

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/23/0064

17K Blairmore Road, Greenock, PA15 3JT ("the Property")

Parties:

Mrs Jenny Buckley, 17K Blairmore Road, Greenock, PA15 3JT ("the Homeowner")

River Clyde Homes, Clyde View, 22 Pottery Street, Greenock, PA15 2UZ ("the Property Factor")

Tribunal Members:

**Mrs Josephine Bonnar (Legal Member)
Mr Andrew McFarlane (Ordinary Member)**

DECISION

The Tribunal determined that the application should be dismissed.

The decision is unanimous.

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 Regulations"

Background

1. The Homeowner lodged an application with the Tribunal stating that the Property Factor had failed to comply with Overarching Standards of Practice (OSP) 2, 4 and 11 and Sections 1, 2.1 and 2.5 of the 2021 Property Factors Code of Conduct ("the Code"). The application also stated that the Property Factor had failed to carry out its property factor duties. Documents were lodged in support of the application including correspondence with the

Property Factor and a copy of a written statement of services. A Legal Member of the Tribunal with delegated powers of the President referred the matter to the Tribunal. A case management discussion ("CMD") was arranged for 3 May 23 at 10am at Glasgow Tribunal Centre.

2. Prior to the CMD the parties lodged submissions and documents. In their submission, the Property Factor said that the application should be dismissed as the complaints had already been determined in two previous Tribunal cases involving the parties and the doctrine of res judicata meant that they could not be considered again.
3. The CMD took place on 3 May 2023. The Homeowner attended and the Property Factor was represented by Mr Woods, an in-house solicitor with the Property Factor). A related application under Chamber reference PF/22/4270 was also discussed. This related to the 2012 Code.

Summary of Discussion at CMD

4. The Tribunal noted that the application relates to the 2021 Code which came into force on 16 August 2021, and to property factor duties. It was also noted that the Homeowner had initially only submitted an application in terms of the 2012 Code. When the application was considered by a Legal Member of the Tribunal, it appeared that the evidence submitted post-dated the 2012 Code. When the Homeowner was made aware of this, she submitted this application.
5. In response to questions from the Tribunal, Mrs Buckley said that she had not sent a second letter to the Property Factor notifying them of the complaints and was relying on a letter dated 9 November 2022 in connection with both applications. The Tribunal noted that the letter of 9 November 2022 only refers to sections 2.1 and 2.5 of the Code, although it does not specify which Code. There is no reference to any OSPs or to Section 1. When the Tribunal discussed sections 2.1 and 2.5 of the 2021 Code, Mrs Buckley said that she had made an error. When she referred to these sections in the application, she meant the 2012 Code. She said that she does not have a copy of the 2021 Code and has no access to the internet. Mr Woods told the Tribunal that he could arrange to provide her with a copy following the CMD. Mrs Buckley told the Tribunal that although she had got mixed up when making the application, she is still waiting for a response to her correspondence and to the four points she first raised in letter of 4 May 2021.
6. Mr Woods told the Tribunal that the application should not proceed due to procedural unfairness. He also said that the application was vexatious as the points have been answered.

The Tribunal make the following findings in fact:

7. The Homeowner is the heritable proprietor of the property.
8. The Property Factor is the property factor for the property.
9. The Homeowner sent a series of letters to the Property Factor between March and November 2022. These letters contain enquiries regarding the calculation of the sum due by her for the works connected a new roof covering at the property and refer to previous correspondence, including a letter dated 4 May 2021.
10. The Homeowner notified the Property Factor on 9 November 2022, that she intended to make an application to the Tribunal that they had breached sections 2.1 and 2.5 of the Code. She did not specify which Code. This letter related to complaints under the 2012 Code.
11. The Homeowner did not notify the Property Factor that she considered that they had failed to comply with OSP 2, 4, and 11 and Sections 1, 2.1 and 2.5 of the 2021 Code. She did not give them notice of these complaints or provide them with the opportunity to resolve them before making the application.

Reasons for Decision

12. Section 17(3) of the 2011 Act states that, no application may be made to the Tribunal unless – (a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty, and (b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowners concern.”
13. Although the letter sent to the Property Factor on 9 November 2022 states that they have failed to comply with Sections 2.1 and 2.5 of the Code, the Homeowner did not mean the 2021 Code, but the 2012 version. The provisions in the two Codes are different. The reference to sections 2.1 and 2.5 in the application was an error.
14. The Homeowner did not notify the Property Factor that she considered that they had failed to comply with OSP 2, 4 and 11 or section 1 of the Code. She did not notify them that they had failed to carry out their property factor duties. As a result, these complaints cannot be considered and must be dismissed.
15. The parties should note that the application is being dismissed only because the Homeowner has failed to comply with Section 17(3) of the 2011 Act. The

Tribunal has not considered the merits of the application. The Homeowner is therefore able to re-submit the application, once she has given proper notification of the complaints, if she still feels that her enquiry has not been addressed. If she does so, she will require to satisfy the Tribunal that she has not had a full response to the enquiry.

16. The Tribunal is therefore satisfied that it cannot consider the application and that it should be dismissed.

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.

Josephine Bonnar, Legal Member

16 May 2023