



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

Decision issued under s19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/20/2674

The Property: Flat 2/2, 336 Cumbernauld Road, Glasgow, G31 3LZ (“The Property”)

The Parties:-

Ridhouan Ahankour, residing at Flat 2/2, 336 Cumbernauld Road, Glasgow, G31 3LZ (“the applicant”)

W. M. Cumming, Turner & Watt, property managers, 40 Carlton Place, Glasgow, G5 9TS (“The property factor”)

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the property factor has failed to comply with the code of conduct as required by Section 14 of the 2011 Act, determined that the property factor has breached the code of conduct for property factors and has failed to carry out its duties in terms of s.17 of the Property Factors (Scotland) Act 2011.

Committee Members

Paul Doyle	Legal Member
Ahsan Khan	Ordinary Member

Background

1 By application dated 24 December 2020, the applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of his complaint that the property factor has breached the code of conduct imposed by Section 14 of the 2011 Act & that the property factor has failed to comply with the property factor's duties.

2 The application stated that the applicant considered that the respondent failed to comply with Sections 1.1a.D, 2.1, 2.5, and 7 of the code of conduct for property factors and breached the property factor's duties.

3 By interlocutor dated 4 February 2021, the application was referred to this tribunal. The First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on both parties, directing the parties to make any further written representations.

4 The applicant lodged further written representations on 11 January and 1 February both 2021. The respondent did not lodge any written representations. Notice of referral and details of the time date and place of today's hearing were sent to both parties on 25 February 2021.

5. A hearing was held by telephone conference on 7 April 2021. The applicant was present, but unrepresented. The respondent was neither present nor represented. The property factor received timely intimation of today's hearing and has chosen not to participate. We are satisfied that we can justly determine this application in the property factor's absence.

Findings in Fact

6 The tribunal finds the following facts to be established:

- (a) The applicant has lived at flat 2/2 336 Cumbernauld Road, Glasgow, for the last 13 years. Throughout that time the respondent has been the applicant's property factor. In recent years, the applicant has become more and more dissatisfied with the services of the property factor.
- (b) In 2020 the applicant paid £120 in management fees to the property factor.
- (c) In September 2020 the property factor instructed a roofing contractor to carry out works to the front of the larger property of which the applicant's home forms part. The total cost of those works was £780. That cost was to be divided between eight proprietors of whom the applicant is one.
- (d) In November 2020 the respondent sent an additional invoice of £30 to each proprietor to pay the same contractor for works which appeared to have been carried out and paid for in September 2020.
- (e) On 19 September 2020 the applicant emailed the property factor questioning his liability for a share of the roofing contractors bill totalling £780. On 21 September 2020 the property factor acknowledged the applicant's email and said that competitive quotes would be obtained.
- (f) The property factor did not obtain competitive quotes. Instead, the property factor instructed the roofing contractor to carry out work.
- (g) Between 19 September and 18 December 2020 the applicant sent 33 emails to the property factor asking for a response to his email of 19

September 2020. At today's date the property factor has not given the applicant a substantive response to any of his emails.

(h) In an email dated 21 September 2020 addressed to the property factor the applicant initiated a formal complaint and asked the property factor to engage the complaints procedure set out in the property factor's written statement of services.

(i) The property factor's written statement of services sets out a complaints procedure and provides that a complaint will be acknowledged within seven working days. The written statement of services expresses the hope that a complaint will be resolved within 14 days. The property factor's written statement of services provides that if a homeowner remains dissatisfied with the outcome of the complaint's procedure, the homeowner can write to a director of the property factor confirming a desire to escalate the complaint. The director of the property factor will then carry out a review within 14 days.

(m) On 20 November 2020 the property factor contacted the applicant and told him the roofing work had been completed. The applicant's complaint of 21 September 2020 was not acknowledged.

(n) In an email dated 5 November 2020 the applicant asked the property factor to refer his complaint to their director. The applicant still awaits a response to that email.

(o) In addition to the 33 emails sent by the applicant to the property factor between September and December 2020, the applicant made just as many telephone calls to the property factor. Each time he left a message and was told that the property factor's employee, named Robert, would phone him back. Robert did not return the applicant's telephone calls.

Reasons for decision

7. Section 1 of the property factors code of conduct deals with the written statement of services. In his application the applicant says that the property factor has breached section 1.1aD of the code of conduct, which says

The written statement should set out:

D. Communication Arrangements

- I. your in-house complaints handling procedure (which may also be available online) and how homeowners may make an application to the homeowner housing panel if they remain dissatisfied following completion of your inhouse complaints handling procedure (see Section 7: Complaints resolution);
- m. the timescales within which you will respond to enquiries and complaints received by letter or e-mail;

- n. your procedures and timescales for response when dealing with telephone enquiries;
- 8. The written statement of services sets out the property factors in-house complaints handling procedure and the timescales involved. In his oral evidence the applicant confirmed that his complaint was not that the written statement of services was defective. His complaint is that the complaints procedure set out in the written statement of services has not been adhered to.
- 9. The property factor has not breached section 1 of the code of conduct for property factors. The real substance of the applicant's complaint relates to sections 2.1 and 2.5 of the code of conduct for property factors..
- 10. (a) Section 2.2.1 of the code of conduct says

SECTION 2: COMMUNICATION AND CONSULTATION

Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes. In that regard:

- 2.1 You must not provide information which is misleading or false.
- (b) Section 2.2.5 of the code of conduct says
 - 2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).
- 11. On the facts as we find them to be the applicant sent 33 emails between September and December 2020, and did not receive a substantive reply to those emails. In September 2020 the applicant made a complaint which was not acknowledged. On 5 November 2020 the applicant asked to escalate that complaint to the director of the property factor. On the facts as we find them to be the applicant's emails and repeated attempts to engage the complaint procedure were ignored by the property factor
- 12. At today's date, the applicant is still waiting for his numerous telephone calls to be returned. At today's date, the applicant is still waiting for the property factor to engage the complaints procedure.
- 13. The property factor has a complaints procedure set out in the written statement of services which the property factor has simply ignored. The

property factor's actions create the impression that the written statement of services is no more than hollow words and false promises.

14. The applicant says that the property factor has breached section 7 of the code of conduct for property factors in its entirety.

15. The property factors written statement of services sets out a clear written complaints resolution procedure. The property factor has breached section 7.1 because although the correct combination of words was used in the written statement of services, the property factor's actions demonstrate that the property factor does not follow their own complaints resolution procedure.

16. On the facts as we find them to be there is a clear breach by the property factor of section 7.2, and section 7.4 of the code of conduct which say

7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.

7.3 Unless explicitly provided for in the property titles or contractual documentation, you must not charge for handling complaints.

7.4 You must retain (in either electronic or paper form) all correspondence relating to a homeowner's complaint for three years as this information may be required by the homeowner housing panel.

17. Because the property factor did not initiate complaints procedure, none of the requirements of section 7.1. Section 7.2 and section 7.4. Have been met.

18. We therefore find that the property factor breached sections 2.1, section 2.5, section 7.1, section 7.2 and section 7.4 of the code of conduct for property factors.

The Property Factors Duties

19. Section 17(5) of the Property Factors (Scotland) Act 2011 defines the property factor's duties.

20. We have found that the property factor has breached the code of conduct for property factors. By analogy, we find that the respondent has not adhered to their duties in relation to the management of the common parts of land owned by the homeowner.

21. We therefore find that the respondent has failed to carry out the property factors duties.

22. The unchallenged evidence placed before us is that the applicant has been faced with property factor management charges for which he has not received an adequate service. Taking an holistic view of the evidence in this case, we reach the conclusion that it is only fair that the respondent should be reimbursed for that expense.

23. The property factor has failed in their duties and breached the code of conduct. The failure in duties and the breach of the code of conduct forms part of a pattern of behaviour which merits a Property Factor Enforcement Order ("PFEO"). The purpose of the PFEO is not to enrich the applicant. The purpose of the PFEO is to punish the property factor; to mark society's displeasure; to protect society and to ensure the enforcement of the Property Factors (Scotland) Act 2011 and the code of conduct in the future.

Decision

24. The tribunal therefore intend to make the following property factor enforcement order (PFEO)

"Within 28 days of the date of service on the respondent of this property factor enforcement order the respondent must pay the applicant £620.00 representing the property factors management fee for 2020 together with a financial penalty for breaching the code of conduct and failing in the property factors duties."

25. Section 19 of the 2011 Act contains the following:

(2) In any case where the committee 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 committee are 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 committee must make a property factor enforcement order.

(4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal.

26. The intimation of the tribunal's decision and this proposed PFEO to the parties should be taken as notice for the purposes of s. 19(2)(a) of the 2011

Act, and parties are hereby given notice that they should ensure that any written representations which they wish to make under s.19 (2)(b) of the 2011 Act reach the First-Tier Tribunal for Scotland (Housing and Property Chamber) office not later than 14 days after the date that the Decision and this proposed PFEO is intimated to them. If no representations are received within that 14 day period, then the tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Right of Appeal

27. In terms of Section 46 of the Tribunal (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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed
Legal Member

7 April 2021