



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/21/2091

Re: Property at 16 Battlefield Avenue, Glasgow, G42 9HP ("the Property")

The Parties:

Mr John Kennedy, 24 Laightoun Gardens, Cumbernauld, G67 4EZ ("the Homeowner")

Cumming, Turner & Watt, 40 Carlton Place, Glasgow, G5 9TS ("the Property Factor")

Tribunal Members:

Neil Kinnear (Legal Member) and Ahsan Khan (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor has failed to comply with sections 1, 2.5, 3.3, 4.1, 4.3, 6.1, 6.9 and 7.1 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £1,500.00 in respect of the Property Factor's failure to comply with sections 1, 2.5, 3.3, 4.1, 4.3, 6.1, 6.9 and 7.1 of the Code of Conduct for Property Factors.

[3] The Decision of the Tribunal was unanimous.

Introduction

[4] In this Decision the *Property Factors (Scotland) Act 2011* is referred to as "the 2011 Act"; the *Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors* is referred to as "the Code"; and *The First-tier Tribunal for Scotland Housing and*

Property Chamber (Procedure) Regulations 2017 as amended are referred to as “the Rules”.

[5] The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

[6] By application dated 30th August 2020 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with sections 1, 2.5, 3.3, 4.1, 4.3, 6.1, 6.9 and 7.1 of the Code as required by section 14(5) of the 2011 Act.

[7] On 30th September 2021 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a hearing. By letters dated 8th October 2021 both parties were notified that a hearing by conference call would take place at 10.00 am on 2nd December 2021. The Homeowner participated, and was not represented. The Property Factor did not participate, and was not represented, but sent in a letter of apology dated 27th October 2021 with various attachments and advised that it did not want to take part in an oral hearing.

[8] The Tribunal heard brief evidence from the Homeowner, who referred to the comprehensive and helpful written material he had lodged in support of his application. He explained that the Property had belonged to his mother, and that after she passed away, he required to expend money and considerable time to deal with the various repairs issues which the Property Factor had failed to deal with prior to the sale of the Property. Ultimately, the Homeowner eventually instructed and paid for much of the repair work himself as a result of the Property Factor failing to do so. As a result of the Property Factor’s failings, the sum of £1,540.72 was retained by the Homeowner’s solicitors from the purchase price obtained for the Property in respect of the sums claimed by the Property Factor from the Homeowner pending resolution of the Homeowner’s complaint. The Tribunal then heard the Homeowner’s submissions on all the evidence concerning the various complaints contained in his application, and his reasons for considering that the Property Factor was in breach of the various sections of the Code which he identified.

[9] In its letter to the Tribunal of 27th October 2021, the Property Factor made no attempt to address any of the complaints by reference to the breaches of the Code identified by the Homeowner, but instead simply apologised for what had happened and offered to remove late payment fees and all management fees without specifying the sum of money that amounted to. It did not appear from its letter to contest any of the breaches of the Code which the Homeowner alleged. It had earlier by letter of 23rd October 2021 to the Homeowner apologised to him for its failings, including failing to respond to his complaint and its deficiencies in attending to repairs at the Property.

Statement of Reasons

[10] Section 17 of the 2011 Act provides:

“17 Application to the First-tier Tribunal

(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering 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.

(3) No such application may be made unless—

(a) the homeowner has notified the property factor in writing as to why the homeowner considers 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, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

(4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.

(5) In this Act, “*property factor's duties*” means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner.”

[11] Section 17(1) creates two separate grounds of complaint, being failure to carry out the property factor's duties and failure to ensure compliance with the Code. The Homeowner proceeded solely in respect of the latter.

[12] The Tribunal was satisfied from the uncontested evidence from the Homeowner that the Property Factor:

(a) failed to provide a statement of services within a year and on request. This was a breach of section 1 of the Code;

(b) failed to respond to verbal and written complaints and requests within prompt timescales. This was a breach of section 2.5 of the Code;

(c) failed to provide a detailed breakdown of charges made and a description of the activities and works carried out which were charged for, and a final invoice showing a breakdown of charges. This was a breach of section 3.3 of the Code;

- (d) failed to provide a clear written procedure for debt recovery which outlines a series of steps which the Property Factor would follow unless there was a reason not to. This was a breach of section 4.1 of the Code;
- (e) imposed charges relating to late payment which were unreasonable in circumstances where the Homeowner had advised the Property Factor that he was withholding payment pending a response to his complaint and request for information. This was a breach of section 4.3 of the Code;
- (f) failed to keep the Homeowner informed of the progress of repair and maintenance work including estimated timescales for completion. This was a breach of section 6.1 of the Code;
- (g) failed to pursue the contractor to remedy defects in inadequate repair work. This was a breach of section 6.9 of the Code; and
- (h) failed to provide the Homeowner with a copy of its in-house complaints procedure. This was a breach of section 7.1 of the Code.

[13] The Tribunal considered that the sum of £1,500.00 was appropriate compensation having regard to both the anxiety and distress caused to the Homeowner by the Property Factor's many failures in respect of the Code and in respect of the Homeowner's time and inconvenience in dealing with the complaints process and Tribunal proceedings, and also in respect of the sums claimed by the Property Factor from the Homeowner, much of which amount the Property Factor appears to accept should be waived by it as a result of its failings.

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.

06/01/2022

Legal Member

Date