

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/22/1885, FTS/HPC/PF/22/1887

Re: Flat 0/1 19 Keir Street, Glasgow G41 2PN ("the Property")

Parties:

Mr Shafiq Nazir Ahmad, Flat 0/1 19 Keir Street, Glasgow G41 2PN ("the Homeowner")

**Hacking & Paterson Management Services, 1 Newton Terrace, Glasgow G£7PL
("the Factor")**

Tribunal Members:

**Graham Harding (Legal Member)
Elaine Munroe (Ordinary Member)**

DECISION

The Factor has not failed to comply with its duties under section 14(5) of the 2011 Act.

The decision is unanimous.

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the 2011 Code" or "the 2021 Code" and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are referred to as "the Rules"

The Factor 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.

Background

1. By applications dated 10 June 2022 the Homeowner's representative Mark Wilson, Govan Law Centre, Glasgow, complained to the Tribunal that the

Factor was in breach of both the 2011 Code and the 2021 Code. Specifically, the Homeowner complained that the Factor was in breach of Sections 1, 4.3, 4.8 and 6.9 of the 2011 Code and also Sections 4.3, 4.5 and 4.9 of the 2021 Code. The Homeowner's representative submitted written representations on behalf of the Homeowner.

2. By Notice of Acceptance dated 6 July 2022 a legal member of the Tribunal with delegated powers accepted the applications and a Case Management Discussion ("CMD") was assigned.
3. By letter dated 28 July 2022 the Factor submitted written representations to the Tribunal and submitted further written representations by email on 8 September 2022.
4. A CMD was held by teleconference on 12 September 2022. Neither party attended and the Tribunal continued the applications to a hearing and issued Directions to the Factor.
5. By email dated 22 September 2022 the Factor submitted further written representations to the Tribunal.
6. By letter dated 26 January 2023 the Factor submitted its response to the Tribunal's directions.
7. By correspondence received on 7 March 2023 the Homeowner submitted further documents and photographs to the Tribunal.
8. By email dated 14 March 2023 the Homeowner requested that the hearing take place by teleconference rather than in person and the Tribunal agreed to the request.

Hearing

9. A hearing was held by teleconference on 9 May 2023. The Homeowner attended in person. The Factor was represented by Mr Alastair Leitch.

Section 1 of the 2011 Code

10. The Homeowner explained that he had owned the property since March 1998 and that there had not been a factor for 22 years and he had not agreed to the Factor being appointed. He said that a new owner had an uncle who worked for the Factor and had suggested that the owners agree to employing them but that there had never been a meeting held at which it was agreed that the Factor be appointed. He had only been provided with the Written Statement of Services in May 2022.
11. For the Factor, Mr Leitch said that one owner, Mr Durant had contacted the Factor and had said that he had spoken to all the owners and that it had been agreed to appoint them as Factor. Thereafter the Homeowner contacted by

letter dated 11 March 2020 confirming the appointment. The Tribunal noted that the wording of the letter suggested that the homeowner had recently purchased the property. Mr Leitch acknowledged that this was incorrect but submitted that all the appropriate information was nevertheless provided. The Homeowner said that he had never received the letter.

Sections 4.3 and 4.8 of the 2011 Code and Sections 4.3, 4.5 and 4.9 of the 2021 Code

12. It was the Homeowners position that the £30 charge levied by the Factor for late payments was unreasonable. Not only was the charge too high but it had also been applied unfairly when he had queried the bills charged and the problems, he had paying due to his limited income. He explained he had been looking for help from the Factor instead the amount he was due continued to rise because of the late payment charges being applied until it reached a point where it was impossible for him to pay. The Homeowner said he had looked for assistance from the CAB and Strathclyde Law Clinic without success. He said he did eventually obtain some assistance from the Govan Law Centre to make the application to the Tribunal. The Homeowner went on to say that he had contacted the Factor in about June 2021 to see if the Factor would remove the late payment charges and had been told they would think about it however during a telephone call with a female staff member he was asked personal questions about his family and he terminated the call. Subsequently in 2022 following discussions with Paul McGhie some charges were removed and the Homeowner paid fees of £394.00.and said his fees were paid up to date.
13. For the Factor, Mr Leitch explained that if a client was having difficulty with payment, it would be normal to ask about family members when assessing ability to pay. He went on to say that although some charges had been removed and the Homeowner had made some payment, he had not paid for the work carried out at the property. The Tribunal noted that the Factor had raised court proceedings against the Homeowner for payment but that the action had been sisted pending the outcome of these applications.
14. The Homeowner referred to an incident that occurred when an unknown employee of the Factor was outside the property talking to another owner. The homeowner said when he raised a query the employee started shouting and screaming at him and saying that he had never paid a penny towards the repairs. The Homeowner said he found it very embarrassing.
15. For the Factor Mr Leitch said that it was very difficult for him to comment but that the person that he thought would have been at the property at the time denied that any bad words had been said. Mr Leitch also said that it might have been one of the neighbours who had become involved.

Section 6.9 of the 2011 Code

16. The Homeowner advised the Tribunal that on 5 October 2020 he had arranged for a contractor to clean the gutters at the development and had

paid £150.00 for the work. He said he had not asked the other owners to contribute. He went on to say that the Factor subsequently instructed another contractor to carry gutter work at a cost of £480.00. The Homeowner went on to say that £10000 of work had been carried out to the roof of the development with scaffolding being in place for six weeks although the work only took four days. He said that the work done did not stop rain entering the development. And there had been subsequent bills for £300 to £400. The homeowner said that in 2021 there was a further £6000 spent on the roof and he queried why there was no guarantee for the earlier work that had been done.

17. For the Factor, Mr Leitch said that there had been major repairs carried out at the development to address water ingress. He said everyone in the block had been in favour with the exception of the Homeowner. He said the work did go ahead with the assistance of Glasgow City Council who paid for the Homeowner's missing share. He said the work consisted of repairs to the roof, gutters and chimney and did cost about £10000. He said subsequently there had been some further minor repair to the gutters that were separate from the previous works. Mr Leitch went on to say that further roof works were proposed but these were again unrelated to the earlier works. He said the Factor had written out to all the owners and asked for payment in advance. He said the works could not go ahead as only five out of the six owners had paid as the Homeowner had not paid and on this occasion Glasgow City Council would not agree to meet the missing share as they had not recovered the earlier payment from the Homeowner. Mr Leitch said that the funds had been returned to the owners and they had been left to deal with the repairs themselves. Mr Leitch explained that all the works carried out had been what was termed jobbing repairs, there were no guarantees. If there had still been water ingress the contractors would have returned to carry out repairs. He said there had been no survey done of the roof which was not new and there would be likely to be subsequent repairs. He confirmed in response to a query from the Tribunal that Glasgow City Council did not have any supervisory role in respect of their payment of the missing share.

18. The Tribunal requested that the Factor provide a copy of the title deeds that made provision for the appointment of a factor and also the contract documents in respect of the work undertaken at the Development and the work that was proposed but did not go ahead under the supervision of the Factor. These documents were provided by the Factor by email on 9 May 2023. The Homeowner also submitted some further documents that had not been requested.

The Tribunal make the following findings in fact:

19. The Homeowner is the owner of Flat 0/1 19 Keir Street, Glasgow ("the Property")
20. The Property is a flat within the block of six flats forming 19 Keir Street Glasgow (hereinafter "the Development").

21. The Factor performed the role of the property factor of the Development.
22. The title deeds of the Development provide for the appointment of a Factor to manage the development if approved by the majority of owners.
23. The Homeowner did not approve the appointment of the Factor but was in the minority.
24. The Factor wrote to the Homeowner advising him of their appointment and directing him to the availability of its Written Statement of Services.
25. The Factor imposes a late payment fee on clients' unpaid invoices in accordance with the terms set out in its written statement.
26. The Homeowner did not agree to major repairs being carried out to the roof of the development and did not contribute to the cost of repairs. The project was only able to proceed with the Homeowner's share of the cost being met by Glasgow City Council.
27. Subsequent minor repairs to the roof instructed by the Factor were not directly linked to the earlier major repairs.
28. A further proposed repair to the roof again not linked to the first major roof repair did not proceed under the management of the Factor as the homeowner refused to contribute his share of the cost and Glasgow City Council refused to contribute the missing share.
29. The Homeowner instructed a contractor to undertake gutter cleaning at his own expense in October 2020 at a cost of £150.00.

Reasons for Decision

30. The Deed of Conditions burdening the homeowners title made provision for the appointment of a Factor to manage the Development. It seems that for many years no factor was in place but a new owner suggested to the other owners in 2020 that they appoint a Factor. There ought to have been a meeting held at which each owner present could vote. Three owners would form a quorum. A majority of owners (therefore four) would need to vote in favour of appointing a factor for the appointment to be valid. It was the Homeowners position that no meeting took place. Nevertheless it would appear that all of the owners in the development with the exception of the Homeowner were in favour of the appointment of the Factor. The Tribunal whilst not disputing that the Homeowner did not attend a meeting cannot conclude that no meeting took place. It therefore has reached the view that as the majority of owners wished to appoint a Factor it was properly appointed.
31. The Tribunal was satisfied that the letter of 11 March 2020 was sent by the Factor to the Homeowner. It was not a model of clarity as it appeared to suggest the Homeowner had recently purchased the property when he had in fact owned the property since 1998. Nevertheless, the letter contained all the

required information in terms of Section 1 of the 2011 Code and the Tribunal was therefore satisfied that the Factor was not in breach of this section of the Code.

32. Most factors impose late payment charges on clients who fail to make payment of fees timeously. It is accepted that non-payment will add to a Factor's administrative and management costs. The Codes require that any late payment charges levied are reasonable. They should not be excessive. They should therefore reflect the additional administrative costs involved. The Tribunal had no information before it from the Factor as to the actual administrative costs incurred. It did note however that the Factor had agreed to waive certain charges with the Homeowner. On balance the Tribunal was satisfied that the late payment charges imposed were not unreasonable.
33. With regards to the manner in which the Factor dealt with the Homeowner and non-payment it appeared to the Tribunal that although the Factor was prepared to pursue the Homeowner to recover the debt due by him through the court it did also attempt to provide some assistance when advised of the Homeowner's circumstances. It may be that the Homeowner misinterpreted some questions being asked by a Factor staff member as unduly intrusive.
34. Whilst the Tribunal has no reason to doubt that words were said to the Homeowner outside his property on an occasion when a member of the Factor's staff was present. It appeared to the Tribunal that there may be some doubt as to whether it was the employee or another homeowner who was using intemperate language.
35. Taking everything into account the Tribunal was satisfied that the Factor was not in breach of any part of Section 4 of either the Codes.
36. The Tribunal was satisfied that the major roof and gutter repairs instructed by the Factor were as detailed in the documents provided. The further repairs instructed were not repairs to the same part of the roof and would therefore be charged separately. The further more major repair that was proposed was also in respect of separate works. The Tribunal was therefore satisfied that the Factor was not in breach of Section 6.9 of the Code.

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.



1 June 2023

Date