



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/23/0568

Flat 1/1, 1533 Dumbarton Road, Scotstoun, Glasgow, G14 9XG ('the Property')

The Parties:

Kleanthi Sula residing at Flat 1/1, 1533 Dumbarton Road, Scotstoun, Glasgow, G14 9XG ('the Homeowner')

Lowther Homes ('the Factor')

Tribunal members:

Jacqui Taylor (Legal Member) and David Godfrey (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with the property factor duty to have defective repairs carried out to a communal drain that had been instructed by the Factor fixed under the repairs warranty referred to in their written statement of services.

The decision is unanimous.

Background

1. By application dated 15th January 2023 the Homeowner applied to the Tribunal for a determination that the Factor had failed to comply with the Property Factor's duties. No sections of the Code of Conduct had been specified in the application or notified to the Property Factor. The complaint detailed in the application is that the Factor did not arrange for a satisfactory repair of a communal drain to be carried out. The Homeowner had been charged five separate amounts for repairs to the communal drain. The invoices are dated 5th, 19th, 23rd and 28th December 2022

2. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 28 April 2023, he intimated that he had decided to refer the application (which application paperwork comprises documents received between 23rd February 2023 and 3rd April 2023) to a Tribunal.

3. The Factor sent the Tribunal administration an email which was received on 4th August 2023 requesting a postponement as they advised that they had not received the case papers.

4. The First Case Management Discussion.

A tele conference case management discussion in respect of the application was scheduled to take place at 10am on 7th August 2023. The parties did not attend. The Tribunal suspected that this may be due to some confusion resulting from the postponement request and consequently adjourned the case management discussion.

5. The Second Case Management Discussion.

A Case Management Discussion by conference call took place in respect of the application at 10am on 10th November 2023.

The Homeowner attended.

The Factor did not attend and was not represented.

The Factor had been notified of the CMD by letter dated 21st August 2023. The Tribunal clerk tried to contact the Factor by telephone after 10am on 10th November 2023 but the telephone was not answered. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

5.1 The Factor did not provide any written representations.

5.2 Documents lodged by the Homeowner:

5.2.1 The Factor's Written Statement of Services.

5.2.2 Email the Homeowner had sent to the Factor dated 2nd February 2023 which states that he had been charged five times for the same job which was the main drain pipe was blocked. He states that if the job had been done correctly he would not have called so many times.

5.2.3 Emails the Homeowner had received from the Factor dated:

3rd January 2023: The email acknowledged the Homeowner's call and asked him to send pictures and number of the repair he is looking to dispute to a specified email address.

2nd February 2023: They refer to the disputed invoices and state that they have fully investigated them and have concluded that all repairs were carried out to communal pipework. Repairs were for blockages in the drains and associated pipework. As per his title deeds he is liable for the apportioned costs of all communal repairs carried out. The invoices issued are correct and the amounts remain payable.

20th March 2023: They refer to invoice 3740964/1 and explain that it was for work carried out to guttering and fascias.

5.2.4 Details of invoices he had received from the Factor:

3740964/1: Invoice for guttering and facia work.

3778528/1:Invoice for £46.48 (completion date 5th December 2022) for emergency repair to common drain.

3787047/1: Invoice for £59.00 (completion date 19th December 2022) for emergency repair to common drain.

3789595/1: Invoice for £28.87 (completion date 23rd December 2022) for emergency repair to common drain.

3763190/1: Invoice for £39.39 (completion date 28th December 2022) for emergency repair to common drain.

03943109/1: Invoice for £33.99 (completion date 26th May 2023) for CCTV survey common drain.

5.2.5 A text message from the Homeowner's neighbour Michele Clarke (undated) which supports the Homeowner's complaint and states *inter alia* that in December 2022 during freezing conditions drains and pipes became blocked which resulted in the toilets at flats 1/1 and 0/2 over flowing. On one occasion the contractors attended to look at the pipes outside and confirmed that they couldn't do anything but they put two small holes in the pipe for the water to release when it melted.

5.3 The detail of the Homeowner's application and his representations in relation to the detailed complaints are as follows:

5.3.1 Breach of Property Factor Duties detailed in the Application.

The Homeowner states that the Factor has not carried out their duties under which they have responsibilities towards the owners, the neighbours have had problems for years. The problem is a blocked drainage pipe. The Factor says all the repairs are finished and investigated but that is not true. He refers to the evidence provided.

5.3.2 Homeowner's Oral Representations.

He owns the property Flat 1/1, 1533 Dumbarton Road, Scotstoun, Glasgow, G14 9XG. The complaint relates to a cracked external pipe. His bathroom flooded in December 2022 and he reported the fault to the Factor. The contractor attended and due to the freezing conditions they made a hole in the pipe to enable the water to release when it thawed. He then received five separate invoices for the repair. The fact that five invoices were received means that the repair was never completed correctly.

The Ordinary and surveyor member of the Tribunal explained that in his opinion it was very unusual for an external pipe to have to be repaired five times. Mr Sula explained that he has not received any correspondence from the Factor explaining why it took five attempts to repair the pipe and he received no correspondence from the Factor advising him of the cause of the blockage.

He telephoned the Factor on many occasions but was not put through to a manager. He confirmed that the pipe had eventually been repaired a couple of months ago.

He confirmed that his complaint was that the Property Factor had not complied with their Property Factor duties and he referred the Tribunal to the written Statement of Services he had produced. He also confirmed that he did not wish an opportunity to amend the application to refer to breaches of the Code of Conduct.

6. Findings in Fact.

The Tribunal makes the following findings in fact:

- A. The Property Factor were factors of Flat 1/1, 1533 Dumbarton Road, Scotstoun, Glasgow, G14 9XG.
- B. The Homeowner is owner of Flat 1/1, 1533 Dumbarton Road, Scotstoun, Glasgow, G14 9XG.
- C. The Factor arranged four emergency repairs to the same external communal drain at the Property in December 2022.
- D. The Homeowner advised the Factor that he was disputing the repair to the communal external drain by telephone, which was acknowledged by the Factor by email dated 3rd January 2023.
- E. The Factor arranged for a CCTV survey of the same external communal drain in May 2023.
- F. The external communal drain was finally repaired approximately two months ago.

- G. The Factor's written statement of services includes the following provisions:
- a. The Factor has delegated authority to complete routine repairs to common parts of the Property.
 - b. The repairs service states that common repairs will be completed within 30 working days of being agreed.
 - c. Repairs come with a standard six month warranty. If an owner has an issue with a repair they have to report it to the factor so they can investigate and make sure any defects are fixed whilst it is still within the warranty period.

7. The Tribunal's Decision:

The Tribunal determine that the Factor provides the Homeowner with the service of arranging common repairs in terms of their written statement of services. The Tribunal find that the Factor is under a duty to arrange for repairs to be carried out to the defective external communal drain. The Factor arranged for four repairs to be carried to the communal external drain in December 2022.

The Tribunal find it to be very unusual for tradesmen to have to attend on four occasions to repair the same defect to a communal external drain. Therefore, the Tribunal consider that on the balance of probabilities the original repair was defective.

The Homeowner advised the Factor that he was not satisfied with the repair to the external communal drain and this is referred to by the Factor in their email to the Homeowner dated 3rd January 2023.

The Factor has not provided any evidence to the Tribunal to demonstrate that they investigated the repair in terms of the repairs warranty. The Factor has not provided the Homeowner or the Tribunal for any explanation as to why four repairs were required to the external communal drain in December 2022.

The Tribunal determine that the Factor has failed in their duty to have the defective repair to the external common drain fixed under the repairs warranty referred to in their written statement of services.

8. Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with the property factor duty stated.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

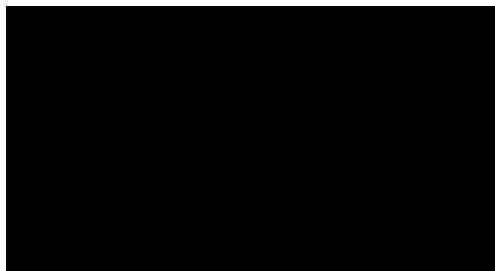
Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

'The Factor must pay the Homeowner £225.00 for the inconvenience he has suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order.'

9. Appeals

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 decision was sent to them.



Signed Date 21st November 2023

Chairperson