

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Decision in respect of an Application under Section 17 of the Property Factors
(Scotland) Act 2011**

Chamber Ref: FTS/HPC/PF/19/1236

**58 Kestel Road, Glasgow, G13 3QT
("the property")**

The Parties:-

Mr David Petrie, residing at the property ("the Homeowner and Applicant")

**Glasgow Housing Association Limited, Wheatley House, 25 Cochrane Street,
Glasgow, G1 1HL ("the Factor and Respondent")**

Tribunal Members:-

Patricia Anne Pryce	-	Chairing and Legal Member
Andrew Taylor	-	Ordinary Member (Surveyor)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Factor has complied with the Code of Conduct for Property Factors as required by Section 14 of the Property Factors (Scotland) Act 2011 ("the 2011 Act") determines unanimously that, in relation to the Homeowner's Application, the Factor has not complied with the Code of Conduct for Property Factors.

Following on from the Applicant's application to the First-tier Tribunal (Housing and Property Chamber), which comprised documents received on 23 April 2019, the Convenor with delegated powers of the Chamber President referred the application to a tribunal on 20 May 2019.

Introduction

In this decision, the tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for

Property Factors as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as “the 2017 Rules”.

The tribunal had available to it, and gave consideration to, the Application by the Applicant as referred to above, representations submitted by the both parties together with oral submissions made by both parties at the hearing.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 2.5, 6.1, and 7.2 of the Code which are referred to for their terms.

Hearing

A hearing took place in the Glasgow Tribunals Centre, 20 York Street, Glasgow on 18 July 2019.

The Applicant attended on his own behalf along with his wife, Mrs Petrie.

The Respondent was represented by Mr David Adams, solicitor, and Mrs Donna Baillie both employees of the Wheatley Group.

Preliminary Matters

1. Mr Adams submitted that the factor in respect of the property was Glasgow Housing Association Limited and not YourPlace as stated in the application. YourPlace, while a factor in its own right, acted as an agent in respect of this property. He had no objection to this being amended. Both parties agreed to the amendment, however, the Applicant submitted that this was part of the problem. He and his wife had no idea who they were dealing with.

The Tribunal allowed the name of the Respondent to be amended to Glasgow Housing Association Limited. However, the Tribunal noted that it was not clear from the correspondence of the Respondent who the Respondent should be. The Tribunal had been provided with correspondence which had emanated from Glasgow Housing Association Limited, YourPlace and the Wheatley Group. The Tribunal observed that, going forward, the Respondent should be clearer as regards clearly disclosing a principal when using an agent.

2. The Tribunal raised the issue that both parties had apparently submitted written representations late. Mr Adams submitted that his representations were not late as he had had these hand-delivered to the Tribunal building. These were date stamped which showed that they had not been received until the day after Mr Adams stated he had sent them. However, neither party objected to the representations and the Tribunal considered that both sets of representations were helpful to the matter at hand. In light of this, the Tribunal considered that it was in the interests of fairness and justice that they were both allowed to be received, though late.

The tribunal makes the following findings in fact:

- The Applicant is the owner of the property known as 58 Kestrel Road, Glasgow.
- The Applicant owns this property jointly with his wife.
- The Respondent is the factor of the common parts of the building within which the property is situated.
- The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 from the date of its registration as a property factor.
- The Applicant requested a meeting with the Chief Executive of the Respondent which request was not responded to by the Respondent within the Respondent's stated timescales in its written statement of services (WSS).
- The Respondent has in place procedures to allow homeowners to notify it of matters requiring repair, maintenance or attention.
- The Applicant exhausted the Respondent's in-house complaints procedure.
- The Respondent sent the Applicant a stage 2 letter advising that the Applicant had exhausted the in-house complaints procedure and how to contact the First-tier Tribunal.

Breach of Section 2.5

The parties agreed that the Respondent had breached this section of the Code by not contacting the Applicant timeously about his request for a meeting with the Respondent's Chief Executive. They agreed that the Respondent had not met its own timescales within its WSS.

Given this, the tribunal found that the Respondent had breached Section 2.5 of the Code.

Breach of Section 6.1

The Applicant submitted that the Respondent had sent a letter in April 2018 advising the four owners in the block that work needed to be done to the gutters and requesting consent for these. This letter was sent to the wrong address. The Applicant did not receive it. The Applicant did not get the chance to consent to the proposed works. The Applicant submitted that he had told the Respondent by phone that the address should be changed. This was prior to that date. The Applicant's mother had lived in the property for a number of years, although it had always been the Applicant who had been the owner. When the Applicant's mother passed away in October 2017, the Applicant had advised the Respondent by phone that the contact details should be changed. Neither the Applicant nor Mrs Petrie could remember if they provided anything in writing to the Respondent. There was another letter sent to the Applicant seeking consent for works in November 2018 which the Applicant received. However, the quote was much higher which the Applicant queried.

Mrs Petrie submitted that she and her husband had Power of Attorney in their favour granted by her mother-in-law. Mrs Petrie used to manage matters for her mother-in-

law. Mrs Petrie could not remember if she had ever provided a copy of this document to the Respondent.

Mr Adams submitted that the initial consent letter went to the property. Mrs Baillie submitted that she could not find a record of the contact details being updated until July 2018. The normal procedure is for consent letters to go to the property address. Mrs Baillie did not dispute that the Applicant may have phoned and advised of a change of contact details but could only find this in July 2018.

Mrs Baillie submitted that consent for the works here had not been obtained as the Respondent required a majority, in this case three out of four owners. The Respondent had not been able to obtain the majority consent, hence the reason the works had not proceeded. No majority had been received for either the April or the November 2018 consent letters.

The Tribunal noted that the Applicant accepted that the Respondent had in place the procedures for notification in respect of repairs as outlined by Section 6.1 of the Code. The Applicant submitted that the Respondent did not implement this very effectively. The Tribunal noted that this part of the Code requires the Respondent to have the procedures. It makes no mention of how these procedures are implemented. Given that, the Tribunal did not consider that this part of the Code had been breached.

The Tribunal did have a certain amount of sympathy for the Applicant as it did appear to the Tribunal that there was confusion around who the factor actually was as noted above. There seemed to be some confusion around the Respondent's systems which was caused by a cross-over between the contact details and their invoicing process. The Respondent has now addressed this so it should not re-occur in future. However, while these circumstances may have given rise to a failure to carry out the property factor's duties, they did not amount to a breach of this Section of the Code.

Given this, the tribunal found that the Respondent had not breached Section 6.1 of the Code.

Breach of Section 7.2

The Applicant and his wife accepted that they had received a Stage 2 letter from the Respondent within which they had been referred to the First-tier Tribunal. Given this, the Applicant submitted that he was no longer insisting on this breach. They had simply misunderstood this part of the Code.

The Tribunal considered these alleged breaches to have been withdrawn.

Given the above, the Tribunal did not require to make a finding in respect of this breach.

Final Submissions of Parties

The Applicant and Mrs Petrie submitted that they had now received most of what they wanted. They had received a full letter of apology, they had their meeting in June 2019 and they had received the letter of 21 June 2019 wherein the owners were now being given three options in respect of the repairs. They have spoken to two of their neighbours and have agreed to consent to option one in the letter. They sent a letter to the Respondent to that effect last week. Other than that, the only other thing they wanted was for the repairs to be done, though they accepted that this required the majority consent which they now consider they have.

The Applicant submitted that it was frustration that had brought him to the Tribunal. He was passed from pillar to post and no one at the Respondent's place of business appeared to know anything when he spoke to them. In short, matters only started to be resolved once he made his present application. He found that entirely unsatisfactory.

Mr Adams submitted that the stage one and two letters explained the position of the Respondent clearly and he did not have much to add. It was not fair to say that there had not been an apology before as the Respondent had apologised in previous correspondence. Mrs Baillie undertook to go back to her office and chase up the last letter sent by the Applicant requesting that the consent process now begin. She will ensure that this happens and, once consent is obtained, instruct the repairs as a priority.

Observations

The Tribunal noted the final submissions by the parties. The Tribunal would commend both parties for conducting themselves in a professional and straightforward manner. They gave their evidence in a credible and straightforward way.

The Tribunal opined that the sum of £200 is a fair and reasonable sum which the Respondent should be required to pay to the Applicant which sum represents the inconvenience and stress through frustration caused to the Applicant in light of all of the circumstances rehearsed above.

Reasons for Decisions

Section 19(1)(b) affords the Tribunal discretion as to whether or not to make a Property Factor Enforcement Order. The Tribunal opined that in light of all of the matters noted in this decision, such an order should be proposed. The Respondent fully accepted the breach and subsequent improvement to its systems as noted above and within all of the documentation produced to the Tribunal.

Property Factor Enforcement Order (PFE0)

The tribunal proposes to make the following property factor enforcement order:-

Within 28 days of the date of communication to the Respondent of the property factor enforcement order, the Respondent must:-

1. Pay to the Applicant the sum of £200.
2. Provide documentary evidence to the tribunal of the Respondent's compliance with the above Property Factor Enforcement Order by sending such evidence to the office of the First-tier Tribunal (Housing and Property Chamber) by recorded delivery post.

Section 19 of the 2011 Act provides as follows:

“(2) In any case where the tribunal proposes to make a property factor enforcement order, they must before doing so—

- (a) give notice of the proposal to the property factor, and
- (b) allow the parties an opportunity to make representations to them.

(3) If the tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the tribunal must make a property factor enforcement order.”

The intimation of this decision to the parties should be taken as notice for the purposes of section 19(2) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal's office by no later than 14 days after the date that this decision is intimated to them. If no representations are received within that timescale, then the tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

In terms of section 46 of the Tribunals (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

.....Patricia Pryce.....

Chairing Member

...18 July 2019.....

Date