

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

Robert Crawford, 40 Homeshaw House, 27 Broomhill Gardens, Newton Mearns G77 5HP (“the Applicant”)

Bield Housing & Care, 79 Hopetoun Street, Edinburgh EH7 4QF (“the Respondent”)

Chamber Ref: FTS/HPC/PF/18/2626

Re: Flat 40, Homeshaw House, 27 Broomhill Gardens, Newton Mearns G77 5HP (“the Property”)

Tribunal Members:

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

DECISION

The Respondent has not failed to comply with its duties under section 14 of the 2011 Act or its property factor's duties.

The decision is unanimous.

We make the following findings in fact:

- 1 The Applicant is the owner and occupier of a flat at 27 Broomhill Gardens, Newton Mearns G77 5HP ("the Property").
- 2 The Property is located within a sheltered housing development consisting of two properties known as Homeshaw House and Shaw Court ("the Development").
- 3 The Respondent acts as the factor of the Development.
- 4 On 25 May 2018 the Respondent sent to the Applicant a letter responding to a request for provision of personal data. The letter was sent by recorded delivery post and was intact when it left the Respondent's office. The letter's envelope had been damaged when it arrived with the Applicant.
- 5 The Applicant sent to the Respondent a letter of 4 November 2018 by Recorded delivery and it was received by the Respondent.
- 6 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor (1 November 2012).
- 7 The Applicant has, by his correspondence, including that of 12 November 2018, notified the Respondent of the reasons as to why he considers the Respondent has failed to carry out its obligations to comply with its property factor's duties and its duties under section 14 of the 2011 Act in respect of the matters in dispute (1); (4); (5) and (6) below.
- 8 The Respondent has not failed or unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

Hearing

A hearing took place at the Glasgow Tribunals Centre on 15 February 2019.

The Applicant was present at the hearing. The Respondent was represented at the hearing by its Nicola Harcus, Interim HR Director; Kathy Crombie, Communications and Marketing Manager; and David MacInnes, Owner Services Manager.

Neither party called additional witnesses.

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 “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 1 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 Statement of Services dated 21 September 2017 which we refer to as the “Written Statement of Services”. They also included a Deed of Conditions by McCarthy and Stone (Developments) Ltd registered 6 August 1987 which we refer to as “the Deed of Conditions”.

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. He relies upon the Written Statement of Services in this respect.

The Code

The Applicant complains of failure to comply with Sections 2.1; 2.2; 2.3 and 2.5 of the Code.

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

" ...SECTION 2: COMMUNICATION AND CONSULTATION...

...2.1 You must not provide information which is misleading or false.

2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action)...

...2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers)..."

The Matters in Dispute

The factual matters complained of relate to:

- (1) The circumstances surrounding the sending of a letter to the Applicant
- (2) The sending of a wrongly addressed second letter
- (3) The circumstances surrounding the sending of a letter to the Respondent
- (4) The attempt to ballot residents on the question of Manager's hours
- (5) An incident involving the Manager and the Respondent's handling of the Applicant's complaint
- (6) The Applicant's perception that the Respondent treats homeowners and tenants in the same way and invades his privacy

We deal with these issues below.

Factual Background

A theme repeated by the Applicant was that he perceives that the Respondent is trying to control him. He lives independently and does not want interference by the Respondent or its local Manager. He considers that the Respondent treats both its tenants and its home owning factoring customers in the same way, which he finds inappropriate. He does not consider himself a customer of the Respondent. He perceives the Respondent as wanting to dictate to him how he should live.

The Respondent's representatives consider that the Applicant has engaged in an unreasonable volume of complaints. They consider that, despite considerable effort on the Respondent's staff's part (including holding a mediation), they have been unable to resolve the Applicant's concerns to his satisfaction. They consider that the Applicant's behaviour has been unreasonable and that each time a complaint is resolved in a way which the Applicant does not like, he then complains about the actions of the staff involved in handling the complaint.

(1) The Circumstances surrounding the sending of a letter to the Applicant

The Applicant complains concerning a letter which the Respondent sent him on 25 May 2018. The letter contained his personal information. When the letter reached him the letter was damaged. The Applicant was concerned that

the envelope had been very full and was only a standard type envelope which would be prone to breaking open. There was no additional sellotape present. There was no evidence that the letter had been sent by recorded delivery.

The Respondent's position is that it investigated the matter when there had been a complaint by the Applicant. The Respondent had reported the matter to the Royal Mail. The Applicant acknowledges that a representative from Royal Mail visited him to discuss the matter.

The Respondent's investigation caused the Respondent to believe that an appropriate envelope had been used and that the letter had been in good condition when it had left their premises. The Respondent produced the recorded delivery receipt signed by the postman who had collected the letter from their office on 25 May 2018. The Respondent's position is that if the letter had become damaged after it left its premises or was not treated as a recorded delivery item, that is not the Respondent's fault.

The Applicant further complains that the Respondent has lied to him regarding whether the letter was sent by recorded delivery. He considers that it was not.

We accept the Respondent's evidence that the letter was sent by recorded delivery and that it was sent in a suitable envelope.

We identify no breach of the Code nor of the Respondent's property factor's duties.

(2) The sending of a wrongly addressed second letter

The Applicant complained that a letter (the date of which was not specified) had been wrongly addressed to him by the Respondent. It had been addressed using the wrong flat number. The postman had realised the mistake immediately and the letter had been delivered correctly to the Applicant.

At best, this seems to have been a simple clerical error which had no practical adverse effect. We identify no breach of the Code nor of the Respondent's property factor's duties. At the hearing, the Respondent had expressed the view that it had had inadequate notice of this aspect of the complaint. Given that we have identified that there is no breach of the Code or of the Respondent's property factor's duties, we have made no formal finding on that question.

(3) The Circumstances surrounding the sending of a letter to the Respondent

The parties agree that the Respondent sent a recorded delivery letter dated 4 November 2018 to its Deborah Gray. He had then contacted Mrs Gray who advised that she had not received the letter. The Applicant had then obtained proof that he had sent the letter by recorded delivery.

The Respondent accepts that the letter had been sent by recorded delivery and received by it. Mrs Gray had not herself received the letter. The Respondent had introduced a system whereby all correspondence from the Applicant was to be dealt with by Kathy Crombie. That system was introduced because there had been a high volume of correspondence received from the Applicant, the Respondent considered that the same issues had been raised by the Applicant with different staff members and that the Respondent was struggling to respond timeously to the Applicant's correspondence.

The Respondent had introduced the single point of contact of Mrs Crombie to resolve these issues. The Applicant was not prepared to deal only with Mrs Crombie which is why he had chosen to correspond with Mrs Gray.

The Applicant considers that it is not for the Respondent to dictate to him which of its staff members it should contact. The Applicant also explained that he sends large volumes of emails as he has a poor memory and it assists him to have an email record of his communications with the Respondent.

There was no dispute that the Applicant had received a substantive response to his letter from Mrs Crombie.

It appears to us that there had been a mistake by the Respondent's Mrs Gray when she indicated that the letter had not been received. However, that was a simple error in that while Mrs Gray had not herself received the letter, it had reached the Respondent and it was replied to by the Respondent.

We identify no breach of the Code nor of the Respondent's property factor's duties in respect of this matter.

At the hearing, the Respondent had expressed the view that it had had inadequate notice of this aspect of the complaint. Given that we have identified that there is no breach of the Code or of the Respondent's property factor's duties, we have made no formal finding on that question.

(4) The attempt to ballot residents on the question of Manager's Hours

The Respondent employs a Manager at the Development. The Applicant complained that the Respondent had proposed a ballot of residents of the Development as to whether the current arrangements relating to the Manager's hours should be altered.

The Respondent's representatives explained that the existing arrangements regarding the Manager's hours had been agreed with residents of the Development in 2013, before the Applicant had moved into the Development.

The Applicant was unhappy with the Manager's hours and this had resulted in the Respondent proposing a ballot of residents to allow them to express a view on whether the Manager's hours should be altered. The Applicant had objected to the holding of the ballot and it had been delayed because of his objection.

The Applicant explained that the basis for his objection was that he considered that it was for the Respondent to consult with residents to obtain their views on the matter and not to hold a ballot. If a ballot were to be held, then it should only be at the instance of the residents.

We consider the Applicant's complaint to be ill founded. The Respondent by its ballot was attempting to do precisely what the Applicant wanted ie to obtain residents' views on the issue. The ballot was itself only an exercise in opinion gathering; it carries no status as a binding method of decision making.

We identify no breach of the Code nor of the Respondent's property factor's duties.

(5) An incident involving the Manager and the Respondent's handling of the Applicant's complaint

The Applicant has complained to the Respondent about an incident in which he describes going to see the Respondent's Manager at her office to discuss an issue regarding the location of garden furniture. The date of the incident has not been identified but both parties are aware of the incident in question. He complains that the Manager "shouted and screamed" at him outside her office.

The parties agree that the Respondent carried out an investigation into the incident. The result of the investigation was that the complaint was partially

upheld by the Respondent. This was explained in the Respondent's letter to the Applicant of 13 December 2018 and in the Respondent's further letter of 24 December 2018.

The Applicant further complains that the investigation into his complaint failed to consider the question of whether there had been intimidation by the Manager both of the Applicant and of another resident who had expressed concerns to Mr MacInnes in the presence of the Applicant.

Mr MacInnes confirmed that the other resident's complaint had been dealt with appropriately. We do not consider that it is open to us in these proceedings to deal with whatever complaint was made by the third party resident. The Applicant's complaint appears to the Tribunal to have been fully and appropriately responded to by the Respondent.

We have been unable to identify a breach of the Code or of property factor's duties in this respect.

(6) The Applicant's perception that the Respondent treats homeowners and tenants in the same way and invades his privacy

The Applicant considers that the Respondent treats both its tenants and its home owners in the same way, which he finds inappropriate. He does not consider himself a customer of the Respondent. He perceives the Respondent as wanting to dictate to him how he should live.

In the Tribunal's opinion, as the owners of Homeshaw House employ the Respondent to provide a factoring service for the property, the owners are customers of the Respondent in this regard.

The applicant complained that the respondent applied the same complaints handling procedures to both sets of clients. The Tribunal could find no fault with this; the procedure appeared to comply with the Code.

The Tribunal could find no evidence of the Respondent invading the homeowner's privacy; it was providing the service it was required to do.

PROPERTY FACTOR ENFORCEMENT ORDER

Having determined that no breach of the Code or of property factor's duties exist, we do not propose to make a property factor enforcement order.

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: 21 February 2019