

Housing and Property Chamber

First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)
In an Application under section 17 of the Property Factors (Scotland) Act 2011
by**

Alasdair Dennis, Flat 3/2, 546 Sauchiehall Street, Glasgow G2 3LX (“the Applicant”)

Redpath Bruce, Crown House, 152 West Regent Street, Glasgow G2 2RQ (“the Respondent”)

Reference No: FTS/HPC/PF/21/0593

**Re: Property at Flat 3/2, 546 Sauchiehall Street, Glasgow G2 3LX
 (“the Property”)**

Tribunal Members:

John McHugh (Chairman) and David Godfrey (Ordinary (Surveyor) Member).

DECISION

The Respondent has not failed to carry out its property factor’s duties.

The Respondent has failed to comply with its duties under section 14 of the 2011 Act.

The decision is unanimous.

We make the following findings in fact:

1. The Applicant is the owner of Flat 3/2, 546 Sauchiehall Street, Glasgow G2 3LX (hereinafter "the Property").
2. The Property is located within a building consisting of shop units on the ground floor and flats above (hereinafter "the Building").
3. The Respondent is the property factor responsible for the management of common property within the Building. It has been appointed as a matter of custom and practice.
4. The property factor's duties which apply to the Respondent arise from the Respondent's Written Statement of Services. The duties arose with effect from 1 October 2012.
5. The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a property factor, 7 December 2012.
6. On 30 September 2019, the Applicant reported that the door entry system required repair.
7. The Respondent obtained a contractor's quotation for carrying out an upgrade to the system and on 14 November 2019 wrote to owners requesting they pay a contribution towards the cost.
8. On 22 April 2020, a further reminder was issued to proprietors that they required to pay their contributions before work would start.
9. By 25 February 2021, only four owners had contributed and the Respondent wrote to owners indicating that it would no longer proceed with the door entry works.
10. On 13 September 2020, the Applicant complained to the Respondent that the stone balustrade outside his window was damaged and in a dangerous condition.
11. The Respondent sent a contractor, CBL. CBL carried out further works to secure the balustrade in addition to the temporary repair already carried out by yth contractor instructed by the Applicant.
12. CBL provided a quotation for permanent repairs in the sum of £6,202.50 plus VAT. The Respondents thought it appropriate to investigate whether cheaper quotations could be obtained. On 5 October 2020 they reported this to the Applicant.
13. The Applicant received no further communication at the instance of the Respondent on the issue.
14. The Applicant emailed the Respondent's Alan Townsley on 2 November 2020 indicating that he wished to pursue a formal complaint about the failure to progress or at least to keep the Applicant informed regarding the progress of repairs.
15. Mr Townsley replied on 9 November 2020 indicating that he would reply to the points raised and that if the Applicant remained dissatisfied with that response, he had the option of pursuing the claim with the Respondent's management.
16. The Applicant wrote a letter to the Respondent dated 2 December 2020 complaining of the lack of a response

17. No response was received.
18. The Applicant has, by his correspondence, including by his letter of 2 December 2020 notified the Respondent of the reasons why he considers the Respondent has failed to carry out its property factor's duties and its obligations to comply with its duties under section 14 of the 2011 Act.
19. The Respondent has unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

Hearing

A hearing took place at by telephone conference on 9 June 2021.

The Applicant was present at the hearing.

The Respondent was represented at the hearing by Stuart McMillan, Director. One of the Respondent's other directors, Margaret Reid, was also present but made no representations during the hearing. No other witnesses were called by either party.

Introduction

In this decision we refer to the Property Factors (Scotland) Act 2011 as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Regulations”.

The Respondent became a Registered Property Factor on 7 December 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the Applicant and the Respondent.

The documents before us included the Respondent’s Written Statement of Services in two sections, the first being the Property Specific Schedule of Services and the second being the substantive written statement itself which together we refer to as “the Written Statement of Services”.

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicant complains of failure to carry out the property factor's duties.

The Applicant has detailed no specific sources of property factor's duties in his Application. At the hearing, he explained that he relied upon the Property Specific Schedule of Services section of the Written Statement of Services as a source of the property factor's duties. In particular, he relied upon the section entitled "Delegated Authority" which indicates that the Respondent has no agreed limit of authority but that it will not instruct works exceeding £500 per property without authorisation "unless specific health & safety or emergency issues arise."

The Code

The Applicant complains of failure to comply with the Code.

The Applicant complains of breaches of Sections: 2.5; 6.1; 6.4; and 7.2 of the Code.

The elements of the Code relied upon in the application provide:

"SECTION 2: COMMUNICATION AND CONSULTATION..."

...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)...

"...SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE..."

6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.

6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works.

"...SECTION 7: COMPLAINTS RESOLUTION..."

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.”

The Matters in Dispute

The Applicant complains in relation to the following issues:

- (1) Failure to respond to a formal complaint.
- (2) Failure to communicate regarding the progress of repairs.

We deal with these issues below.

1 Failure to respond to a formal complaint

The parties were agreed that the Applicant emailed the Respondent's Alan Townsley on 2 November 2020. That email indicated that the Applicant wished to pursue a formal complaint. It detailed the issues of complaint which were essentially a failure to progress or at least to keep the Applicant informed regarding the progress of certain repairs. Mr Townsley had replied on 9 November 2020. He had acknowledged the email of 2 November. He had indicated that he would reply to the points raised and that if the Applicant remained dissatisfied with that response, he had the option of pursuing the claim with the Respondent's management.

The parties were agreed that no response was sent to the Applicant. The Applicant had sent a further letter dated 2 December 2020 complaining of the lack of a response. Mr McMillan advised that the Respondent had no record of having received that letter but accepted that, even without that letter, there had been a failure by the Respondent in relation to its duties under Code Sections 2.5 and 7.2 in this regard. We agree and find there to have been a breach of Code sections 2.5 and 7.2.

2 Failure to communicate regarding the progress of repairs

Initial Matters

The Applicant complained of the Respondent's failure to progress certain repairs and to keep him informed as to those repairs.

His Application made reference to the following repairs: the balustrade; the door entry system; front gutters/water ingress; repairs to the roofs of shop units which serve as the floor of a first floor courtyard at the rear of the building.

During the course of the hearing, the Applicant advised that he did not wish to pursue any complaint in respect of the front gutters/water ingress or the shop unit roofs/courtyard floors.

The parties also agreed during the hearing that the Respondent's service did not include cyclical maintenance and so the Applicant withdrew his complaint of a breach of Code section 6.4.

In respect of the remaining issues:

Door Entry System

The Applicant had complained to the Respondent that the door entry system was not working. He had first complained regarding this on 30 September 2019. The Respondent had responded promptly and instructed a contractor, WSS Group to attend. The contractor made recommendations as to an upgrade of the system and provided a quotation. On 14 November 2019, the Respondents wrote to all of the proprietors in the block advising them of the issue, the cost of repair and asking for payment of their shares.

On 22 April 2020, a further reminder was issued to proprietors that they required to pay their contributions before work would start. By 25 February 2021, only four owners had contributed and the Respondent wrote to owners indicating that it would no longer proceed with the door entry works. During the period from November 2019 to May 2021 the Respondents provided no update to the Respondent on the progress of the matter (except the letter of 22 April 2020) other than when he raised the matter himself.

Balustrade

On 13 September 2020, the Applicant had complained to the Respondent that the stone balustrade outside his window was damaged and in a dangerous condition. He consulted with his own stonemason who advised that immediate repair works were required. His stonemason had tied the balustrade with rope to make it safe on a temporary basis.

The Respondent sent a contractor, CBL. CBL added more rope to the temporary repair. CBL provided a quotation for permanent repairs in the sum of £6,202.50 plus VAT. The Respondents thought it appropriate to investigate whether cheaper quotations could be obtained. On 5 October 2020 they reported this to the Applicant. The Applicant received no further communication at the instance of the Respondent on the issue.

It was not until May 2021 that the Respondents instructed a new contractor, Gilmour & Son who had carried out some repairs and quoted for others. The Applicant complains of the delay between his original report of the balustrade issue and the failure to advance the repair and communicate with him in the period from September 2020 to May 2021. Mr McMillan accepted that there had been an unacceptable delay in advancing matters. The Respondent had thought that because the quotation was in respect of a large amount, it would be appropriate to seek alternative quotations to ensure best value for money. However, this had caused delay and the matter had not been advanced as it should have been.

We consider the Respondent's conduct in failing to communicate in relation to the progress of the door entry and balustrade works to amount to a breach of Code sections 2.5 and 6.1.

As regards property factor's duties, the Applicant had highlighted that the Written Statement of Services indicates that works will be attended to where there are health and safety implications regardless of an absence of financial authority. We note that the Respondent did send a contractor to site promptly to deal with the balustrade and that immediate health and safety concerns seem to have been resolved at that time. Accordingly, we do not find there to have been a breach of property factor's duties.

PROPERTY FACTOR ENFORCEMENT ORDER

We propose to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached document.

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.

JOHN M MCHUGH

CHAIRMAN

DATE: 15 June 2021

