of the hole in the lead flashing that should have been apparent to the contractors employed by the Respondent.

18. For the Respondent Mrs Aitken maintained that it had been confirmed by the contractors that the roof was at the end of its serviceable life and therefore it was reasonable that the Applicants pay their share of the cost of renewal.

This was confirmed as amounting to £6270.00 per owner. Mrs Aitken also confirmed that the Applicants' management fees had been reimbursed to them for the period from 24 April 2019 to Jan 2023.

19. The First Applicant submitted that the Respondent provided little in exchange for their management fee. She felt owners were just another number and that for their failures in this matter the Respondent needed to be held accountable. The First Applicant went on to say that she relied upon the Respondent to do its job and if paying for a service she was entitled to expect a service that was carried out in a timely manner and in a respectable way. She said if that did not happen then the Respondent should be punished financially as that would be a hard lesson for it to learn.

20. The Second Applicant also submitted that the Respondent had to be held accountable. She spoke of repairs being missed and not being done properly had led to years of stress and sleepless nights. The Second Applicant noted that the Respondent had accepted liability for the cost of the internal repairs to her property but indicated that she thought as an organisation it was complacent and that had been detrimental to her and her property. The Second Applicant spoke of the need for the Respondent to take account for their actions and for their failures in communication and that it should meet the whole cost of the roof repair.

21. For the Respondent, Mrs Aitken said that the Respondent had admitted liability and had reimbursed the management charges and the cost of the original roof repair and met the cost of the Second Applicant's internal repairs. She said that she understood that the Applicants would have incurred stress and that there had been failings on the part of the Respondent but that it should not have to meet the cost of the roof repair.

Findings in Fact

22. The First Applicant is the owner of 64 Montrose Avenue, Carmyle, Glasgow.

23. The Second Applicant is the owner of 66 Montrose Avenue Carmyle, Glasgow.

24. The Factor performed the role of the property factor of the Development of which the Applicants' properties form part.

25. In 2019 the Second Applicant reported water ingress to her property and a repair was approved but not undertaken.

26. The repair was finally carried out in February 2022.

27. The repair did not resolve the water ingress.

28. Between 2019 and 2022 the Respondent was slow to respond to queries and communications from the Applicants.

29. The properties are about eighty years old.

30. Some other properties in the area have had their roofs replaced.

31. The Second Applicant proposed that the roof and gutters at the Applicant's properties be renewed in March 2022.

32. There was a long delay in the Respondent obtaining majority consent for the roof and gutter renewal to proceed and poor communication on the part of the Respondent in its communications with the Applicants.

33. Following the raising of these proceedings the Respondent admitted its failings and reimbursed the Applicants for the cost of the 2022 repairs and its management fees for the period from April 2019 to January 2023

34. The roof and gutter renewal at the Applicants' properties commenced in August 2023 and was fully completed in November 2023.

35. The cost per property amounted to £6270.00.

36. The Respondent met the cost of the internal repairs to the Second Applicant's property. This work was completed in about January 2024.

37. There was no internal damage to the First Applicant's property.

38. Both Applicants suffered worry and distress as a result of the Respondent's delay in dealing with the water ingress from the roof at the Applicants' properties.

39. The Respondent admitted there had been failings on its part and that it was in breach of the various sections of the Codes as claimed by the Applicants and had failed to carry out its property factor's duties.

Reasons for Decision

40. The Respondent accepted from early in the proceedings that there had been significant failings on its part and offered no opposition to the complaints. To its credit the Respondent offered to reimburse the Applicants management fees for the period from 2019 to the beginning of 2023 by way of compensation and also met the cost of the internal repairs to the Second applicant's property.

41. Despite this the Applicants remained concerned that the Respondent continued to treat them with a lack of concern or respect and that they were not being provided with the standard of service that they could expect. The

role of the Tribunal is to consider the complaints made by the Applicants in their applications and to determine whether there has been a breach of the various sections of the Codes and a failure to carry out property Factor's duties. In this regard the Tribunal's role has been simplified by the Respondent accepting that it did fail to comply with its Section 14(5) duties and its property factor's duties.

42. The Applicants submitted that as a result of the Respondent's failings it became necessary to replace the roof when had they been more pro-active and properly managed the repairs at an earlier stage the renewal of the roof could have been avoided. However, the Applicants did not provide the Tribunal with any substantive evidence to that effect. It was confirmed by all the parties that some other properties in the area had replaced their roofs and given the age of the properties it is not unreasonable to conclude that the roof of the properties was reaching the end of its useful life.

43. Nevertheless, the Tribunal does accept that the poor communication on the part of the Respondent and the long delay in responding to phone calls and emails and ultimately in progressing the roof renewal has caused the Applicants considerable stress. However, the responsibility for maintaining, repairing and renewing the roof of the properties lies with the owners and despite the obvious failings on the part of the Respondent, the Tribunal does not consider that it would be appropriate for the Respondent to meet the Applicants' shares of cost of the roof repair. No doubt the Applicants will benefit from having the repairs carried out in terms of the marketability and value of their properties.

44. The Respondent has gone some way to compensate the Applicants by reimbursing management fees and by meeting the cost of the Second Applicant's internal repairs. Despite this the Applicants remain somewhat sceptical as to whether or not the Respondent's communication and management has materially improved. They remain concerned that they are just a number and feel strongly that the Respondent must be held to account for its failings. Although the Tribunal does not consider that it would be appropriate to find that the Respondent should meet the cost of the Applicants' shares of the roof repairs it does consider that given the worry and distress experienced by the Applicants over a prolonged period that a financial award is appropriate. The Second Applicant suffered damage to the interior of her property and although the Respondent met the cost of the internal repairs the Tribunal found that the Second Applicant had been particularly badly affected by the Respondent's failings and finds that an award of £1250.00 is an appropriate award to reflect the time, inconvenience, worry and distress suffered. Although the First Applicant did not suffer any internal damage to her property, she nevertheless had to endure a significant amount of time. Inconvenience, worry and distress also and the Tribunal considers that an award of £850.00 is appropriate.

Proposed Property Factor Enforcement Order

45. 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

18 March 2024 Date