

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/16/0127

The Parties:-

Mr Edmund Curran residing at 695 Hawthorn Street, Glasgow G22 6AZ ("the homeowner")

ng property (Scotland Limited, a subsidiary of North Glasgow Housing Association and having a place of business at 50 Reidhouse Street, Glasgow G21 4LS ("the factor"), per their agents, TC Young & Co, solicitors, Glasgow (the factors' agents)

Property: common parts at 695 Hawthorn Street, Glasgow G22 6AZ

Tribunal Members

Karen Moore (Legal Member)

Elizabeth Dickson (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 of the Property Factor Code of Conduct ("the Code") and (ii) the factor had not failed to comply with the property factor duties in terms of section 17(5) of the Act.

Background

1. By application dated 4 September 2016 ("the Application") the homeowner applied to the Homeowner Housing Panel 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 a detailed financial breakdown of the electricity charges made and a description of the reason for these

charges and (ii) a determination the factor had failed to comply with the property factor duties as set out in section 17(5) of the Act by failing to ensure that close cleaning and garden maintenance were carried out in terms of the factor's written Statement of Services and the title deeds to the property.

2. The Application comprised the following documents-
 - I. Application form dated 4 September 2016
 - II. Copy correspondence (email and letter) between the homeowner and the factor dated from 20 June 2015 to 7 November 2016
 - III. Copy invoices for common charges issued by the factor;
 - IV. Homeowner's letter of complaint to factor dated 29 September 2016;
 - V. Factor's written Statement of Services;
 - VI. Extract from homeowner's title deed;
3. On 12 December 2016, the tribunal directed that an inspection of the common parts should take place ahead of the hearing.
4. On 14 December 2016, the factor's agent lodged documentary productions with the tribunal which were copied to the homeowner.

Inspection

5. An inspection of the property took place at 09.15 on 11 January 2017. The homeowner was present. Ms Karen McNaughton of the factor was present and represented by Mrs Mullen of the factor's agents.

Hearing

6. Following the inspection, a hearing took place at 10.00 on 11 January 2017 at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL. The homeowner was present. Ms Karen McNaughton, property management officer, of the factor was present and represented by Mrs Mullen of the factor's agents.

Preliminary Matter

7. At the start of the hearing, the homeowner asked to be allowed to submit productions to the tribunal. The productions comprised email correspondence between the homeowner and the factor dated January 2017 and a typewritten statement from a third party. The tribunal sought the view of the factor and their agents who objected to the lodging of the third-party statement but not to the email correspondence. The tribunal having regard to the fact that the third party was not present to speak to or be examined on the statement, refused to admit the third-party statement to evidence but admitted the email correspondence.

Property Factor Duties

8. The tribunal first dealt with the homeowner's complaint in respect of the property factor duties as set out in section 17 of the Act which states:-
Section 17 (1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed (a) to carry out the property factor's duties.....
Section 17 (4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.
Section 17 (5) In this Act, "property factor's duties" means, in relation to a homeowner, duties in relation to the management of the common parts of land owned by the Homeowner"

Evidence on behalf of the homeowner in respect of property factor duties.

9. In respect of the grass cutting and landscape work to the common rear garden of the block of which the homeowner's property forms part, the homeowner advised the tribunal that previously there had been problems with the standard and regularity of this work. The homeowner advised the tribunal that he was aware that dog fouling within the common garden area was a recurrent issue and that as this prevented the proper maintenance of the common garden area, the factor should have been proactive in resolving the issue with the relevant owner of the dog or with the landlord of that owner.
The homeowner did not accept that the grass was cut the 14 -15 times as specified, however, the homeowner accepted that, by and large, the grass cutting and landscape work to the common rear garden were now satisfactory.
10. In respect of the common close and stair cleaning, the homeowner advised the tribunal that the common close and stair should be cleaned weekly each Tuesday but that frequently this did not happen. The homeowner stated that he kept a photographic record of the common close and stair on Monday and made checks on Tuesday and Wednesday to determine if the common close and stair had been cleaned, and, if it had not, he notified the factor. The homeowner stated that it was his understanding that the cleaning, until recently, had been carried out two-weekly and then only if one of his neighbours was at home to allow access via the door entry system. The homeowner stated that, in response to his suggestion, the factor placed a rota at the entrance to the common close for the cleaners to mark to confirm attendance. Despite this system being put in place and being duly marked weekly, the homeowner maintained strongly and firmly that the common close and stair were not cleaned every Tuesday as agreed with the factor

and were not cleaned properly. The homeowner advised the tribunal that the cleaners did not remove items placed in the common close and stairway by his neighbours and did not clean the bin shelter area.

Evidence on behalf of the factor in respect of property factor duties.

11. Ms McNaughton and Mrs Carol Wilson, property management manager of the factor, both gave evidence on behalf of the factor.
12. With regard to the grass cutting and landscape work to the common rear garden, Ms McNaughton and Mrs Wilson advised the tribunal that the extent of dog fouling was such that the factor's contractors refused to enter the common rear garden and carry out the work. They explained that the factor's landscaping contract is with Land Engineering and is for the greater housing stock within the factor's control as factor and ownership as landlord. The contract is managed by a contract administrator and is monitored at weekly meetings. As factor, their advice to residents was to notify Glasgow City Council's environmental health service regarding the persistent dog fouling. Mrs Wilson advised the tribunal that homeowners were not charged for abortive visits by the contractor and that she understood that last year grass cutting and landscape works had been carried out successfully.
13. With regard to the common close and stair cleaning, Mrs Mullen, on behalf of the factor, submitted to the tribunal that cleaning was carried out weekly, albeit not necessarily each Tuesday, that on only one occasion was the weekly clean missed and the homeowners were not charged on this occasion. Mrs Mullen referred the tribunal to the factor's written Statement of Service which states at page 3 under heading "Stair Cleaning", "*Stair cleaning is carried out weekly for some owners where this is in place*" and submitted that this service commitment had been complied with by the factor as the common close and stair have been cleaned each week, bar one. Ms McNaughton and Mrs Wilson advised the tribunal that, in the past, there had been an access issue as the cleaners did not have a fob to operate the close door entry system but that this has been resolved. Mrs Wilson advised the tribunal that the cleaning contract was for sweeping and mopping the common close and stair only and that the factor did not provide a service for cleaning the bin shelter or for removing items from the common areas.
14. Mrs Wilson confirmed to the tribunal that the contracts for both the grass cutting and landscaping services and the common close and stair cleaning services had been tendered by the factor.
15. In respect of the homeowner's request in his application to the tribunal that he be excluded from the common close and stair cleaning service and be

allowed to carry out his own cleaning, Mrs Mullen, on behalf of the factor, submitted that this would have to be agreed to by the majority of owners block in terms of the process set out in the title deeds for management of common property. Mrs Mullen went on to explain that should Mr Curran be allowed to opt out as he wished he would still be responsible for paying a 6th of the cost of cleaning the rest of the common close and stairs.

Section 14 Duty

16. The tribunal then dealt with the homeowner's complaint in respect of the section 14 duty of the Act which deals with non-compliance of the Code. The tribunal 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"

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

17. The homeowner advised the tribunal that this part of his complaint related to the way in which the electricity supply to the common close and stair was charged and invoiced. The homeowner advised the tribunal that there is a metered supply and an unmetered supply. He stated that he had asked the factor to explain why there is an unmetered supply but had not had a satisfactory answer. The homeowner's position is that both supplies should be metered in order to provide an exact charge to owners. The homeowner advised the tribunal that he considered the metered supply to be excessive as it included charges for services which he did not use.

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

18. On behalf of the factor, Mrs Wilson advised the tribunal that the unmetered supply was for the stair lighting. She explained that it was unmetered as the supply was part of a contract tendered by the factor for all of the block properties within its control. She further explained that this was an historical arrangement dating back to when Glasgow City Council maintained the stair lighting prior to the transfer of all their stock. The cost of the supply was apportioned across all of the homes and, in the factor's view, represented a fair cost and a value for money. Ms McNaughton advised the tribunal that, following a request by the homeowner that the lighting supply be metered,

the factor, in terms of the title deeds, had contacted all of the owners of the block for approval but only the homeowner had responded. Mrs Wilson advised the tribunal that the metered supply was for common services such as digital tv aerials and extractor fans in the loft space which formed part of the common parts of the block and for which the homeowner had a responsibility whether or not he benefitted directly from their use.

Factual findings of the tribunal

19. The tribunal took into account the application and accompanying papers, the inspection, the productions lodged by the parties and the submissions made by the parties at the hearing.

20. The tribunal found the following facts to be proved and not in dispute:-

- I. The property is the rear garden ground and the close and stair relative to the block of six houses at 695 Hawthorn Street, Glasgow;
- II. The property is in the common ownership of the homeowner and five other owners all of whom have an equal responsibility for the maintenance and upkeep of the property;
- III. In addition, there is a bin shelter and rear path owned in common by the owners of this block;
- IV. The property is managed by the factor;
- V. The factor issued the written statement of services which states "*Stair cleaning is carried out weekly for some owners where this is in place*";
- VI. The factor has a contract in place for common close and stair cleaning.
- VII. The factor has a contract in place for grass cutting and landscape works and, in the main, this is now operating satisfactorily.
- VIII. There are two electricity supplies to the common close: one metered and for common services, such as door entry, loft fans and digital TV and the other unmetered and for close lighting.

21. The tribunal found the dispute between the homeowner and the factor to be (i) the regularity and standard of the common close and stair cleaning and (ii) the way in which the electricity supplies are invoiced.

Decision of the tribunal

22. The first matter between the parties and the first matter for the tribunal's determination is: has the factor had failed to comply with the property factor duties as set out in section 17(5) of the Act by failing to ensure that common close and stair cleaning and common rear garden maintenance were carried out in terms of the factor's written Statement of Services and the title deeds to the property.

23. The tribunal noted the extent of the cleaning service provided by the factor as outlined in its written Statement of Services. From the inspection, the tribunal noted that the common close and stair appeared clean and recently swept. Although, pieces of furniture had been placed in the close, the tribunal noted accepted Mrs Wilson's evidence on behalf of the factor that removal of items is not part of the core services and that it is for individual owners to arrange disposal of their own bulk items. The tribunal is of the view that the written Statement of Service could be clearer in the actual services provided to the property.
24. Also, from the inspection, the tribunal noted that the common rear path and bin shelter were clean and tidy. The tribunal accepted Mrs Wilson's evidence on behalf of the factor that backcourt services are not provided to this property but again are of the view that the written Statement of Service could be clearer in this respect.
25. With regard to the common rear garden, from the inspection the tribunal noted that this was reasonably neat and tidy given the winter season. In any event the tribunal noted that the parties were agreed that this matter had been resolved.
26. From the inspection, the tribunal noted that the weekly rota had been adhered to.
27. The tribunal recognises that the homeowner does not accept the factor's position that the common close and stair cleaning is carried out weekly and disputes this strongly. However, on the evidence before it, the tribunal is satisfied that there is a contract in place for weekly cleaning of the common close and stair cleaning and that this contract has been fulfilled, with one or two exceptions. The tribunal is satisfied that on the few occasions when weekly cleaning was not carried out the factor acted appropriately by apologising to the homeowner and abating the charge. Therefore, the tribunal finds that the factor has complied with the property factor duties as set out in section 17(5) of the Act, and its Written Statement that confirms that cleaning is carried out weekly, not necessarily on a set day
28. The second matter between the parties and the second matter for the tribunal's determination is: has the factor had failed to comply with the section 14 duty by failing to comply with Section 3 (Financial Obligations) at paragraph 3.3.
29. The tribunal had regard to the invoices issued to the homeowner all of which detail the electricity supply charges levied by the factor. The tribunal acknowledged Mr Curran's discontent with regard to being charged for

services he made little of no use of, but having regard to the title deeds for the property the tribunal accept these are common costs for which he is liable. The tribunal also had regard to the correspondence from the factor to the homeowner explaining the way in which the electricity supply charges had accrued and had been apportioned. The tribunal had further regard and accepted the evidence given by Mrs Wilson in respect of the reason for the different metering arrangements. The tribunal had no hesitation in finding that the factor had provided the homeowner with detailed financial breakdown of charges made for the electricity supplies and had supplied information to support these charges. Accordingly, the tribunal determined that the factor has complied with the section 14 duty.

30. The decision is unanimous.

Review of tribunal's decision

Any 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 the party must seek leave to appeal from the First-tier tribunal. The appeal must be made within thirty days of the date when the decision was sent to them.

K Moore

Karen Moore
Chairperson

22 January 2017