



Hearing Notes of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 (1) of the Property Factors (Scotland) Act 2011

Reference number: FTS/HPC/PF/23/1109

Re: Property at Flat 3, 9 Watson Street, Glasgow G1 5AF (“the Property”)

The Parties:

Miss Marjory Ofoegbu, 43, Greenoakhill Gate, Glasgow, G71 7PR (“the Applicant”)

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

Tribunal Members:

Andrew McLaughlin (Legal Member) and Nick Allan (Ordinary Member)

Background

[1] The Applicant seeks a determination that the Respondent has breached their obligations under *The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors* (“The Code”).

[2] The paragraphs of the Code alleged to have been breached are:

Communications and Consultation: Sections 2.1;

Insurance: Sections 5.4 and 5.5

Carrying out repairs and maintenance: Section 6.1

Overview of Claim

[3] The substance of the allegations can be categorised as relating to one principal issue: failing to repair a leak that has been flowing into the Property from an internal, overhead pipe since October 2022. The pipe is owned in common by the proprietors of the building in which the Property is situated. The Applicant alleges that the

Respondent has failed to deal with matters adequately and that she has been left complaining about the issue to no avail for months.

Previous Procedure

[4] The Application had previously called for a Case Management Discussion (CMD) by conference call on 19 September 2023. The Tribunal noted that the Respondent's own Mr Watt admitted that the Respondent had dealt with matters negligently. The Tribunal made a Direction ordering the Respondent to set out in numbered paragraphs, a full written account of the whole situation. This should set out what happened, when it happened and what could have been done better and what was being done to fix matters. The Applicant herself was directed to set out clearly and in numbered paragraphs, a detailed account of her own alleged financial losses and how those had been calculated together with an explanation about why the Respondent was said to be responsible for them. Parties were allowed 28 days to supply the information requested. The Application was then continued to another CMD to reconsider matters once the necessary information had been produced.

[5] The Application then called for another CMD on 14 December 2023. This time there was no appearance by or on behalf of the Respondent. The Respondent also appeared to have failed to comply with the Direction made. The Tribunal continued the Application to a Hearing for evidence to be heard and a final decision to be made. It was also set out in the Tribunal's CMD notes that "*The Respondent should also be prepared to explain why they did not comply with the Direction made.*" It then appeared that at 18.18 on 13 December 2023, (the evening before the CMD), the Respondent had submitted certain documentation. This contained some documents bearing to be invoices and notes relating to repair orders. There was also a brief letter which set out some background information. Nothing was ever heard further from the Respondent.

The Hearing

[6] The Application then called again for a Hearing, in person, in Glasgow Tribunal Centre, at 10am on 16 April 2024. The Applicant was personally present together with her husband, Mr Hadrian Ofoegby. The Applicant had no preliminary matters to raise. She herself had submitted some brief information in response to the Direction made for her to produce information. The Tribunal had received that timeously. There was no appearance by or on behalf of the Respondent. The details of the Hearing had been competently intimated to the Respondent. The Tribunal also noted the non-compliance with the Direction made and the previous non-participation in the CMD. The Tribunal therefore saw no need to delay matters further, when it seemed apparent that the Respondent was not intending to fully co-operate with the Tribunal. The Tribunal therefore began hearing evidence from the Applicant. The Tribunal discussed all aspects of the Application with her and also put the documentation lodged by the Respondent to her to comment on.

[7] Ms Ofoegby and her husband came across as credible and reliable. They were genuinely frustrated with the way the Respondent had communicated with them about what clearly appeared to be a problem with a communal pipe. It seemed to the Tribunal that their main complaint was the lack of communication. The Tribunal couldn't help but note that the Respondent had barely communicated with the Tribunal never mind the Applicant. The Respondent had been less than co-operative with the Tribunal and this corroborated the Applicant's own account that she had been left in the dark following on from the initial response to the leak being raised.

[8] The information which the Respondent had sent the Tribunal was brief and did not conform to the terms of the Direction made. It did however finally reveal some useful information about what the difficulty was with the repairs to the communal pipe.

[9] Having considered the Application and having heard evidence, the Tribunal made the following findings in fact,

- I. *The Applicant is the proprietor of Flat 3, 9 Watson Street, Glasgow G1 5AF.*
- II. *The Property is factored by the Respondent within the meaning of the Property Factors (Scotland) Act 2011.*
- III. *In October 2022, a leak developed in the ceiling of the Property. The source of the leak was an internal, overhead pipe owned in common by the proprietors of the building in which the Property is situated. This meant that the Respondent was responsible for the maintenance of this pipe and therefore effecting the necessary repairs.*
- IV. *The Respondent initially arranged for a contractor, Abbey Services, to attend at the Property. They attended at the Property around November 2022. They carried out some investigations but couldn't resolve the problem. It did however result in the ceiling to the Property being opened up and the piping left exposed.*
- V. *Abbey Services attended again at the Property around January 2023 and carried out further works. These again did not resolve the problem.*
- VI. *The Respondent did engage with the Applicant in email correspondence around these times. They provided some information about what was being done to try and deal with the problem. There are emails between the Respondent's Mr Robert Watt from around the time of the leak commencing in October 2022 up until March 2023. However, the Respondent appears to have stopped communicating with the Applicant from around March 2023 onwards. There is certainly no evidence of communications continuing beyond that point.*

- VII. *The Applicant spent £1,368.73 in April 2023 to have remedial works carried out to their ceiling. By this point a bucket had been placed beneath the leak for about six months. The Applicant still has leaks in her Property, emanating from the communal pipe.*
- VIII. *Abbey Services have recently been out to the Property again and carried out a further survey. The Respondent now understands that the Abbey Services have carried out works which have cleared blockages in the pipe which will rectify any further occurrence of water backing up. The Respondent has also been advised by Abbey Services that the main pipe will need replaced as there may be cracking in the pipework.*
- IX. *The Respondent submitted this information to the Tribunal in the form of a letter dated 12 December 2023. That was the first time the Applicant had been informed of any of the issues raised in that letter.*
- X. *There has been a six-month period between March 2023 and December 2023 when the Respondent failed to communicate with the Applicant adequately.*
- XI. *The repair issues themselves are clearly not straightforward and the Respondent did take steps early on to respond to the issues raised by the Applicant. But this line of communication ended.*
- XII. *The Applicant has suffered a degree of financial loss as a result of the leak as the Property had been let out to a rent paying tenant, but the tenancy was ended because of the leak. There are still damp patches visible on the ceiling of the Property which have caused the Applicant difficulty in letting the Property out to a new tenant.*
- XIII. *The Respondent has adequately attempted to address the problems with the common pipe and therefore is not liable for the Applicant's financial losses. They have however failed to communicate adequately with the Applicant about the status of the repairs.*

[10] Having made the above findings in fact, the Tribunal makes the following findings in respect of the paragraphs of the Code alleged to have been breached.

The Code

"2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations."

[11] This paragraph of the Code has been breached by the Respondent. The Respondent failed to communicate adequately for a period of six months with the Applicant.

"5.4 Homeowners must be notified of any substantial change to the cover provided by the policy."

[12] This paragraph has not been breached. There is no basis for suggesting that it has been breached. The Application is really about the failure to communicate.

"5.5 A property factor must disclose to homeowners, in writing, any commission."

[13] This paragraph has not been breached. There is no basis for suggesting that it had been breached. The Application is really about the failure to communicate.

"6.1 This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard."

[14] This paragraph has not been breached. There is no basis for suggesting that it has been breached. The Application is really about the failure to communicate.

Property Factor Enforcement Order

[15] Having made the above findings, the Tribunal proposes to make a Property Factor Enforcement Order in terms of Section 19 (2) of the Act.

[16] The Tribunal considered that appropriate remedy for the breach established, would be payment of a sum of money in terms of Section 20 (1) (b) and an order on the Respondent to execute certain action, being an order to update the Applicant about the status of the repair in terms of Section 20 (1) (a) .

[17] The Tribunal noted that there had been six months of inadequate communication. The Tribunal decided that there was no obvious scientific method for calculating what compensation might be appropriate. The Tribunal had to decide what was reasonable. The Tribunal took the view that the sum of £50.00 for each month of inadequate communication would be reasonable. This results in the Tribunal determining that the Respondent ought to pay the Applicant £300.00. The Tribunal will order that this sum is paid within a period of 28 days.

[18] The Tribunal will also order that the Respondent sends the Applicant an email detailing exactly what the position is about the status of the relevant repairs within 28

days. A Proposed Property Factor Enforcement Order will be made to this effect and is produced herewith.

APPEAL PROVISIONS

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Andrew McLaughlin

Legal Member

28 April 2024