

Housing and Property Chamber

First-tier Tribunal for Scotland



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/23/1956

Property: 8 Sanderling, Lesmahagow, Lanarkshire ML11 0GX (“the Property”)

The Parties:-

Mr Archie Palmer, 8 Sanderling, Lesmahagow, Lanarkshire ML11 0GX (“the homeowner”)

Lorimer Stevenson Limited, registered in Scotland under the Companies’ Acts (SC641225), having their registered office at c/o William Duncan & Co, 44 Bank Street, Kilmarnock KA1 1HA and having a place of business at CoVault, 1 Redwood Crescent, East Kilbride G74 5PA (“the property factors”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') decided that the property factors had failed to comply with OSP11 and Sections 2.4, 2.7 and 5.3 of the Property Factors Code of Conduct effective from 16 August 2021 and had failed to carry out the property factor's duties.

Background

1. By application, dated 12 June 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 Overarching Standards of Practice ("OSP") 2 and 11 and Sections 2.1, 2.4, 2.7 and 5.3 of the Property Factors Code of Conduct effective from 16

August 2021 ("the Code"). The complaint also related to a failure to carry out the property factor's duties.

2. The homeowner's complaint was that it was a continuous struggle to get a transparent and satisfactory reply from the property factors when he requested information, such as a statement of the contingency fund to which owners contribute, insurance documentation, and problems regarding overcharging for communal energy used. He also complained about the property factors' failure to reply and to communicate to resolve queries and disputes. He had asked to have wooden railings repaired or removed but had received no response.
3. The application was accompanied by copies of the property factors' Written Statement of Services ("WSS"), an email of 12 March 2023 notifying the property factors about damaged railings, a chaser email of 20 March, and a response from the property factors of 21 March confirming his emails had been received. The homeowner also provided copies of his email of 22 March 2023 querying the level of energy charges and the common insurance premium and requesting certain documents, a chasing email of 28 March and, again, an acknowledgement by the property factors. These acknowledgements were sent by an individual in the Accounts and Administration Department who said she was unable to assist directly but that she had copied the emails to a Liz Lorimer. The homeowner sent a further email on 17 April, which received a very similar response. The homeowner advised the property factors on 4 May 2023 that he was making an application to the Tribunal. This was acknowledged as before and the person sending the email told the homeowner that "It will be Liz or Raymond that will have to respond to this." The response was copied to both of these individuals.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 18 September 2023. The homeowner had told the Tribunal that he did not wish to attend and he was not present or represented. The property factors were represented by their Director, Mr Raymond Lorimer.
5. Mr Lorimer told the Tribunal that he understood that all the particular issues had now been dealt with, apart from the removal of the wooden stumps of the railing. This had a cost implication for owners and he was presently awaiting a quotation in order to seek approval. The homeowner had told the property factors that he wanted only annual statements from them but that, as he had then requested a copy of the

contingency fund statement, it was sent to him in month 11 of the 12-month “cycle”. Mr Lorimer said that he wished the Tribunal to take into account a number of emails and documents, which would demonstrate that the only outstanding issue was the removal of the wooden stumps and that this was in hand. He told the Tribunal that the designated Property Manager for the Development of which the Property forms part is no longer employed by the property factors and that it appeared that the individual concerned had not got round to dealing with a lot of tasks and had been shielding them. Mr Lorimer accepted that timescales had not been met on a number of occasions, but he also stated that there was no record of the homeowner having gone through the property factors’ formal complaints procedure. Had he done so, Mr Lorimer was of the view that the matter would have been dealt with and appropriate compensation offered to the homeowner, but the homeowner had not exhausted the complaints procedure before he made his application to the Tribunal.

6. Mr Lorimer then left the conference call, and the Tribunal Members considered all the evidence, written and oral, before them.

Findings of Fact

1. The homeowner is the proprietor of the property, which comprises part of a mixed development of social and privately-owned houses and flats.
2. 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”).
3. 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.
4. 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.
5. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber, dated 12 June 2023, under Section 17(1) of the Act.
6. The concerns set out in the application have not been addressed to the homeowner’s satisfaction.

Reasons for Decision

7. 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 to enable it to decide the application without a Hearing.
8. The Tribunal noted that it appeared that the specific matters referred to in the application had been addressed with one minor item still to be resolved. The homeowner had confirmed on 13 August 2023 that he had received the insurance documentation and that recent installation of smart meters should resolve any issues of inaccurate electricity costs, but, despite the property factors having stated in an email of 28 June that the accounts department had been asked to send him a statement of the contingency fund and that it might take till the end of that week for them to provide it, he had still not received it. The question of the repair/removal of the wooden railings had also not been resolved. At the heart of the homeowner's complaint, however, is the failure of the property factors to respond to his various emails over a three-month period from March to June 2023 and their failure to even respond to, let alone address his complaint.
9. The view of the Tribunal was that the homeowner's email to the property factors of 4 May 2023 clearly constituted a formal complaint. He stated that he had still not received an adequate response to his email of 22 March and summarised the emails that he had sent requesting repair or removal of the wooden railings and the fact that he had requested documentation, including a current statement of the contingency fund. Mr Lorimer had contended that the homeowner had not exhausted the formal complaints procedure, but the Tribunal held that he was unable to do so, because the property factors did not acknowledge his complaint, did not set out the procedure to be followed and did not provide a formal response to his email of 4 May until 28 June, by which date the homeowner had submitted his application to the Tribunal. The email of 4 May had been copied to the designated Property Manager and to Mr Lorimer, and the property factors should have been under no illusion that this was a formal complaint and that the onus was now on them to respond, following their complaints procedure. The homeowner had stated that he intended making an application to the Tribunal, but had not done so for a further period of more than 5 weeks, thus affording to the property factors ample time within which to respond to his complaint.
10. **OSP2 of the Code** states "You must be honest, open, transparent and fair in your dealings with homeowners." The Tribunal did not uphold this head of complaint. The homeowner's concerns related to lack of communication and there was no evidence that what communication there was, was not honest, open, transparent or fair.

11. **OSP11 of the Code** states “You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.”
12. **Section 2.7 of the Code** can be read alongside OSP11. It provides that a property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall, a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.
13. The Tribunal upheld the complaints under OSP11 and Section 2.7 of the Code. It was clear from the evidence provided that the property factors had failed to respond to the homeowner’s complaint of 4 May 2023 until 28 June. This was not a reasonable timescale.
14. **Section 2.1 of the Code** provides that good communication is the foundation for building a positive relationship with homeowners...They therefore need to be consulted properly in decision making and have access to the information they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.” The Tribunal did not uphold the complaint under this Section, which is a general overview. The homeowner’s specific complaint relating to communication had been more appropriately dealt with under Section 2.7 of the Code.
15. **Section 2.4 of the Code** states that where information must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to. The Tribunal upheld the complaint under this Section. The homeowner specifically requested copies of supplier invoices, the agreement with EDF Energy and the updated insurance premium document on 22 March 2023 and the property factors failed to provide them.
16. **Section 5.3 of the Code** requires the property factor to provide an annual insurance statement to each homeowner with certain clear information. That information may be supplied in the form of a summary of cover, but full details must be made available if requested by a homeowner. The Tribunal upheld the complaint under this Section. The property factors failed to comply timeously with the homeowner’s request of 22 March 2023 for the updated insurance premium document.
17. The homeowner also complained that the property factors had failed to comply with the Property Factor’s Duties. The Tribunal held that the failure to comply with OSP11 and Sections 2.4, 2.7 and 5.3 of the Code also constituted failures to comply with the provisions of the WSS regarding response times and the statement that insurance policy documents would be available on renewal.

18. Having decided that the property factors had failed to comply with OSP11 and Sections 2.4, 2.7 and 5.3 of the Code of Conduct and had failed to comply with the property factor's duties, 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 been serious and had caused the homeowner considerable inconvenience. The Tribunal decided that it would be appropriate to make a Property Factor Enforcement Order and to order that the property factors make a payment to the homeowner by way of compensation.
19. The Tribunal decided to make a Property Factor Enforcement Order in terms of the accompanying Section 19(2)(a) Notice requiring the property factors to pay the homeowner the sum of £250, which the Tribunal regarded as reasonable compensation for the inconvenience caused by the property factors' failures to comply with the Code of Conduct.
20. 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.

Signed

George Clark (Legal Member/Chair)

Date: 4 October 2023