

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)

Chamber Ref: FTS/HPC/PF/17/0164

Flat 40 Homeshaw House, 27 Broomhill Gardens, Newton Mearns, G77 5HP
("The property")

The Parties:-

Mr Robert Crawford, residing at Flat 40 Homeshaw House, 27 Broomhill Gardens, Newton Mearns, G77 5HP ("the Applicant"); and

Bield Housing & Care, 79 Hopetoun Street, Edinburgh, EH7 4QF ("the Respondent")

Tribunal Members:

Mr G. McWilliams, Legal Member; and
Mr C. Campbell, Ordinary Member

DECISION

The Tribunal determined that the Respondent has not failed to comply with its duties in terms of Sections 2.1 and 2.5 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors. Accordingly no Property Factor Enforcement Order is required in the circumstances.

The Decision is unanimous.

Introduction

1. In this decision we refer to the Property Factors (Scotland) Act 2011 as the "the 2011 Act" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as " the Code".
2. The Respondent became a registered Property Factor on 7th December 2012 and its duty under Section 14(5) of the 2011 Act to comply with the Code arises from that date.

Background

3. By application received on 28th April 2017 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for a determination that the Property Factor had failed to comply with Sections 2.1 and 2.5 of the Code. An alleged breach of Section 7 of the Code was withdrawn by the Applicant by letters dated 9th and 25th May 2017.

The Hearing

4. A Hearing was held at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL on 21st August 2017. The Applicant was present and represented himself. The Respondent was represented by their Communication and Marketing Manager, K Crombie and their Interim Director of Human Resources, N Harcus. As the Applicant has hearing difficulties an Induction Hearing Loop was used throughout the Hearing.
5. At the commencement of the Hearing the Respondent's Representatives raised a preliminary point. They indicated that the Respondent was willing to attend Mediation to try to improve the parties' communication and to resolve any difficulties. After consideration the Applicant stated that he did not wish to attend Mediation.
6. The Applicant stated the Respondent had misled and lied to him. He stated that the Respondent had provided him with misleading information regarding parking on a road at the development within which the Applicant's property is located. The parties' communications in this regard began in May 2016. The Applicant stated that the Respondent's Manager Ms D. Robertson said that she was not clear regarding the ownership status of the particular road, and, in particular, whether or not it had been adopted by the East Renfrewshire Council. The Respondent's representatives stated that Ms Robertson had been candid with the Applicant as she did not know the status of the road. In answer to questions from the Tribunal the Applicant accepted that the ownership status issue had been resolved. He said that he did not wish to answer the Tribunal's question as to whether or not Ms Robertson had been deliberately trying to mislead him.
7. Separately, the Applicant stated he had complained about an inappropriately parked vehicle and that the owner of the vehicle had been informed by Ms Robertson that it was the Applicant who had made the complaint. The Applicant considered that this was a breach of confidentiality. The Respondent's position was that there was no evidence that there had been any breach of confidentiality and they had not misled the Applicant. The Applicant accepted that this issue was not referred to in his application.
8. The Applicant also referred to an issue regarding bird feeding at the development. He stated that he had met the Respondent's Merryn Foreshaw and Laura Livingstone on 23rd August 2016 and that they should have informed Ms Robertson of an issue discussed at the meeting, namely the Applicant's complaint that another owner at the development was feeding

birds. The Respondent's position in this regard was that their employees Ms Foreshaw and Ms Livingstone did not have the opportunity of discussing this issue with Ms Robertson, immediately after their meeting with the Applicant, as Ms Robertson was herself was meeting with another person at the time. The Respondent's representatives stated that their Owner Services Manager, Mr D MacInnes and their Director of Asset Management, Mr S Dow subsequently met with the Applicant to discuss all outstanding matters. The representatives stated that they understood that they had resolved outstanding issues, in particular regarding communication, and specifically the Applicant's complaint of having been misled or lied to, as stated in their Mr Dow's letter to the Applicant dated 2nd November 2016.

9. The Applicant further stated that the Respondent had not replied to his e-mails or had delayed excessively in doing so. He stated that he had not received a timeous response to a number of emails. The Tribunal considered the emails with the Applicant and the Respondent's representatives, as follows:
 - i) The Applicant's e-mail dated 5th October 2016. The Respondent's position was that they met with the Applicant on 10th October 2016 and sent him an e-mail, following the meeting, on 21st October 2016.
 - ii) The Applicant's e-mail dated 6th November 2016. The Respondent's position was that they could not acknowledge every e-mail of the Applicant and that, as there had been previous dialogue in respect of the Applicant's said email, no additional response was necessary.
 - iii) The Applicant's e-mail dated 3rd March 2017. The Respondent's position was that they had replied on 9th March 2017 at 17.41.
 - iv) The Applicant's email dated 9th March 2017. The Respondent's position was that they had replied on 15th March 2017.
 - v) The Applicant's e-mail dated 15th March 2017. The Respondent's representatives stated that they had responded on 16th March 2017.
 - vi) The Applicant's e-mail sent on 17th March 2017 at 12.41. The Respondent's position was that they had replied on 22nd March 2017.
 - vii) The Applicant also referred to his e-mail dated 1st April 2017, timed at 10.53am. He sent a further e-mail that day at 12.47. The Respondent's position was that an out of office response was sent to the Applicant at 10.53am on 1st April 2017. The Respondent's position was that they replied on 3rd April 2017.
 - viii) The Applicant's email dated 16th April 2017 at 11.16am. The Respondent's position was that an out of office response was sent to the Applicant at 11.59am that day. An out of office response was received at 11.59 that morning from the Respondents. The

Respondents Ms Harcus stated that she then replied to the Applicant on 19th April 2017.

10. The Applicant further stated that he had been misled by the Respondent in other communications. However, he was unable to direct the Tribunal to any emails or letters which supported this contention.

Summary of submissions

11. The Respondent's position was they had tried to sort things out as best as possible with Mr Crawford. When putting their file together for the case they had tried to learn from their experience in this case. The Respondent's submission was that they had not provided information to the Applicant which was misleading or false and they did not consider that they had breached Section 2.1 of the Code. Further they did not believe that they had breached Section 2.5 of the Code when all factors were considered. They acknowledged that the Applicant did not receive a response to his e-mail of 5th October 2016 for 16 days but re-iterated that there had been a meeting with him on 10th October. They stated that they felt that they had complied with their provisions for response times in their Statement of Services which provides that complaints will be acknowledged within 3 working days and dealt within 2 working days, unless there is a good reason for more time being required, and that they had responded to enquiries and complaints by letter or e-mail from the Applicant within prompt timescales.
12. In summing up the Respondent's representatives stated that they considered that they had not acted in breach of Sections 2.1 and 2.5 of the Code and moreover that having reviewed their communications, policies, procedures, and actions they could not find any failures/breaches of other Sections of the Code.
13. In summary the Applicant's position was that the Respondent had misled or lied to him and that he sought "honest answers to his honest questions". He stated that he was a householder who deserved to be treated as an individual. He stated that there should be Minutes taken of all meetings.

The Tribunal make the following findings in fact:

14. The Applicant is the owner of the house at 40 Homeshaw House, 27 Broomhill Gardens, Newton Mearns, G77 5HP. The property is a flat within the retirement housing development located at Homeshaw House, Newton Mearns.
15. The Respondent performs the role of Property Factor of the development.
16. The Respondent has not breached Sections 2.1 and 2.5 of the Code.

Reasons for Decision

17. Dealing with the individual parts of the Code complained of:-

- a) Section 2.1 provides: You must not provide information which is misleading or false.

The Tribunal, having had sight of all the communications between the parties, and heard the oral evidence from the Applicant and the Respondent's representatives, is satisfied that there have not been any communications in which the Property Factor has provided information to the Applicant which is misleading or false. With regard to the Applicant's complaint in connection with the ownership status of the road, the Tribunal finds that the Respondent's Ms Robertson confirmed that she was not aware of the status of the road ownership. She did not deliberately mislead the Applicant. The Tribunal notes that this issue was subsequently clarified. With regard to the issue of the complaint of inappropriate parking, the Tribunal finds that there is no evidence to establish that the Respondent's Ms Robertson mislead the Applicant. The Tribunal further finds that there was no misleading or false information given to the Applicant in connection with the bird feeding issue. The Applicant's grievance in this regard was that the Respondent's Ms Foreshaw and Ms Livingstone had not informed Ms Robertson about the bird feeding issue. There was no evidence before the Tribunal to establish that the Respondent had misled the Applicant in any way in this regard. Ms Foreshaw and Ms Livingstone had simply not spoken to Ms Robertson and this issue was subsequently discussed between the Respondent's and the Applicant at subsequent meetings. The Tribunal is satisfied that the Respondent has not provided the Applicant with any information which is misleading or false. Accordingly there has been no breach of the Code in this regard.

- b) Section 2.5 provides: You must respond to enquiries and complaints received by letter or e-mail 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 time should be confirmed in the written statement (Section 1 refers). Section 1 provides: You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the home owner.

The Tribunal considered the 9 e-mails (including 2 sent on 1st April 2017) which the Applicant referred to when submitting that the Respondent had not responded to his enquiries and complaints within prompt timescales. The Tribunal finds that the Applicant's e-mail of 5th October 2016 had not been responded to in writing for 16 days, until 21st October 2016. This date was acknowledged by the Respondent. The Tribunal finds that the Respondent had met with the Applicant on 10th October to go over matters with him and then sent the letter to him on 21st October to report on that meeting. The Tribunal also finds that, in any event, the response of the Respondent to the Applicant's e-mail of 5th October 2016 did not breach the target referred to in the Respondent's Statement of Services, which had previously been issued to the Applicant. The other 8 e-mails referred to by the Applicant were responded to promptly. Taking account of all the circumstances of this case,

including the volume of communications between the parties, the Tribunal finds that the Respondent has responded to the Applicant's enquiries and complaints within prompt timescales. Accordingly there has been no breach of the Code in this regard.

Property Factors Duties

18. The Applicant and the Respondent had confirmed that there was no issue regarding the Respondent's compliance or otherwise with their Property Factor's duties in terms of the 2011 Act.

Observation

19. The Respondent indicated in an e-mail dated 18th August 2017, through their representatives at the Hearing, and in emails sent to the Tribunal's office following the Hearing, that they do wish to enter into Mediation and/or settlement discussions with the Applicant. The Tribunal observe that given the history of the parties' relationship, and the communication problems which they have had, it would be helpful if Mediation, through a recognised third party body, were to be considered and proceeded with.

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

17th October 2017