

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Reference number: FTS/HPC/PF/20/1889

Re The Property: 26 The Paddock, Hamilton, ML3 0RB ("the Property")

The Parties:

Jack Fortune Limited, 2 Corstorphine High Street, Edinburgh, EH12 7ST ("the Homeowner")

Spiers Gumley Property Management, Red Tree Magenta, 270 Glasgow Road, Glasgow G73 1UZ ("the Property Factor")

Tribunal Members:

G McWilliams (Legal Member)

A McFarlane (Ordinary Member)

Decision

- 1) The Homeowner has failed to co-operate with the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") to permit their Application to be dealt with justly and fairly, as required by the overriding objective set out in Rule 2 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure ("the 2017 Rules"). Therefore the Application cannot be considered and is dismissed in terms of Rule 27 of the 2017 Rules. The decision is unanimous.

Introduction and Background

- 2) In this decision, the Tribunal refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code".
- 3) The Property Factor became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

- 4) By Application received by the Tribunal in papers sent between 7th September 2020 and 26th October 2020, the Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with the Code. The Homeowner stated that the Property Factor had failed to comply with Sections 1(all), 2.1, 2.5, 4.1, 4.4, 4.6, 4.8, 4.9, 5.2, 5.3, 5.4, 5.5, 5.8, 5.9, 6.2, 6.3, 6.7, 6.9, 7.1, 7.2 and 7.4 of the Code. The Homeowner also sought a determination that the Property Factor had failed to carry out its Property Factor's Duties in terms of Section 17(5) of the 2011 Act. The Homeowner lodged documentation in support of the Application including two letters, dated 16th February 2020, addressed to the Property Factor, which provide details of the Homeowner's complaints, other emails to the Property Factor, and copies of Orders of the Sheriff in respect of Simple Procedure Claim Reference Number GLW-SG2612-19 dated 14th August 2019, 27th February 2020 and 3rd July 2020.
- 5) On 3rd December 2020, a Legal Member of the Tribunal, on behalf of the Tribunal President, referred the matter to a Tribunal for a determination. A Hearing was assigned to take place on 2nd February 2021. Parties were advised that, as a result of Government restrictions due to COVID 19, the Hearing would take place by telephone conference call. Parties were provided with a telephone number and passcode.
- 6) On 15th December 2020, the Property Factor requested an extension of time to lodge written representations given the impending festive season break, when their office would be closed. The request was crossed over to the Homeowner. On 22nd December 2020, having not received any representations from the Homeowner, the Tribunal granted the Property Factor's request and asked that their written representations be made by 18 January 2021.
- 7) On 11th January 2021 the Tribunal's office informed the Tribunal that a file of papers, including a Hearing Notification letter dated 9th December 2020, issued by the Tribunal's office, by recorded delivery post, to the Homeowner, had been returned by Royal Mail. The latter reported that they had been unable to deliver the package, and no one had called to collect it from their Delivery Office.
- 8) The Tribunal enquired if the Tribunal's office held a contact email address for the Homeowner. On learning they did, the Tribunal instructed their office to email the Homeowner to notify them of the Hearing on 2nd February 2021 and to make arrangements for the papers to be collected.
- 9) On 18th January 2021 the Tribunal was informed, by their office, of the response to the email sent to the Homeowner on 17th January 2021. This was an automated response, received on 17th January 2021, which read: "Our offices are currently closed due to Government COVID-19 restrictions. Staff are currently furlough until further notice. Emails will not be read or replied to until restrictions are lifted or further guidance issued by the Scottish Government Stay safe and hopefully we will be open in the near future"
- 10) Also, on 18th January 2021, the Property Factor lodged written representations which it was anticipated would be referred to at a Hearing.

- 11) A Tribunal Caseworker attempted telephone contact using the telephone number provided on the Application form, on 27th January 2021, with no success.
- 12) On 29th January 2021, with doubt that the Homeowner was aware of the imminent Hearing on 2nd February 2021, and to reduce inconvenience to the parties and Tribunal's office staff, the Tribunal decided to postpone the said Hearing. A fresh Hearing was scheduled to take place on 18th March 2021. The Tribunal then posted a first class letter to the Homeowner, and had this copied to the Property Factor, in the following terms, on 2nd February 2021:

"The Tribunal postponed the Hearing, which had been scheduled to take place this morning, as their attempts to notify you of the Hearing details, by email, recorded delivery post and telephone, had been unsuccessful.

A fresh Hearing has been scheduled to take place by teleconference call on 18th March 2021 at 10am.

The Tribunal request that you contact the Tribunal's Office, in writing, within 14 days of today's date, that is on or before 16th February 2021, to confirm that you have received this letter, are aware of the new Hearing date, and to further confirm whether or not you wish to proceed with your Application.

Please note that if you do not contact the Tribunal's Office by 16th February 2021 the Tribunal may decide to dismiss your Application on the basis that they cannot deal with the Application justly and fairly without your co-operation.

The Tribunal look forward to hearing from you as soon as possible."

- 13) On 4th March 2021 the Tribunal's office confirmed that no communication had been received from the Homeowner. They confirmed that they last received an email from the Homeowner on 26th October 2020, prior to the Application being referred for determination on 3rd December 2020

Reasons for the Decision

- 14) The Tribunal have directed themselves to their overriding objective, set out in Rule 2 of the 2017 Rules. This states that "the First-tier Tribunal is to deal with proceedings justly". Rule 3 of the 2017 Rules goes on to state that the Tribunal must manage the proceedings in accordance with the overriding objective and parties must assist the Tribunal to further the overriding objective.
- 15) The Tribunal considered the various attempts made by their office to establish contact with the Homeowner, and inform them of the arrangements made for their Application to be dealt with.

- 16) The Homeowner has apparently not put in place alternative arrangements to ensure that postal, telephone or email communications reach them, whilst their office is closed due to the Covid pandemic. The Tribunal contrast this with the extensive arrangements made by other small businesses to ensure business, and communication, continuity in the current circumstances.
- 17) The Tribunal do not have confirmation that the Homeowner is aware of the current proceedings. It appears to the Tribunal that there is, at present, no further action which can be taken to establish contact with the Homeowner.
- 18) The Homeowner, in not communicating with the Tribunal since October 2020, has not assisted the Tribunal to further the overriding objective. In all the circumstances the Tribunal considers that it cannot deal with the Homeowner's Application justly and fairly and cannot manage the proceedings in accordance with the overriding objective.
- 19) Separately, and in any event, the Tribunal consider that they do not have sufficient information, in the Application Form and accompanying documentation, to fully consider and determine the various complaints raised by the Homeowner. The Homeowner has made numerous complaints, and stated that they have suffered considerable financial loss, in their Application papers. If the Homeowner had engaged with the Tribunal after their Application was accepted, the Tribunal would have sought that they lodge further representations and documentation.
- 20) The Tribunal have therefore decided to dismiss the Application in terms of Rule 27 of the 2017 Rules.

Appeals

A Homeowner or Property Factor 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.

G McWilliams, Legal Member
4 March 2021