

Housing and Property Chamber First-tier Tribunal for Scotland



Decision: Property Factors (Scotland) Act 2011, section 19(1) and the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, Rule 31

Chamber Ref: HOHP/PF/16/0153

THE PROPERTY:

81 Tankerland Road, Cathcart, Glasgow G44 4EW

THE PARTIES:-

Miss Paula O'Brien, residing at the property ("the homeowner")

and

D&I Scott Property Management 1 Carment Drive, Shawlands, Glasgow G41 3PP ("the factors")

THE TRIBUNAL (formerly the Home Owner Housing Panel (HOHP)):

David M Preston (Chairman) and Linda Robertson (Ordinary Member)

Decision:

The tribunal, having made such enquiries as it sees fit for the purpose of determining whether the factors had complied with the Code of Conduct for Property Factors ("the Code") as required by section 14 of the Act, determined unanimously that the factors had neither failed to comply with sections 6.1 and 6.4 of the Code; nor with their duties.

Background:

1. By application dated 20 October 2016 the homeowner applied to HOHP for a determination as to whether the factors had failed to comply with the Code of Conduct and to carry out the Property Factor's duties.
2. In particular the homeowner complained that the factors had failed to comply with sections 6.1 and 6.4 of the Code. In addition the homeowner complained that the factors had failed to manage services provided for tenants; failed to manage contractors used for works resulting in rat infestation in the bin areas; and failed to act on concerns raised.

3. By Minute of Decision dated 6 January 2017 a convener of the Housing and Property Chamber with delegated powers referred the application to the tribunal.

Hearing:

4. A hearing took place in Wellington house, 134-136 Wellington Street, Glasgow G2 2XL on 7 March 2017. Neither the homeowner nor the factors were present or represented at the hearing. Both parties had indicated in their Notices of Response dated 22 and 24 February 2017 respectively that they did not intend to attend the hearing. Accordingly the tribunal proceeded to consider the application on the basis of the representations and supporting documents submitted by the parties.
5. In support of her application, the homeowner had lodged:
 - 1) Email to the factors dated 24 August 2016;
 - 2) Email to the factors dated 29 August 2016;
 - 3) Email from the factors dated 1 September 2016;
 - 4) Letter/email from the homeowner dated 1 September 2016;
 - 5) Email from the factors dated 12 September 2016; and
 - 6) Email from the homeowners dated 20 September 2016;
 - 7) Letter from the factors 2 March 2016;
 - 8) Statement of Services of the factors;
 - 9) Written representations dated 24 February 2017.
6. in support of their written representations dated 22 February 2017, the factors had lodged:
 - 1) Letter to the homeowner dated 21 November 2016;
 - 2) Emails from the homeowner dated 24 and 29 August 2016;
 - 3) Email from the factors to Allan Slaters & Builders Ltd dated 6 June 2016; and
 - 4) Emails between the factors and the homeowners dated 26 October and 22 November 2016.

Facts & Circumstances:

7. On 2 March 2016 the factors wrote to the proprietors of the tenement to advise that work was required to the rear gutters of the tenement of which the property formed part and sought advance payment for the estimated cost. The last share was received on 10 June 2016, on which date they instructed contractors to commence work and asked for notification of the date on which the scaffolding would be erected in order that they could notify owners in advance (factors production 3).

8. The tribunal was provided with no information to confirm whether the contractor was advised of the start date but the homeowner maintained that they were not advised of when works would begin or a timeframe of how long it would take to complete. The homeowner also complained that the factors did not provide the contractors with access to the front door or the attic area.
9. The information provided in the email correspondence between the parties stated that the scaffolding was erected on 4 August 2016 and the repairs to the gutters were completed by 8 August 2016.
10. On 24 August 2016 the homeowner complained to the factors that the scaffolding remained in situ and that its presence had prevented refuse from being collected, resulting in rat infestation in the area of the bins.
11. On receipt of this information the factors instructed contractors to remove the scaffolding, which they did on 25 August 2016; however they left some scaffolding poles and a platform on site resulting in a further email from the homeowner on 29 August 2016 advising of this. On receipt of that email the factors instructed the removal of the remaining items, which was done.

Evidence and Representations:

12. The homeowner complained that the factors had failed to manage the contractors used for works resulting in rat infestation in the bin areas of the property. In particular she said that the factors had:
 - a. failed to ensure that the contractors had removed the scaffolding for three weeks after completion of the works resulting in blockage of the route to allow refuse collection resulting in rat infestation, despite repeated requests to the factors to have the scaffolding removed.
 - b. taken the contractors' word that the scaffolding had been removed which was incorrect as some items were left in her and a neighbouring property.
 - c. failed to advise her of when the work would begin or a timeframe for completion of the work.
 - d. failed to provide access to the front door or the attic area
 - e. failed to provide a programme of works, detailing property inspections and or a planned programme of cyclical maintenance
 - f. not arranged for gutter clearing for over a year.
13. The homeowner raised further complaints regarding additional work to gutters and plasterwork. However in an email of 19 December 2016 she confirmed that she did not wish these additional matters to be considered by the tribunal.

14. The homeowner submitted two letters dated 8 November 2016.

- a. One letter states that the factors: had failed to carry out their duty to attend to the water ingress; did not ensure that repairs were carried out promptly; and did not coordinate the contractors to provide an efficient service, as set out in the written statement of services. Her reasons for this were stated to be: that the factors had notified the homeowners in March 2016 that repairs were required but they were not completed until August; and that the contractors left the scaffolding in situ for three weeks following completion of the works and only removed it following repeated requests from residents to the factors, resulting in rat infestation in the bin area.
- b. The second letter referred to the factors alleged failure to comply with sections 6.1 and 6.4 of the Code. The homeowner complained that she was not advised of a planned timeframe from the notification in March, apart from an update on how many residents had paid, until completion in August. She was not informed of the start date which was only discovered when scaffolding arrived. There was no communication on the length of time expected to complete the work. The scaffolding remained in situ for three weeks after work and completed and was only removed following repeated requests from residents to the factors resulting in rat infestation. She also complained that she had not received a programme of works for maintenance of the property.

15. With her email of 22 November 2016 the homeowner produced an email dated 15 November 2016 from a neighbour regarding the cleaning of gutters to support her allegation that the factors had failed to provide a programme of works. The homeowner also alleged that the lack of gutter cleaning had contributed to the damage requiring repairs.

16. The homeowner's email of 24 August 2016 advised the factors that the scaffolding remained in place following completion of the work on 8 August 2016. In that email she advised that the location of the scaffolding had prevented Glasgow Council from gaining access to the communal bin area for the purpose of emptying the bins and that as a result there had been an infestation of rats.

17. Following the removal of the scaffolding, the homeowner emailed the factors on 29 August 2016 to advise that the contractors had left a number of scaffolding poles in the back garden as well as a scaffolding platform in the neighbouring garden.

18. The homeowner complained that she had been required to contact Glasgow Council who informed her that alternative arrangements could have been made for refuse collection in view of the restricted access and she said in her email of

24 August 2016 that the Council advised her that it was the factors' responsibility to make such arrangements.

19. As a consequence the homeowner complained that the factors were: in breach of section 6.1 and 6.4 of the Code; and had failed in their duties as outlined above.
20. In response the factors explained that on 2 March 2016 they had notified the owners of the tenement of which the property formed part that work was required to defective gutters at the rear of the building and in view of the level of the estimates they sought payment in advance. They advised that the last share of payment was received on 10 June 2016 on which date they instructed the work to proceed. They advised that they had informed the owners on three occasions between 2 March and 10 June of the progress with collection of the payment.
21. The email from the factors to the contractors of 10 June 2016 asked the contractors to advise them of a date for the scaffold in order that they could notify the owners in advance. No evidence was presented as to whether such a date was intimated either to the factors by the contractors or to the homeowners.
22. The factors said that when they received the email of 24 August 2016 which advised of the restricted access to the bin area, they had contacted the contractors who had removed the scaffolding on 25 August 2016 and on receipt of the email of 29 August 2016 they had contacted the contractors who had removed the remaining poles and platform on 31 August 2016. They said that the email of 24 August was the first they had heard about a problem with access to the bins and immediately on receipt of that information they instructed the contractors to remedy the situation.
23. The factors maintained that they had fully complied with section 6.1 and 6.4 of the Code.

Determination and Reasons for Decision:

24. The tribunal found that the factors were neither in breach of sections 6.1 or 6.4 Of the Code nor of their duties.
25. The tribunal was satisfied that the factors' Statement of Services provided clear provisions for notification of matters requiring repair, maintenance for attention. It was also satisfied that they had informed the homeowners of progress of the ingathering of advance payments. Whilst no estimated timescale for completion had been provided, the work carried out was completed within a period of four days.

26. In relation to this specific work, the tribunal was satisfied that the factors had responded to a report from a homeowner about defective guttering and, in view of the level of expenditure sought advance payment in accordance with the Statement of Services. Thereafter they kept the homeowners informed of the progress in ingathering the funds and promptly instructed the work on receipt of the final share. In their email of instruction they asked to be advised when the contractors would carry out the work and the tribunal had no information as to whether they were so notified. The tribunal found on the evidence before it that it was more likely than not that the factors had not been told by the contractors of a start date for the work. They could not therefore have given the homeowner that information, through no fault of theirs. In any event the contractors erected the scaffolding on 4 August 2016 and carried out the necessary work to the guttering by 8 August 2016. However they failed to remove the scaffolding about which the factors were not advised until 24 August 2016 on receipt of the homeowner's email. The time between the instruction and the start of work was not unreasonable.
27. The tribunal found that factors are under no obligation to attend any property when work is being carried out unless there is specific provision within their Statement of Services which requires them to do so. The fact that the scaffolding blocked access to the bin area was obvious to the homeowners in the property and they could either have informed the factors of the problem or made such alternative arrangements as would be necessary to allow the refuse to be collected. It is unreasonable to expect that factors would be aware of such a detail when instructing works.
28. The tribunal was satisfied that the factors acted promptly when they were advised of the problem and the scaffolding was removed the following day. There was no evidence to suggest that access to the bin area continued to be a problem following the removal of the bulk of the scaffolding. In any event the remaining items of scaffolding equipment were again removed promptly in response to the homeowner's email of 29 August 2016.
29. The homeowner complained that the factors had not provided access keys to the contractors. As stated above, the tribunal found on the evidence and representations before it that it was more likely than not that the factors had not been told by the contractors of a start date for the work as they had asked in their email of 10 June 2016 and they were accordingly unable to provide any such information, or timescales to the homeowners.
30. In relation to the homeowner's complaint about the gutters not having been cleaned for over a year she referred to the email from her neighbour by way of evidence. The tribunal considered the terms of the email but was unable to accept it as evidence to support the homeowner's position. The email contained

no identification or address for the sender and it was not clear what gutters were being referred to. The tribunal was satisfied that the Statement of Service made specific provision for the factors to aim to visit the property a minimum of once every two years and there was no evidence that they had failed to comply with that.

31. The tribunal was satisfied that the Statement of Service provided for a periodic inspection of the property and there was no evidence of that not having been carried out. The factors were under no obligation to advise homeowners of when they were carrying out such an inspection. No evidence was presented to the tribunal of there being any need for a planned programme of cyclical maintenance in respect of which a programme of works was required.

Right of Appeal:

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 on which the decision was sent to them.

D Preston Chairman

17 March 2017