

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
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/22/2897

Re: Property at 2F Cogan Place, Barrhead, Glasgow G78 1QZ ("the Property")

Parties:

Mrs Sylvia Ferguson, 2F Cogan Place, Barrhead, Glasgow G78 1QZ ("the Homeowner")

Lorimer Stevenson, A CoVault, 1 Redwood Crescent, Glasgow G74 5PA ("the Property Factor")

Tribunal Members:

Neil Kinnear (Legal Member) and Mike Scott (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011*, and had failed to comply with sections 2.1, 2.7, 3.1 and 7.2 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £458.50 in respect of the Property Factor's failure to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011* and its failure to comply with sections 2.1, 2.7, 3.1 and 7.2 of the Code of Conduct for Property Factors as required by Section 14(5) of the *Property Factors (Scotland) Act 2011*

[3] The Decision of the Tribunal was unanimous.

Introduction

[4] 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 Code"; and *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended are referred to as "the Rules".

[5] The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

[6] By application dated 30th August 2022 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act, and had failed to comply with sections 1.1, 2.1, 2.6, 2.7, 2.10, 3.1, 3.2, 3.3, 3.8, 5.3, 5.5, 6.4, 6.6, and 7.2 of the Code as required by section 14(5) of the 2011 Act.

[7] On 10th November 2020 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a hearing. By letters dated 28th November 2022 both parties were notified that a hearing by conference call would take place at 10.00 am on 30th January 2023. Both parties e-mailed helpful written representations in advance of the Hearing.

[8] A Hearing was held on 30th January 2023 by conference call. The Homeowner participated, and was not represented. The Property Factor's Raymond Lorimer participated, and was not represented.

[9] The Tribunal and the parties discussed the various alleged breaches, which resulted in a resolution between the parties that the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011*, and had failed to comply with sections 2.1, 2.7, 3.1 and 7.2 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[10] That left the question of what order the Tribunal should make, upon which the parties did not agree. The Property Factor in its submissions to the Tribunal conceded that it should credit to the Homeowner's account the Homeowner's 1/12th share of £550.00. It had instructed a manual removal of moss from the roof of the block of which the Property forms part at a cost of £1,050.00. The contractor had not done that work, but instead applied a spray. That work should have cost only £500.00, hence the Property Factor accepted that the Homeowner's share of the additional £550.00 should be returned, being £45.83.

[11] The Property Factor also accepted that it should credit the annual management fee due to its failings to the Homeowner's account, being £95.00. Finally, the Homeowner challenged the quality and frequency of the cleaning invoiced to her. The

Tribunal heard no evidence on this point, but the Property Factor as a gesture of goodwill offered to concede that it would credit the Homeowner's account with her 1/12th share of the annual cleaning charge of £212.00, being £17.67.

[12] The Homeowner sought time to calculate her position on monetary adjustment, and as a result the Tribunal issued her with a direction to provide her submissions on that issue.

[13] The Homeowner duly provided her submissions, which the Tribunal considered. She sought repayment of all her outstanding debits on her account of £600.13. The Tribunal was not persuaded that there was any basis to do that, but that instead it should consider the discrete claims arising from the agreed breaches by the Property Factor.

[14] The Homeowner also sought repayment in addition to the repayment of her share of the manual removal of moss from the roof of the block of which the Property forms part which had not been carried out, the further sum of £500.00 for the spray treatment which had been carried out. Albeit that was not the full extent of the work instructed, it had been carried out and had benefitted the Property. For that reason, the Tribunal was not persuaded that that sum should be refunded.

[15] Similarly, the Homeowner sought repayment of her 1/12th share of the cost of installing three non-slip mats at a cost of £450.00. Albeit that sum does seem quite high monetarily, there was no evidence from the Homeowner to show that this sum was excessive, and the Property Factor advised that the mats were installed as an urgent "emergency" measure for safety reasons after an incident in the common areas of the block of which the Property forms part. For those reasons the Tribunal was not persuaded that this cost should be refunded.

[16] Finally, the Homeowner sought repayment of her 1/12th share of cleaning and electricity bills for the year 2022. It was unclear to the Tribunal upon what basis electricity charges were sought to be recovered. The Tribunal heard no evidence on these points, and accordingly was not in a position to reach any conclusions thereon. In those circumstances the Tribunal acceded to the Property Factor's concession that it would concede that it would credit the Homeowner's account with her 1/12th share of the annual cleaning charge of £212.00, being £17.67.

[17] The Tribunal notes that the Homeowner sought in addition a sum of £200.00 said to have been conceded by the Property factor at the Hearing. The Tribunal had no note of any such concession being made, but in any event, understood that the Property Factor made various concessions as a goodwill gesture in an effort to reach a global settlement of the Homeowner's claim rather than as discrete and conceded separate elements of her claim.

[18] In conclusion, the Tribunal decided that the Property factor should credit the Homeowner's account with the sum of £158.50, being the total of the Homeowner's share of the additional £550.00 for the roof works, being £45.83, the annual management fee, being £95.00, and her share of the annual cleaning charge, being £17.67.

[19] In addition, the Tribunal considered that the Property Factor should make payment of £300.00 compensation to the Homeowner in respect of its accepted failings, having regard to the anxiety and distress caused to the Homeowner by the Property Factor's failures and in respect of the Homeowner's time and inconvenience in dealing with the complaints process and Tribunal proceedings.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

27/03/2023

Legal Member

Date