



Decision

Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Chamber Ref: FTS/HPC/PF/23/0435 and FTS/HPC/PF/23/0442

Re: Flat 4, 6 Lancaster Crescent, Glasgow, G12 0RR (“the Property”)

Parties:

Mr Peter Garbett, Flat 2/1, 14 Durwood Court, Glasgow, G41 3RZ (“the Applicant”)

Integro Property Management Limited, the Ca’doro, 45 Gordon Street, Glasgow, G1 3PE (“the Respondent”)

Mr Mark Onorati, Jones Whyte, Solicitors, 3rd Floor, The Connect Building, 59 Bath Street, Glasgow, G2 2DH (“the Respondent’s Representative”)

Tribunal Members:

Martin McAllister, solicitor, (Legal Member) and Elaine Munroe (Ordinary Member) (“the tribunal”)

Background

1. These are two applications by Mr Peter Garbett in respect of the Property in relation to the Respondent’s acting as a property factor. The applications are in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act).
2. One application alleges that the Respondent has failed to comply with paragraphs 1.1a, 2.2, 2.4, 3.3, 4.8, 6 and 7 of the version of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (“the Code”) applicable up to 15th

August 2021. It also states that the Applicant considers that the Property Factor has not carried out the property factor's duties in terms of the Act.

3. The other application alleges that the Respondent has failed to comply with overarching standards of practice 2,3,6 and 12 and paragraphs 1.1a, 2.2, 2.4, 3.3, 4.8, 6 and 7 of the version of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code") applicable from 16th August 2021. It also states that the Applicant considers that the Property Factor has not carried out the property factor's duties in terms of the Act.
4. The applications were dated 10 February 2023 and were accepted for determination by the Tribunal on 2 May 2023. The applications were accompanied by a number of documents.
5. Written representations were submitted by the parties' representatives.
6. Two case management discussions were held in terms of Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("The Rules").

Case Management Discussion on 11 July 2023

7. A case management discussion was held by teleconference on 11 July 2023. Ms Maguire and Mr O'Donnell were present. The purpose of a case management discussion was explained.
8. Ms Claire Maguire, who at that time represented the Applicant, and Mr O'Donnell, who represented the Respondent, intimated that there had been discussions with regard to possible resolution of matters which may obviate the requirement for the applications to be determined by the tribunal. They were agreed that it would be beneficial if the case management discussion were continued to allow a possible resolution to be explored further.
9. The case management discussion was continued to 3 October at 10 am. Ms Maguire and Mr O'Donnell were advised of the date and time.
10. A direction under Rule 16 was issued requiring:
 - 10.1 The Respondent to lodge copies of all versions of its written statements of services from 1 January 2014 to 4 April 2023. These have to be lodged by 28 August 2023 and copies are to be provided to the Applicant.
 - 10.2 The Applicant to make further written submissions and send to the Respondent by 28 August 2023. A copy is to be sent to the Tribunal.

10.3 The Respondent to make further written submissions and send to the Applicant by 4 September 2023. A copy is to be sent to the Tribunal.

10.4 Parties to make final submissions to the Tribunal by 11 September and send a copy to the other party.

Submissions following Case Management Discussion of 11 July 2023

11. Submissions were lodged by the Applicant's solicitor on 28 August 2023.

12. Submissions were lodged by the Respondent's solicitor on 25 August 2023, 4 September 2023 and 7 September 2023.

13. Copies of written statements of service were submitted by the Respondent's solicitor.

14. On 8 September 2023, Ms Maguire emailed the Tribunal and intimated that her firm was withdrawing from representation of the Applicant.

Case Management Discussion on 3 October 2023

15. A case management discussion was held by teleconference at 10 am on 3 October 2023. It concluded at 10.31 am.

16. Mr Mark Onorati, solicitor, represented the Respondent. The Applicant was not present.

17. The purpose of a case management discussion was explained by the Legal Member.

18. Mr Onarati said that his firm emailed the Applicant on 26 September 2023 and wrote to him by first class recorded delivery mail on the same day. The Applicant had been asked to confirm if he had alternative representation and was reminded of the date of the case management discussion.

19. After a short adjournment, Mr Onerati confirmed that the letter had been sent to the Applicant at Flat 2/1, 14 Durwood Court, Glasgow, G41 3RZ. He said that the Royal Mail track and trace website was not functioning but he said that he had no reason to believe that the letter had not been delivered and he said that the communication had also been emailed to the Applicant at psgarbett@gmail.com.

20. Mr Onorati moved the tribunal to dismiss the applications because of the failure of the Applicant to insist on them.

Decision

21. The tribunal dismissed the applications in terms of Rule 27 (2) (b) of The Rules on the basis that the Applicant has failed to *“co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly.”*

Reasons

22. The tribunal considered the motion by the Respondent’s solicitor.

23. The tribunal noted that the Applicant’s agent had been present on 11 July 2023 when the date and time of the case management discussion had been fixed and that the agent would have been written to by the Tribunal to confirm those arrangements.

24. The tribunal accepted that the Respondent’s solicitors had communicated with the Applicant and in those communications had referred to the date of the case management discussion.

25. The tribunal noted that, during the case management discussion, the Applicant had not accessed the teleconference.

26. The tribunal noted that the clerk checked and that no email had been received from the Applicant with regard to arrangements for the case management discussion.

27. The Applicant had engaged a solicitor until Ms Maguire intimated her withdrawal from representation on 8 September 2023. The fact that the Applicant was not present at the case management discussion of 11 July 2023 was irrelevant since his agent was present and it was reasonable for the tribunal to accept that he would have been aware of the date and time of the case management discussion.

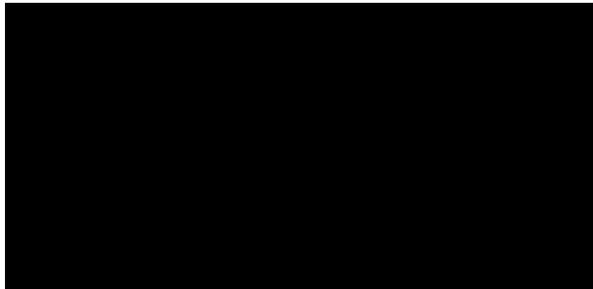
28. The tribunal also considered that the communications from the Respondent’s solicitors to the Applicant were significant and that, taking all matters into account, it was appropriate to dismiss the applications because of the Applicant’s failure to engage with the Tribunal process. To do otherwise would not be fair on the Respondent. The tribunal also had regard to the cost to the public purse as a consequence of the Applicant’s failure to engage with the Tribunal process.

Expenses

29. Mr Onorati submitted that an award of expenses should be made in terms of Rule 40 of The Rules. The tribunal determined that the Respondent would require to make written submissions on the matter.

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.



Martin J. McAllister
Legal Member
3 October 2023