

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber Ref: FTS/HPC/PF/17/0128

The Parties:-

Ms Irene Barr, residing at 31 Earlspark Avenue, Glasgow, G43 2HN ("the Homeowner")

And

James Gibb Property Management Ltd (trading as James Gibb Residential Factors), 65 Greendyke Street, Glasgow, G1 5PX ("the Property Factor")

The Property:-

Subjects at Flat 1/1, 513 Alexandra Parade, Glasgow, G31 3EW

Tribunal Members

Mr James Bauld (Legal Member)

Mr David Godfrey (Ordinary Member)

Decision

The Tribunal determined that the Property Factor had not failed to comply with any duties arising from the Property Factors Code of Conduct ("the Code") and accordingly determined to dismiss the application.

Background

1. By application dated 31st March 2017 the Homeowner applied to the First-tier Tribunal alleging that the Property Factor had failed to comply with the Property Factors Code of Conduct. A determination dated 18th April 2017 the matter was referred to a Tribunal for consideration.
2. The Tribunal was fixed to take place on July 2017 at Wellington House, Glasgow.

1
3rd

Hearing

3. The hearing took place before the Tribunal at 10 am on 3rd July 2017 at Wellington House in Glasgow. The Homeowner was present at the hearing. The Property Factor was represented at the hearing by Debbie Rummen, the Operations Director and Sharon Cosgrove their Technical Manager. In attendance with them was Jim Mackie from Mackie & Co, Chartered Building Surveyors.

4. The Tribunal indicated to the parties and their witnesses and representatives that the Tribunal would deal with the matter in accordance with the relevant regulations and would seek to deal with matters in accordance with the overriding objective which is to deal with the proceedings justly. The Tribunal emphasised that the matter would be dealt with as informally and flexibly as possible.
5. The Tribunal heard firstly from the Homeowner. She indicated that she does not live in the property in question at Flat 1/1, 513 Alexandra Parade, Glasgow. She has leased this property out to a tenant. The Homeowner indicated that various works had been done to the building at 513 Alexandra Parade in early 2016. These works had been major structural works involving the tying of the stairwell walls to the rear elevation stonework and the replacement of the ground floor slabbing in the common close. The works had been completed in or around May 2016.
6. During the works, the Homeowner indicated she was advised that the cornicing in her hall and bathroom had come off and that a crack had appeared internally in the wall above the front door to the flat. She also indicated a crack had appeared in the plasterwork on the living room ceiling during the works. She indicated that some tiles had come off the bathroom wall. She indicated that the tiles had been replaced during the works when the foreman of the contractors had been made aware of these difficulties.
7. The Homeowner then indicated that in August 2016, some two to three months after the works had been completed, the living room ceiling plasterwork had fallen off. This had occurred while her tenant was in the property. She indicated that she did not take any steps to claim on her landlord insurance when this happened and that she did not contact her insurers. She stated that she did not think it was their place to replace or repair damage which had been caused during the structural works. Her position was that liability to repair was not determined by a party having insurance. It was her belief that the ceiling collapse was directly caused by the structural works that had been carried out to the building. She indicated that during these works there had been significant drilling, banging, hammering and vibration caused to the building.
8. The Homeowner then indicated that she asked James Gibb to do something and was advised by them that it was her responsibility to pursue the contractor herself. She indicated she has taken no steps at all to contact the contractor. She indicated she had sought legal advice from the Strathclyde University Law Clinic who had told her that she required to pursue the Tribunal process before pursuing the contractor. She indicated she wished the Tribunal to make an order on the basis that the Property Factor had breached section 6.9 of the Code of Conduct and that she wished the Tribunal to make an order requiring the Property Factor to pay her the various sums which she had expended in repairing the damage to the internal ceiling and the costs of obtaining a specialist report into the matter.
9. On being questioned by the Tribunal members, the Homeowner put forward her position that it was her belief that the Property Factor should have some provision to deal with damage consequent to the works. It was her position that she should not be left just to pursue the contractor.
10. The Tribunal then heard from the representatives from the Property Factor. They accepted that they are the Property Factors for the property and accepted that the various structural works had been instructed and undertaken. They indicated there were eight flats in the close, four of which were owner occupied and four of which were tenanted. They indicated they had obtained approval from the various owners and that the works had been carried out in terms of a section 30 notice from Glasgow City Council. Five owners had agreed to pay their shares. The Council agreed to pay the other three shares. The Property Factors indicated they had obtained payment in advance from the five owners. The works were carried out between January and May 2016. EBS Contractors Ltd were appointed to carry out the works.

11. Mr Jim Mackie then indicated he was the Project Manager for the works and confirmed that the rear wall of the property was moving outwards. He indicated this was a common feature on tenements. He indicated there were some cracks on the back stonework of this property which indicated racking of the wall. He indicated there were brick ties at each floor level which had probably been installed in the 1960s. He said these floor ties were not doing their job and required to be replaced. He said that the removal of the old ties caused some internal damage to some of the flats and that the contractor did carry out renewal works in those properties.
12. Mr Mackie indicated no full condition survey had been taken of the property prior to the works being undertaken. There had been no inspection of every room within every property. He indicated that a photographic record had been taken of the exterior of the property and some of the rooms which were attached to the rear wall where the works would be done. He indicated this survey was done by another company.
13. Mr Mackie indicated that the contractor appointed was EBS and that works proceeded. It was his position that the damage to the living room ceiling was so remote from the location of the works that he did not consider that it had been caused by the works done to the building. He accepted that at various times there would be drilling during these works including drilling into the building to enable the scaffolding to be affixed.
14. Mr Mackie was referred to the report which had been lodged by the Homeowner which had been obtained from David Narro Associates. The report was dated 14th September 2016 and had been prepared by Ben Adam. Mr Adam is one of the Directors of David Narro Associates. In his report, Mr Adam concluded that he believed that the cause of the plaster falling from the ceiling was caused by the vibrations from the works to repair the tenement loosening the keying of the plaster in the ceiling and potentially other ceilings.
15. Mr Mackie disagreed with this conclusion. He pointed out that in Page 9 of the report Mr Adam had provided five possible reasons for plaster failure and collapse of a ceiling. The first possible cause was the deflection in the floor structure through heavy applied loads. He indicated this would be a common aspect in certain tenements where floors can carry loads which are excessive. The second possibility was vibration loading attached to the floor. The third possibility was a rot attack weakening the structure. The fourth possibility was inadequate gaps being left between the laths causing the plaster not to key properly and the fifth possibility was poor workmanship in the original application.
16. In Mr Mackie's view he thought there was a latent defect in the plasterwork. He indicated his view that every plaster ceiling will eventually fall down. He indicated that in looking at whether the pictures which had been attached to the report there was a problem with the way the laths had been applied to the ceiling and that there were gaps in it which may have caused the plaster to eventually collapse. He indicated that even if a condition survey had been carried out such a survey would not pick up a ceiling which was about to collapse. His view was that the collapse of the ceiling was simply coincidental.
17. Further questions were then asked by the Tribunal members with regard to correspondence between the parties where the homeowner had asked for a copy of the condition report. The Tribunal was advised that such a report did not exist. The Factors indicated they had requested it from EBS and they had asked the Homeowner to contact EBS directly. The Factors indicated that EBS had offered to go and visit the Homeowner to discuss matters but that the Homeowner had not taken up this opportunity. The Homeowner indicated she had asked the Property Factor to obtain the report and the Property Factors they had indicated they had asked EBS for the report.

18. Mr Mackie then indicated that there is no written report with regard to the condition of this property prior to the structural works being undertaken. He understood that EBS Contractors had taken various pictures on cameras on phones and that they anticipated some movement. They had checked inside various properties when they were drilling and had carried out some minor repairs which had been affected on the inside by the exterior works.
19. Mr Mackie then explained some of the works that had been done to the ground floor and in particular the replacement of the close floor. It had transpired during the works that they had discovered that the steel beams had corroded and accordingly these beams were removed and replaced with concrete beams.
20. There was then some further discussion with regard to the contractor dealing with works to internal properties during the works. It seemed to be accepted that some works had been done at various times if they had been reported to the foreman of the contractors. Mr Mackie indicated that the coving in the Homeowner's bathroom ceiling was on a defects list which was currently with the contractor and the contractor wished to discuss that matter with the Homeowner. He indicated that they expected to have a decision from the contractor on whether remedial works would be done to the coving by tomorrow (4th July).
21. The Tribunal then concluded by again asking the Homeowner whether there was common buildings insurance. It transpired there is none but each co-owner has individual buildings insurance. The Homeowner indicated that she has landlords insurance but had never attempted to claim. She also indicated that she has made no attempts to contact EBS to try to resolve matters despite the offer made by the Property Factor.

Decision

22. The Tribunal listened to the evidence which had been led by the parties and considered the various documents which had been produced. In addition to the report mentioned, the Tribunal had regard to the various letters of complaint which had been sent by the Homeowner to the Property Factor. The initial letter of complaint was dated 22nd November 2016. The Property Factor responded to that letter on 12th December 2016. The Homeowner then submitted a further complaint to the Property Factor by letter dated 30th December 2016 and the Property Factor responded to that by letter dated 19th January 2017. The Tribunal considered these four letters during the course of the hearing and indeed prior to the hearing. It is clear from the letters that the Property Factors position is that the damage to the ceiling plasterwork was simply a coincidental occurrence and was not caused by the structural works. That view is disputed by the report from Mr Adam. The view in Mr Adam's report is disputed by Mr Mackie.
23. The Tribunal, having considered matters took the view, that on the balance of probabilities, that the collapse of the ceiling was caused by the vibrations which were caused during the works. They agree with the conclusion in the report from David Narro Associates.
24. However, the Tribunal have to determine whether the Property Factor has failed to act in accordance with the Code of Conduct. The Homeowner in her application only alleges breach of one section of the Code of Conduct. That section is section 6.9. That section reads that a Property Factor "must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate you should obtain a collateral warranty from the contractor".
25. The Tribunal took the view that the Homeowner had made a complaint to the Property Factor regarding what she believed to be inadequate work done by the contractor. The Property Factor had responded to the Homeowner indicating that

they were happy for her to contact the contractor directly and that the contractor was willing to discuss matters with the Homeowner. It was the Homeowner who decided not to speak to the contractor. She took no steps to attempt to speak to the contractor. It may well be that such an approach would have led to a resolution. It was noted at the end of the hearing that it appeared that certain steps were being made for the contractor to re-attend to inspect the necessary coving works. Subsequent to the hearing emails had been received from the parties confirming that a representative from EBS has confirmed they will attend the property to look at the reported damage to the cornicing and coving. It is understood that access will be made available for that to be done.

26. The Tribunal were unable to find that there has been a breach of section 6.9. There are two parts to section 6.9 of the code. The first part is whether the works are inadequate or not and if the Tribunal accept that the works are inadequate it then needs to consider the second part, which is 'has the property factor pursued the contractor or supplier to remedy the defects'.
27. The Tribunal take the view that the work done by the contractor has probably caused the internal damage in the homeowner's property. Taking the widest possible definition of the word "inadequate", the Tribunal concludes that the works carried out by the contractor were "inadequate" in that the works are the more probable cause of the internal damage
28. The property factor therefore is required to "pursue" the contractor to remedy the defect. The property factor has raised the homeowner's complaint with the contractor. They have accordingly "pursued" the contractor. The contractor offered to meet with the homeowner. The homeowner has refused to meet the contractor or to contact the contractor to ascertain if any resolution can be achieved. The homeowner seems to take the view that the requirement on the property factor to "pursue" the contractor extends to the property factor taking steps on behalf of the homeowner to sue the contractor. The Tribunal does not agree that the duty under section 6.9 of the Code immediately extends that far.
29. The Tribunal accepts that property factor was faced with conflicting evidence from two separate sources regarding the likely cause of the damage. The Tribunal does not take the view that the factor was obliged at that stage to decide on the more likely cause of the damage. The factor put the homeowner in direct contact with the contractor and was content at that stage to allow them to discuss matters and seek a possible remedy. It was the homeowner who declined to follow this course of action. If that had failed to produce a conclusion which satisfied the Homeowner then other options were available to her. The Tribunal take the view that section 6.9 of the Code does not require the property factor to only deal with complaints in a manner to be determined by the homeowner. The property factor is entitled to apply professional judgement in these matters and in the Tribunal's view the property factor in this case acted in an appropriate fashion in dealing with the homeowner's complaint
30. Accordingly the Tribunal find that there has been no breach of the Code of Conduct by the Property Factor and accordingly the Tribunal make no further order.

Rights of Appeal

31. 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.

32. 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.

J Bauld

James Bauld, Chairperson

25 July 2017

Date

..... Witness

..... DONNA JONES

..... Full name

..... SECRETARY

..... Designation

7 West George Street,
Glasgow,
G2 1BA