

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016
Chamber Ref: HOHP/PF/16/0140

The Parties:-Mrs. Claire Regan residing at 125, Tantallon Road, Townhead, Coatbridge, ML5 2LU (the "homeowner") and Cairn Housing Association, having a place of business at Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD ("the factor")

The Property: Amenity ground at Townhead Development, Coatbridge, North Lanarkshire ("the property")

Tribunal Members

Karen Moore (Legal Member)

John Blackwood (Ordinary Member)

Decision

The tribunal determined that (i) the factor had not failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Section 3 (Financial Obligations) at paragraph 3.3 and Section 4 (Debt Recovery) at paragraphs 4.4 and 4.5, all of the Property Factor Code of Conduct ("the Code") .

Background

1. By application dated 28 September 2016 ("the Application") the homeowner applied to the Homeowner Housing Panel (now the First-tier Tribunal for Scotland (Housing and Property Chamber) for (i) a determination that the factor had failed to comply with Section 3 (Financial Obligations) at paragraph 3.3 of the Code by failing to provide an explanation of the reason for management charges and (ii) a determination the factor had failed to comply with Section 4 (Debt Recovery) at paragraphs 4.4 and 4.5 of the Code by failing to clarify the way in which the management charge was levied and by pursuing a debt which had prescribed.
2. The Application comprised the following documents-

- I. Application form dated 28 September 2016
 - II. Copy correspondence (email and letter) between the homeowner and the factor dated from 21 October 2014 to 13 October 2016;
 - III. Copy invoices for common charges issued by the factor;
 - IV. Factor's written Statement of Services and
 - V. Copy of homeowner's title deed.
3. In response to the Application, the factor submitted written submissions and lodged productions with the tribunal comprising:-
- a) Copy correspondence (email and letter) between the homeowner and the factor dated from 21 October 2014 to 22 December 2016;
 - b) Copy invoices for common charges issued by the factor;
 - c) Homeowner's letter of complaint to the factor dated 29 September 2016;
 - d) Factor's written Statement of Services and
 - e) Copy of the homeowner's title deed, all of which were copied to the homeowner

Hearing

4. A hearing took place at 10.30 on 25 January 2017 at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL. The homeowner was not present. Ms. Jacqueline McNaughton and Mr David Leishman of the factor were present. The factor was represented by Ms Anne Bennie, Advocate.

Section 14 Duty

5. The tribunal dealt with the homeowner's complaint in respect of the section 14 duty of the Act which deals with non-compliance of the Code and noted that the homeowner's complaint related to:-

Section 3 (Financial Obligations) at paragraph 3.3 which states:- *"You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance"*

Section 4 (Debt Recovery) at 4.4 which states:- *"You must provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations."*

and

Section 4(Debt Recovery) at 4.5 which states:- *"You must have systems in place to ensure the regular monitoring of payments due from homeowners. You must issue*

timely written reminders to inform individual homeowners of any amounts outstanding."

Position of the homeowner in respect of section 14 duty

6. As the homeowner was not present, the tribunal relied on the content of the Application. At part 7 of the application form the homeowner stated *"I have been seeking answers to the following questions since November 2014 regarding my property management fee"* and listed four areas of complaint as:-
 - 6.1– the factor's authority to levy a management fee;
 - 6.2 – the factor's reliance on a Deed of Conditions recorded in 2004 and not shown on the homeowner's title deeds;
 - 6.3 - clarification of the variable charges shown on the factor's invoices and
 - 6.4 – the reasonableness of the factor to invoice for old debt.
7. With regard to 6.1 and 6.2 above, the tribunal had regard to the content of the correspondence lodged by the homeowner and in particular to email correspondence in which the homeowner requested information on the factor's authority to levy a maintenance charge and to which the factor replied with a full explanation.
8. With regard to 6.3 above, the tribunal had regard to the factor's Written Statement of Service lodged by the homeowner and noted that, at paragraph 4, this stated the charge to be £25.00. The tribunal also had regard to the responses of 23 March 2016 from the factor to the homeowner and lodged by the homeowner which explained how the charge had been set.
9. With regard to 6.4 above, the tribunal had regard to the content of the correspondence lodged by the homeowner and in particular to the invoices and email correspondence from the factor dated 1 April 2016 and 13 May 2016 which show that the factor does not seek to recover sums which became due outwith the statutory prescriptive period.

Evidence on behalf of the factor in respect of section 14 duty.

10. On behalf of the factor, Ms Bennie submitted that the complaint raised by the homeowner did not fall within the Sections and Subsections of the Code listed by the homeowner. Ms Bennie referred the tribunal to those various parts of the productions lodged by the factor which demonstrate that the factor had answered and dealt with the homeowner's requests promptly, fully and repeatedly. Ms Bennie submitted that the factor, when responding to the homeowner's requests, had done so as fully as possible.

11. In response to the tribunal's enquiry in respect of the time lapse between Mrs. Regan acquiring her home and the factor issuing the first invoice and the Written Statement of Service, Ms Davidson explained that the factor's office practises had been lax until her appointment to her role as finance manager and that the change of ownership had been overlooked. The factor's first communication with the homeowner was a welcome letter dated 21 October 2014 which enclosed the factor's Written Statement of Service. The first invoices had been sent on 26 November 2014.
12. Ms. Bennie submitted that either the homeowner does not understand the factor's position or simply does not accept it.

Factual findings of the tribunal

13. The tribunal took into account the application and accompanying papers, the productions lodged by the parties and the submissions made on behalf of the factor at the hearing. The tribunal noted that both parties had lodged and referred to copies of the same correspondence between them, a copy of the homeowner's Land Certificate being Title Number LAN73014 and a copy of the same Written Statement of Services in support of their cases and so the tribunal accepted these as unchallenged evidence.
14. The tribunal found the following facts to be proved:-
- I. The property is common amenity ground forming part of the Townhead Development, Coatbridge, North Lanarkshire;
 - II. The property is owned by the factor and the homeowner and another 620 owners have an equal responsibility for the maintenance and upkeep of the property;
 - III. The property is managed by the factor;
 - IV. Title Number LAN73014 at burden entry D at the bottom of page D14 burden Ninth states "feuars shall be bound to pay to the superiorsa share of the cost incurred by the superiors" ;
 - V. The factor's Written Statement of Service at paragraph 4 states that the maintenance charge is £25.00;
 - VI. The factor issued a welcome letter and invoices at the end of 2014, following which the homeowner's correspondence requesting information began;
 - VII. The factor responded to the homeowner's requests promptly and in detail;
 - VIII. The factor seeks to recover debt which has fallen due within the statutory prescriptive period and
 - IX. The factor did not contact the homeowner and issue invoices until some ten years following the homeowner's acquisition of her home.

15. The tribunal found the dispute between the homeowner and the factor to be: has the factor responded to the homeowner's requests for information in respect of its authority to levy a maintenance charge, has the factor intimated the level of charge to the homeowner, has the factor applied this charge properly, is the factor seeking to recover debts which have prescribed and do these alleged failings amount to breaches of the Code at Section 3 at paragraph 3.3 and Section 4 at paragraphs 4.4 and 4.5.

Decision of the tribunal

16. With regard to Ms. Bennie's submissions that the complaint raised by the homeowner did not fall within the particular Sections and Subsections of the Code listed by the homeowner, the tribunal placed a wide interpretation on the wording of the Subsections and took the view that the homeowner's complaint in respect of authority to levy a maintenance charge and apply it fell within the second sentence of 3.3 and that the homeowner's complaint in respect of the length of time taken by the factor to pursue the debt and the factor's attempt to recover prescribed debt fell within Subsection 4.5. The tribunal agreed that the homeowner's complaint did not fall within Subsection 4.4.
17. The first matter between the parties and the first matter for the tribunal's determination is: has the factor responded to the homeowner's requests for information in respect of its authority to levy a maintenance charge. The tribunal, having regard to the Title Number LAN73014 at burden entry D on page D14, is satisfied that the factor has authority to levy a maintenance charge.
18. The second and third matters for the tribunal's determination are: has the factor intimated the level of charge to the homeowner and has the factor applied this charge properly. The tribunal, having regard to Ms. Bennie's submissions, the factor's Written Statement of Services and the correspondence lodged by both parties is satisfied that the factor both intimated the level of charge to the homeowner and applied the charge properly.
19. In respect of the matters dealt with at paragraphs 17 and 18 above, the tribunal's view is that the factor has made a great effort to provide the homeowner with as full an explanation as possible in a courteous and plain English manner and that the factor could do no more in this respect.
20. The next matter for the tribunal's determination is: is the factor seeking to recover debts which have prescribed. The tribunal, having regard to the Ms. Bennie's submissions, Ms. Davidson's evidence and the factor's correspondence, is satisfied that the factor now has a system in place to monitor payments due by homeowners and is not attempting to pursue debts which have prescribed.

21. The final matter for the tribunal's determination is: do the alleged failings amount to breaches of the Code at Section 3 at paragraph 3.3 and Section 4 at paragraphs 4.4 and 4.5. Having determined that there are no failings on the part of the factor, the tribunal, accordingly find that there are no breaches of the Code.

22. The decision is unanimous.

Appeal of tribunal's decision

A party aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within thirty days of the date when the decision was sent to them.

K Moore

Karen Moore

Chairperson

10 February 2017