



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

Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/23/3501

Property: 102/34 Commercial Street, Edinburgh EH6 6LS (“the Property”)

The Parties:-

Mr Ian Brunton, 102/34 Commercial Street, Edinburgh EH6 6LS (“the homeowner”)

Myreside Management Limited, registered in Scotland under the Companies’ Acts (SC213664), having their registered office at 3 Dalkeith Road Mews, Edinburgh EH16 5GA (“the property factors”)

Tribunal Members:

George Clark (Legal Member/Chairman) and John Blackwood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was able to decide the application without a Hearing and decided that the property factors had failed to comply with OSP11 and Sections 1.1, 1.2, 2.1, 2.3, 2.7 and 3.1 of the Property Factors Code of Conduct effective from 16 August 2021. The Tribunal does not propose to make a Property Factor Enforcement Order.

Background

1. By application, dated 4 October 2023, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. He alleged failures to comply with OSP1 and Sections 1.1, 1.2, 1.5, 2.1, 2.3, 2.5, 2.7, 3.1, 3.4, 5.3, 5.11 and 7.1 of the Property Factors Code of Conduct effective from 16 August 2021 (“the Code of Conduct”). The complaint also related to a failure to carry out the property factor’s duties.

2. The homeowner's complaint was that the property factors had failed to respond to a number of emails that he had sent after he took ownership of the Property on 14 August 2023. On that day, he had asked a number of questions regarding the common insurance policy and the share of premium that he was required to pay, lift repairs and the door entry system, the method of payment of his factoring fees and insurance costs and the use to which his float could be put. He sent a reminder on 24 August and the property factors responded that his email had been passed to their Accounts team. He sent a further reminder on 31 August and asked for a welcome pack. On 11 September, he again requested a response and added a small number of additional questions and, on 4 October, he lodged his application with the Tribunal. On 3 November, he emailed the property factors again, acknowledging a voicemail message from them and repeating his request for answers to the various questions he had asked.
3. On 27 November 2023, the property factors provided written answers, with apologies for their lack of responses. They advised that he should by now have received his opening account invoice and their Written Statement of Services ("WSS"), sent on 25 October. They offered to deduct his opening account fee of £54 and their management charges from 1-31 August.
4. On 21 December 2023, the property factors asked the homeowner to confirm that all his questions had been answered. He replied on 30 December. He had some further questions about the apportionment of the common insurance premium and repeated an earlier request for details of the last 3 years' factoring charges. He raised further, separate, issues regarding lift repairs. The property factors replied on 5 January 2024, providing the figures he had requested, and asked if he would consider withdrawing his application to the Tribunal.
5. On 22 December 2023, a Director and CEO of the property factors, Mr Peter Goddard, replied to the homeowner's formal complaint. He was most perturbed by the lack of service the homeowner had received. He did not understand why it had happened and said that he could not even offer an excuse, but he would not tolerate this lack of efficiency. He noted that the homeowner's questions had now been answered and asked that he direct any further questions directly to him. He appealed to the homeowner to withdraw his application to the Tribunal but added that he fully understood if the homeowner decided against this.
6. On 11 January 2024, the property factors confirmed to the homeowner that they would be happy to discuss any outstanding matters over the

phone or in person in order to reach an amicable conclusion. On 14 January, the homeowner responded that he would let the complaint to the Tribunal “run its course.”

7. On 15 January 2024, the property factors provided their written representations to the Tribunal. They stated that they had hoped the matter could be resolved out of court and, since 27 November 2023, they had sent 5 emails to the homeowner and left a voicemail, in an effort to resolve his complaint. He had confirmed that they had answered all his questions satisfactorily and they had issued an apology for their lack of initial responses to his earlier emails. He had accepted the deductions they had offered, and this indicated that his complaint had been resolved, but, on the previous day, he had emailed them to say he was going to let his complaint to the Tribunal run its course. The property factors felt that they had genuinely attempted to resolve the complaint.

Case Management Discussion

8. A Case Management Discussion was held by means of a telephone conference call on the morning of 13 March 2024. The homeowner was not present or represented. The property factors were represented by Mr Peter Goddard. He told the Tribunal that, in 23 years of trading, nothing like this had ever happened before. They had now taken action internally, by refining their processes in relation to sales of properties under their management, to ensure it could not happen again. The property factors accepted that a mistake was made, had apologised and had provided compensation by way of an abatement of charges. He asked the Tribunal to dismiss the application as unnecessary, the complaint having been resolved.
9. Mr Goddard then left the Case Management Discussion, and the Tribunal Members considered all the evidence, written and oral, before them.

Findings of Fact

- i. The homeowner is the proprietor of the property, which is a flat in a development of flats, converted from a former warehouse, in Leith.
- ii. The property factors, in the course of their business, manage the common parts of the development of which the Property forms part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).

- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors first registered on 1 November 2012. Their present registration is dated 26 April 2019.
- v. The homeowner has notified the property factors in writing as to why he considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- vi. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 4 October 2023, under Section 17(1) of the Act.
- vii. On 27 November 2023, the property factors apologised for their lack of responses to emails from the homeowner and offered to deduct his opening account fee and their management fees from 14-31 August 2023, a total of £63.69. This was accepted by the homeowner.

Reasons for Decision

10. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation it required to enable it to decide the application without a Hearing.
11. The Tribunal's view was that, in terms of Section 17(1) of the Act, it was unable to dismiss the application, as the evidence clearly indicated that the property factors had failed to comply with a number of Sections of the Code of Conduct and the homeowner had not asked that the application be withdrawn. The Tribunal's discretion was whether or not to make a Property Factor Enforcement Order.
12. The Tribunal considered that the questions raised by the homeowner in his emails had been reasonable ones for a new homeowner to ask. The property factors had failed to answer these between 14 August and 27 November 2023. In particular, they had failed to provide the homeowner with a copy of their WSS until 25 October, some 10 weeks after he advised them that he had taken ownership of the Property. They had, however, apologised for their failures, provided compensation which the homeowner had accepted and had taken steps to amend their internal processes to ensure this did not happen again. They had also made a number of attempts to meet with the homeowner in the hope of resolving his complaint.
13. **OSP11 of the Code of Conduct** states that property factors must respond to enquiries and complaints within reasonable timescales and

in line with their complaints handling procedures. The Tribunal upheld the complaint under OSP11. The delay in responding to emails between 14 August and 27 November 2023 had been admitted by the property factors.

14. **Sections 1.1 and 1.2** of the Code of Conduct relate to the requirement that property factors send a copy of their WSS to a homeowner within 4 weeks of the date of purchase of a property. The complaint under these Sections was upheld. It was admitted by the property factors that they had not sent the WSS until 25 October 2023, some 10 weeks after the date of purchase.
15. The homeowner's complaints under **Sections 1.5 and 2.5** of the Code of Conduct were not upheld. They all relate to the contents of the WSS and the Tribunal was satisfied that the property factors' WSS met the requirements set out in these Sections.
16. **Section 2.1** of the Code of Conduct provides, *inter alia*, that homeowners need to have access to the information that they need to understand the operation of the property factor. The Tribunal upheld this ground of complaint, because of the delay in sending their WSS to the homeowner.
17. For the same reason, the Tribunal upheld the complaint under **Section 2.3** of the Code of Conduct. The delay in providing the full insurance details constitute a failure to comply.
18. **Section 2.7** of the Code of Conduct requires a property factor to respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Their failures were admitted by the property factors and the complaint was upheld.
19. **Section 3.1** of the Code of Conduct states that homeowners should be confident that they know what they are being asked to pay for and that no improper payment requests are included on any financial statements/bills. The Tribunal upheld the complaint under this Section as, from 14 August until 25 October 2023, the property factors failed to provide the information requested by the homeowner regarding the apportionment of the common insurance premium, repairs to the lifts and the use to which his float could be applied.
20. The Tribunal did not uphold the complaints under **Sections 3.4 and 5.3** of the Code of Conduct. Both Sections require property factors to provide certain information at least once a year, and the homeowner has not been in residence for a year.
21. **Section 5.11** of the Code of Conduct states that property factors must, on request, provide clear details of the costs of public liability insurance. There was no evidence that the homeowner had specifically requested this information, so the Tribunal did not uphold the complaint.

22. **Section 7.1** of the Code of Conduct requires property factors to have a written complaints handling procedure and to provide homeowners with a copy on request. The Tribunal did not uphold the complaint under this Section, as the WSS contains a Complaints Procedure section and there was no evidence that the homeowner had specifically requested a copy before the WSS was sent to him.
23. The homeowner did not provide any evidence in support of his complaint that the property factors had failed to carry out the Property Factor's duties, so the Tribunal made no finding on this matter, but noted that all the issues in the application had been covered by the complaints made under the Code of Conduct.

Property Factor Enforcement Order

24. Having decided that the property factors had failed to comply with OSP11 and Sections 1.1, 1.2, 2.1, 2.3, 2.7 and 3.1 of the Code of Conduct, the Tribunal then considered whether to make a Property Factor Enforcement Order. The Tribunal's view was that the failures on the part of the property factors had caused the homeowner inconvenience, but that the property factors had now provided answers to all his questions, had apologised for their failure to respond more quickly, had taken steps to improve their internal processes to ensure this did not happen again and had, by way of abatement of charges, compensated the homeowner to the extent of £63.69, which was in excess of the amount that the Tribunal would have awarded by way of compensation, had it decided to make an Order. The inconvenience did not persist over a protracted period and the homeowner had suffered no actual loss. The Tribunal decided, therefore that it would not be appropriate to make a Property Factor Enforcement Order.

25. The decision of the Tribunal was unanimous.

Right of Appeal

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.

Date: 13 March 2024
George Clark (Legal Member/Chairman)