



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) concerning application at the request of the Property Factor to review a decision made by it dated 31st March 2022, which application was made in terms of Rule 39 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended

Chamber Ref: FTS/HPC/PF/21/1283

Re: Property at 11 Silverholm Drive, Cleghorn, Lanark ML11 7SY (“the Property”)

Parties:

Mr Robert Orr, 11 Silverholm Drive, Cleghorn, Lanark ML11 7SY (“the Homeowner”)

Newton Property Management Limited, 87 Port Dundas Road, Glasgow G4 0HF (“the Property Factor”)

Tribunal Members:

Neil Kinnear (Legal Member) and Andrew Taylor (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for review should be allowed in respect that the Tribunal proposed awarding compensation payable by the Property Factor to the Homeowner in the sum of £637.29 in respect of the Property Factor’s failure to comply with sections 2.1 and 2.4 of the Code of Conduct for Property Factors.

Background

By application dated 27th May 2021 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 2.1, 2.2 and 2.4 of the Code as required by Section 14(5) of the 2011 Act.

On 5th July 2021 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a Hearing. By letters dated 28th July 2021 both parties were notified that a hearing by conference call would take place at 10.00 am on 9th September 2021.

Prior to the Hearing both parties lodged helpful written submissions with appendices outlining their respective positions.

Thereafter, the Tribunal held three Hearings on 9th September 2021, 18th November 2021 and 17th February 2022 by conference call. The Tribunal issued its decision, proposed Property Factor Enforcement Order and order for expenses on 31st March 2022.

The Property Factor sought review of those upon two bases. The first is that the order awarding expenses against the Property Factor and in favour of the Homeowner to cover the expense to the Homeowner of preparing for the further continued Hearing on 17th February 2022 should be restricted to preparation undertaken after 1st January 2022. The Factor argued that having advised the Tribunal at the Hearing of 18th November 2021 that it was undertaking further investigations with third parties which it anticipated it would conclude by the end of December 2021, its failure to communicate the results of those investigations only commenced from 1st January 2022.

The second is that the Tribunal held that the parties were agreed that in the event that the Tribunal concluded that the Property Factor was in breach of its obligations, then the sum of £787.29 represented the sum which the Homeowner had paid which he should have not. The correct sum was not £787.29, but was £287.29.

A review Hearing was held at 10.00 am on 5th July 2022 by conference call. The Homeowner participated, and was not represented. The Property Factor's Mr MacDonald and Mr Miller participated, and the Property Factor was not represented.

As a result of a discussion between the parties and the Tribunal, it became clear that both Tribunal members had misunderstood the parties' respective positions. The Tribunal had understood that the parties were agreed that the sum of £787.29 represented the sum which the Homeowner had paid which he should have not, and that in the event that the Tribunal concluded that the Property Factor was in breach of its obligations (as it did), that this sum should be repaid to the Homeowner by the Property Factor and that no other payment by way of compensation was sought.

Both parties confirmed that the correct position was that they were agreed that the sum of £287.29 represented the sum which the Homeowner had paid which he should have not. The Homeowner sought that sum together with compensation of £500.00 in respect of distress and inconvenience producing a total figure of £787.29. However, the Property Factor did not accept that compensation should be awarded, and accepted only that the sum of £287.29 should be repaid by it to the Homeowner in respect of the sum which the Homeowner had paid which he should not have.

Having focused the issue, the Tribunal concluded that it ought to order the parties to provide written submissions on that point and set a continued review Hearing to hear the parties' arguments regarding whether or not compensation for distress and inconvenience should be awarded by the Tribunal to the Homeowner, and if it should be, the amount of any such compensation.

Further, the Tribunal concluded that it ought to order the parties to provide written submissions on whether the Tribunal's award of expenses should be restricted to cover only preparation undertaken after 1st January 2022, and to hear the parties' arguments on that point also at the continued review Hearing.

The Tribunal noted that this application was heard together with application FTS/HPC/LM/21/2188, and that it made a decision, proposed Property Factor Enforcement Order and order for expenses in identical terms in that application. The Property Factor also sought review of those on the same bases as in this application. Unfortunately, albeit that a review Hearing was set in that application to be heard along with this application, the Homeowner did not appear to have been intimated with notice of the review Hearing by administrative oversight.

The Tribunal made a similar order for written submissions in that application, and set a continued review Hearing to be heard along with that in this application, as the arguments and background circumstances were the same in both.

The continued Review Hearing

A continued review Hearing was held at 10.00 am on 7th November 2022 by conference call. The Homeowner participated, and was represented by Mr Malcolm Campbell. The Property Factor's Mr MacDonald and Mr Miller participated, and the Property Factor was not represented.

The Parties again confirmed that the correct position was that they were agreed that the sum of £287.29 represented the sum which the Homeowner had paid which he should have not. However, the Homeowner sought a monetary award in respect of distress and inconvenience suffered by him with regard to the circumstances of this case, the history of which is set out in the Tribunal's original decision. The Homeowner had originally sought £500.00 in this regard, but now considered that the sum of £1,000.00 was appropriate upon the basis of the conduct of the Property Factor in drawing out the proceedings further by seeking review of the Tribunal's decision and not reimbursing the overpayment made by the Homeowner.

Mr MacDonald accepted that a monetary award in respect of distress and inconvenience suffered by the Homeowner was appropriate, but argued that this should be limited to £250.00. Mr MacDonald noted that Mr Campbell has separately previously brought an application in respect of his own property to the Tribunal in respect of the same grounds of complaint as here, and the Tribunal had made an award of £250.00 in respect of his distress and inconvenience.

Mr Campbell notes that the award made to him for distress and inconvenience was made by the Tribunal in 2021. Since that time, the Property Factor had further delayed in resolving the Homeowner's complaint. In those circumstances a higher award was appropriate.

Mr MacDonald submitted that the order awarding expenses against the Property Factor and in favour of the Homeowner to cover the expense to the Homeowner of preparing for the further continued Hearing on 17th February 2022 should be restricted to the sum of £225.00, which the Property Factor was willing to concede. However, Mr Campbell submitted that the Homeowner was not prepared to accept that offer due to the amount of time and preparation he had put in to preparation, and that the Tribunal's order for expenses was reasonable.

Reasons for Decision

The Property Factor applied to the Tribunal for review of its decision of 31st March 2022, and set out why the Property Factor considered a review of the decision was necessary.

Rule 39(1) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that the Tribunal may at the request of a party review a decision made by it where it is necessary in the interests of justice to do so.

The application did comply with the criteria set out in Rule 39(2) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended and section 43(2)(b) of the *Tribunals (Scotland) Act 2014*.

The Tribunal considered that the Property Factor's reasons for review had merit with respect to the award of compensation of £787.29. It was clear that the Tribunal has misunderstood the parties' positions about compensation, perhaps as a result of the conflation of a concession by the Property Factor concerning the overpayment of £287.29 with the sum sought by the Homeowner of £787.29 which included both that figure and a further £500.00 sought in respect of distress and inconvenience he had suffered.

In any event, both parties accepted that the correct figure in respect of the overpayment by the Homeowner was £287.29 and not £787.29. They differed upon the level of any monetary award in respect of distress and inconvenience.

After careful consideration, the Tribunal determined that £350.00 was an appropriate monetary award in respect of distress and inconvenience caused to the Homeowner by the Property Factor's breaches. The Tribunal considered that there was some force in Mr Campbell's submission that the Homeowner had suffered more distress and inconvenience compared to himself as a result of the further delay in resolving the Homeowner's complaint compared to his own. However, the Tribunal felt that the sum of £1,000.00 sought was excessive in the circumstances.

That being so, the Tribunal considered that it should review the figure of compensation award in its decision of 31st March 2022 from the figure of £787.29 to the figure of £637.29.

With respect to the question of the Tribunal's award of expenses, the Tribunal was not persuaded that it should alter its decision to award expenses to the Homeowner, nor the basis for its decision in that regard.

Decision

For the foregoing reasons, the Tribunal determined that the application for review should be allowed in respect that the Tribunal proposed awarding compensation payable by the Property Factor to the Homeowner in the sum of £637.29 in respect of the Property Factor's failure to comply with sections 2.1 and 2.4 of the Code of Conduct for Property Factors.

07 November 2022

Legal Member

Date