

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber Ref: HOHP/BF/16/0158

The Parties:-

Miss Linda Young, residing at Flat 0/1, 37 Whitehill Place, Dennistoun, Glasgow, G31 2BB ("the homeowner")

And

Edzell Property Management, having their offices at 1008 Pollokshaws Road, Glasgow, G41 2HG ("the property factor")

Tribunal Members

Mr James Bauld (Legal Member)

Ms Ann MacDonald (Ordinary Member)

Decision

The tribunal determined that the property factor had failed to comply with certain duties arising from the Property Factors Code of Conduct ("the code") and accordingly determined to make a Property Factor Enforcement Order.

Background

1. By application dated 26th October 2016 the homeowner applied to the then Homeowner Housing Panel for a determination that the property factor had failed to comply with various sections of the code. In particular the homeowner alleged that the property factor had breached sections 6.1 and 6.2 of the code and failed to carry out Property Factor's duties.
2. On 1st December 2016, the jurisdiction of the Homeowner Housing Panel was transferred to the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of various regulations and legislation
3. After sundry procedure the application was referred to the First-tier Tribunal for Scotland Housing and Property Chamber and a hearing was set to take place on 23rd February 2017 at Wellington House, Glasgow.

The hearing

4. The hearing took place before the tribunal on 23rd February 2017 at Wellington House. The homeowner was present at the hearing. The property factor was represented by Timothy Lovat, their managing partner.

5. The two alleged breaches of the code arise from the section which deals with property factor carrying out repairs and maintenance. Section 6.1 requires property factor to have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance and attention and also requires property factor to inform homeowners of the progress of work including estimated timescales for completion. Section 6.2 indicates that if emergency arrangements are part of the service provided to homeowners then there must be in place procedures for dealing with those emergencies, including out of hours procedures where that is part of the service. This section also requires that contractors must be given access to properties in order to carry out emergency repairs wherever possible. The allegation of the failure to carry out the property factor's duties was because the property factor had failed to carry out an emergency repair within the timescales specified in their own written statement of services which resulted in significant additional water damage to the property
6. The hearing proceeded by listening to the homeowner who provided her version of events and thereafter allowing the property factor's representative to provide the property factor's version of events. As the hearing progressed it became apparent that there was very little dispute between the parties with regard to the factual position.
7. The homeowner returned to her flat on 24th June 2016 at about 4.30 pm. She indicated that she had been staying away from her home for a period of about a week to two weeks beforehand. On her return home on Friday 24th June she discovered that there was a water leak within the cupboard in her hall which contained her gas boiler. It became apparent to her that the leak was coming from above. Water was leaking into the cupboard and had caused laminate flooring within her hall just outside the cupboard to become damaged. She described this damage as the flooring being "blistered". She also indicated that she was worried that water was affecting the boiler itself. She made various investigations and tried to go to the upstairs flat but got no answer. She attempted to telephone Edzell's office but got no answer. There was no message advising how to contact the company nor a contractor in an emergency. She emailed Edzell the next day, Saturday 25th June at 10.23 am. She indicated that she had contacted a plumber the previous evening who had not come out but from photographs advised that they thought it was from the communal waste pipe from the flat above. She received emails from Edzell on Saturday 25th June indicating that they had received her emails and would be dealing with matters. Further emails were exchanged between the parties on Sunday 26th June. On Monday 27th June the homeowner telephoned Edzell and spoke to Timothy Lovat. The homeowner had believed that the property factor also acted as the letting agents for the flat above but was advised that they did not. After sundry emails and telephone conversations it appeared that the property factor policy was to ensure first that the leak was not from the flat below before instructing common work. They had managed to contact the landlords of the flat above and the property factor believed that the landlord was arranging the appropriate repair. An email was sent at 1.53 pm from the Edzell Group's managing partner to the homeowner. That email was acknowledged at 2.14 pm by the homeowner.
8. It transpired that the upstairs landlord did not resolve the problem. On 1st July their heating engineer arrived to check matters. That heating engineer had apparently been arranged by the owner of the upstairs flat. He confirmed what the plumber who had been instructed by the homeowner had said on the previous Friday. They indicated that this was a problem with a common waste pipe and was a repair which required to be dealt with by the factor. No contact was made between the homeowner and the property factor over the weekend of 2nd and 3rd July.
9. On 4th July the homeowner contacted the property factor and spoke to Timothy Lovat. She advised him that she had now been told by two separate plumbers that the matter was a common repair which required to be dealt with by the property factor. The property factor's representative accepted that he had received this telephone call and accepted that on 4th July he had become aware that this was a repair which required to be instructed by the property factor.

10. It became apparent from the evidence that the repair was not actually instructed until 7th July. On that date Edzell instructed a plumber to go out to inspect the ongoing damage and repair. There was an exchange of emails between the property factor and a company called A G Plumbing. The property factor indicated they had emailed the plumbers on 7th July and the plumbers had attended on 8th July. There appears to have been an email sent on 8th July from the plumber to the property factor indicating that the work would cost approximately £170 and that they would carry it out on Monday. The property factor answered the email confirming that they could go ahead with the work.
11. It then transpired that although the works were meant to be done on Monday 11th July they were not eventually carried out until Tuesday 12th July.
12. Once the works were completed the leak was stopped.
13. Throughout the period from 24th June to 12th July water was continuing to escape from the communal waste pipe and entering the homeowner's flat. The homeowner indicated that the damage which had been present in her flat on 24th June had become worse over the period of time between discovering the requirement for the repair and the repair actually being carried out, spreading from blistering of the laminate just at the door to the hall to damaging an area approximately one square metre in area.
14. During questioning the homeowner indicated that she did not have any planned regular inspection or maintenance in respect of her boiler nor any maintenance plan to deal with repairs. She indicated that she simply dealt with repairs to the boiler as and when needed. She indicated that she had previously required a repair to the boiler about two years ago and the boiler had been serviced then. She indicated that she initially believed that the leak of water had caused significant damage to her boiler as it has stopped working until it dried out. She now seemed to accept that the boiler itself had not been significantly damaged by the water leak but was concerned that its life might be affected by corrosion to the pipes. She had obtained a quote from a company who had been provided via the insurance brokers to carry out various works to refit the panel above her boiler cupboard, to lift and replace laminate flooring and to generally repair the water damage which had occurred. The cost of that work was £831 plus VAT.
15. The homeowner had indicated in her application that what she was seeking from the tribunal was an order against the factor to require the factor to firstly apologise for their failures and thereafter to make recompense in respect of the costs which she had incurred. She did not agree with the property factor's position that the response time for what was an emergency communal repair was a reasonable response time.
16. The representative from the property factor indicated that they had apologised and indeed were willing to further apologise in person. They were also willing to offer to have the homeowner's boiler checked out by their gas safety engineers to ensure that it was safe and continued to be safe to use. Their position was that they had instructed the matter as soon as they became aware of it. Their position was that when they were first alerted over the weekend of 25th and 26th June they had believed it was a repair required in the upstairs flat. They had taken steps to ascertain the owner of that flat on Monday 27th June and had understood those repairs were being carried out. It was not until they had been further contacted on 4th July that they became aware that the works had not been carried out. Their position was it was only on 4th July they became aware that this was a factoring repair. There was really no explanation tendered by Mr. Lovat with regard to the delay in the property factor instructing the works between 4th July and 7th July nor the delay of a further five days in these works being carried out. There was no explanation for the failure to confirm that the works which he had understood would be done in the week commencing on 27 June had actually been done. The cost of the required works fell well under the level which the written statement of services indicated would be carried out by the property factor without requiring permission from the homeowners.
17. Mr. Lovat indicated he did not think that a Property Factor Enforcement Order should be made. His position was that the property factor had complied with the relevant paragraphs of

the code. He did not regard the repair as an emergency as the water had been running for several weeks already.

Discussion and Decision

18. After the hearing was concluded the tribunal considered the evidence which had been led. The tribunal considered not only the evidence led at the hearing but all the papers which had been lodged in advance by both the homeowner and the property factor. The tribunal took into consideration the various emails which had been lodged. The tribunal had also been shown photos during the hearing which the homeowner had taken at the time on her mobile phone.
19. With regard to the allegations of the breaches of the relevant sections of the code, the tribunal took the view that there had been a breach of section 6.1 of the code. The tribunal accepted that the property factor had in place procedures to allow homeowners to notify them of matters requiring repair. Those procedures were clearly set out in the written statement of services. A telephone number and an email address was provided but it was noted that this had been changed since the statement had been issued and owners were now advised to email. Emails were checked 24/7 by the company. However, it is clear that the property factor did not meet the part of this section of the code which required them to "inform homeowners of the progress of the work including estimated timescales for completion". The property factor seemed to assume that the work was being done by another party in the period from 27th June to 4th July. From 4th July once they accepted the work was communal to 7th July the property factor seemed to take no steps whatsoever to progress the work nor advise the homeowner of the timescale for completion. There also seemed to be no explanation as to why the plumber who had attended on 7th July did not immediately carry out the necessary repair work given the relatively low cost of the work. The Factor confirmed that the plumber had the authority to carry out the work without referring back to them and it was unclear why they did not do so.
20. With regard to the alleged breach of section 6.2 of the code, the tribunal did not find that the property factor had breached his section. It is clear from the written statement of services that the property factor does have in place emergency arrangements to carry out works. However, while it is clear that they failed to actually follow those arrangements, the Code simply requires the property factor to have arrangements in place.

With regard to the alleged breach of Property Factor's duties, the written statement of services provided by Edzell advises that an emergency repair is one "**where urgent work is required to prevent further damage being caused, or in the interests of health and safety, and where there is not time to use the normal channels of consultation and decision making**". The Tribunal felt that the water leak did constitute an emergency falling within the first part of this definition. It was "urgent workrequired to prevent further damage" the tribunal took the view that this constituted a breach of the Factor's duties as the timescale specified for dealing with emergency repairs in the statement of services was stated to "within 24 hours". For other repairs, contractors would be instructed within 2 days. The repair was not instructed for 3 days after it became clear and was accepted by the property factor to be a communal matter.

21. The tribunal noted the offer which had been made by the property factor to provide assistance to the homeowner in having the boiler fully serviced and checked in respect of gas safety regulations. While the tribunal can make no order in respect of that matter, the tribunal has noted the offer and trusts that it will be honoured by the property factor. The tribunal also noted the apology offered at the tribunal by Mr Lovat and judged this apology was offered freely and sincerely.
22. The tribunal, having decided that there had been a breach of the code and a failure to comply with the property factor's duties, required to determine whether or not a Property Factor Enforcement Order should be made in terms of the Act. The tribunal took the view that a

Property Factor Enforcement Order should be made. The tribunal considered what the terms of that order should be. The tribunal accepted that the homeowner had returned on 24th June to discover that there had been a leak. At that stage some damage had already been caused to her property. None of that damage could be held to be the fault of the property factor. Had the homeowner not been away from the property the leak may have been discovered earlier and some of that initial damage may have been prevented. However, it is clear that in the period from 24th June to 12th July the damage must have been made worse by the constant and continual ingress of water from the broken pipe.

23. The tribunal noted that the cost of repairs for which an estimate had been provided was £831 plus VAT. The VAT on £831 would be £166.20. Accordingly the total cost of the repair including VAT would be just under £1,000. The homeowner was unable to claim her insurance to cover these repairs as her insurance had an excess of £1,000. The tribunal accordingly took the view that the property factor should be made liable to pay a proportion of the cost of repairing the damage. The tribunal decided that the amount which the property factor should pay should be £400. The tribunal accordingly proposes to make a draft Property Factor Enforcement Order in those terms. The terms of the draft Property Factor Enforcement Order are set out in a document accompanying this decision. The parties are invited to make representations to the tribunal in respect of this proposed order in terms of section 19(2) of the Property Factor (Scotland) Act 2011. Such representations should be remitted to the tribunal within fourteen days of the intimation of this decision.

Review of tribunal's decision

24. 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.

J Bauld

(Witness Signature)

(Legal Member)

CATHERINE McQUARRIE (Witness Name in full)

7 WEST GEORGE ST (Witness address)

GLASGOW

SOLICITOR

30 March 2017