

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/20/0529

Re: Property at Flats 6 & 10, Clyde Waterside, 1 Clydesshore Road, Dumbarton G82 4AF ("the Property")

Parties:

Mr James Ryan, residing at Hastie Cottage, Ewhurst Road, Cranleigh, Surrey GU6 7AG ("the homeowner")

and

Lomond Property Factors Ltd, incorporated under the Companies Acts (registered No 388310), Registered Office at 249 Govan Road, Glasgow, Scotland, G51 and having a place of business at The Gowk, Gartocharn, Dunbartonshire G83 8ND ("the factors")

Tribunal Members ("the tribunal"):

Mr David Preston (Legal Member) and Mrs Elizabeth Dickson (Ordinary Member).

Decision

The tribunal finds that the Property Factor has not failed to comply with Section 1.1.a, C(g) or Section 4.1 of the Code or with their duties.

Introduction

In this decision: the Property Factors (Scotland) Act 2011 is referred to as "the Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 is referred to as "the Rules" and the First-tier Tribunal for Scotland (Housing and Property Chamber) is referred to as "the Tribunal".

Background

1. The application made by the Homeowner dated 12 February 2020 was received by the Tribunal on 17 February 2020.
2. The application contended that the factors had failed to comply with Sections 1.1a, Cg and 4.1 of the Code. The application form indicated that the factors had also failed to comply with the factors' duties, but the detail of that complaint referred to the Code and did not specify any failures in duties. However, there would be a failure to carry out their duties if the factors applied such charges when they were not entitled to.
3. On 19 February 2020, a legal member of the Tribunal, acting under delegated powers, referred the application to the tribunal for determination.
4. In support of the application the homeowner submitted email correspondence between the parties between 28 October and 14 November 2019 and an undated Written Statement of Service.
5. A hearing was scheduled for 16 April 2020, which was intimated to the parties on 26 February 2020, but due to the measures introduced for the prevention of spread of the covid-19 virus the hearing was re-scheduled for 8 September 2020.
6. In response to the Notice of Referral and Hearing the factors submitted written representations dated 16 March 2020 with supporting documents. The homeowner submitted further representations dated 10 March and 1 August 2020 with supporting documents.

Hearing

A Hearing was held by telephone conference on 8 September 2020. The homeowner was present and gave evidence. Mrs Catherine McInnes and Mr Iain McInnes of the factors attended and Mrs MacInnes gave evidence.

Representations

1. The homeowner maintained his complaint that the factors were in breach of the Code since their Statement of Service did not comply with the terms of the Code. He had raised concerns about a number of issues in relation to charges for services included on the invoices sent to him which he contended were not provided or were unsatisfactory. Late payment fees totalling £168 representing £84 in respect of each of Flat 6 and Flat 10 belonging to him were imposed on his account. He considered that the Statement of Service issued to him when he bought the flats did not contain any procedure dealing with disputed charges and the factors therefore had no basis for imposing such late payment fees. He drew this to the attention

of the factors who issued an amended Statement of Service but refused to refund the late payment charges notwithstanding that flaw in the original Statement.

2. The homeowner referred to examples of services with which he was not satisfied: cleaning of bins; and garden maintenance. He also questioned the basis of his initial payment to the float/emergency fund of £150 whilst being asked to pay for the repairs which he considered had already been paid from the emergency fund. He considered that he was being asked to pay twice for the same thing. He explained that he had retained the payments until his questions had been resolved, but the factors had nonetheless applied the late payment charges as a result of which he had paid the accounts, but he did not regard his issues as being resolved. He said that he had raised the garden maintenance issue in a telephone conversation.
3. The homeowner contended that the revised Statement of Services did not include details of a procedure for dealing with disputed debts but merely imposed a time limit on homeowners raising a dispute. In his view this did not provide a method of resolving disputes as required by the Code.
4. The factors acknowledged that the original Statement of Service had not covered the requirements of the Code and immediately on that being drawn to their attention, they had issued an amended Statement to all owners of properties under their management. They contended that the Statement as amended meet the terms and requirements of the Code.
5. The factors maintained that they had explained their position in relation to the flats to the homeowner before his purchase and had provided him with details of costs and charges. It was their position that the late payment charges had been properly imposed. There had been correspondence in relation to the bin cleaning with which they believed the homeowner was satisfied as he paid the accounts in full and nothing further was raised in relation to bin cleaning thereafter and the garden maintenance issue was not raised with them until October 2019.
6. The factors explained that they had taken up the bin cleaning situation with the contractors and had been assured that the work had been carried out. In June 2019 they had obtained photographs of the bins after cleaning, one of which was sent to the homeowner on 1 July 2019. He had paid the account on 24 July 2019 and had not raised this issue again until his complaint was made. The payment on 24 July 2019 left a balance outstanding of £168.90 for each flat representing the float and a further £18.90 which equated to the charge for garden maintenance.
7. The factors pointed out that the first payment made by the homeowner was some 20 weeks after he had taken entry to the property.

Reasons for Decision

1. The tribunal had regard to the oral representations made by the parties and to the email correspondence between them. At the close of the hearing the tribunal confirmed with each party that the question to be determined was whether the factors' Statement of Service was in accordance with the requirements of the Code. We also consider that we should address the issue of whether the factors were entitled to impose late payment charges under their initial Statement of Service.
2. The relevant sections of the Code are:
 - i). *Section 1.1a: The written statement should set out:*

C. Financial and Charging Arrangements

g. confirmation that you have a debt recovery procedure which is available on request and may also be available online (see section 4: debt recovery).
 - ii). *Section 4:*

It is a requirement of section 1 (written statement of services) that you inform homeowners of any late payment charges and that you have a debt recovery procedure which is available on request.
1. *You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is a reason not to. This procedure must be clearly, consistently and reasonably applied. It is essential that this procedure sets out how you will deal with disputed debts.*
3. There is no need for us to consider this in relation to the original Statement of Service as the factors have acknowledged that it was defective in this regard and they took immediate steps to rectify the defect on it being drawn to their attention. The defect was remedied in November 2019 and clarified the position in relation to what amounted to a 'dispute item' in an account. There was provision in paragraphs 7.2. and 7.3 to entitle the factors to impose the charges on overdue accounts.
4. The tribunal is satisfied that the amended version of the Statement includes the necessary confirmation that the factors have a debt recovery procedure. That procedure is set out in paragraphs 7.2 to 7.7 of the Statement and sets out the series of steps to be followed where payment is not made.
5. We do not agree with the applicant's contention that the amendment simply applies a time limit within which a disputed item requires to be raised. Any questions raised by a homeowner in terms of paragraph 7.7 amounts to 'a disputed item'. It is clear in that paragraph that undisputed items fall to be paid on the due date, from which it follows that any disputed items do not

fall to be paid until the dispute is resolved one way or the other. In addition, there is a clearly stated Complaints Procedure in paragraph 8.

6. The Invoices for both flats covering the period from the homeowner's date of entry were amended in view of the confusion over his date of entry and ultimately issued on 21 June 2019. No payment was made in respect of any of the items contained therein until 24 July 2019, which was out-with the 28 day period under paragraphs 7.2 and 7.3.
7. The payment on 24 July 2019 was made under deduction of the float (EM108 @ 12:27 refers) and what was confirmed at the hearing to have been the garden maintenance, although this was not specified in the email. The homeowner questioned the payment to the float/emergency fund and the factors explained the arrangements in their email timed @ 14:36 of the same date. They also specifically pointed out that late payment charges would apply if the outstanding sums were not paid by 31 July 2019. The next payment by the homeowner was not made until 3 September 2019 as per the various Statements and particularly at Item 1 of the factors' Inventory of Productions.
8. We accordingly find that, on whatever measure there were outstanding charges for a period in excess of 28 days in respect of which the factors were entitled to impose late payment administration charges. They were entitled to regard the issue of the wheelie bins to have been resolved and were not made specifically aware of the garden maintenance matter until October 2019. They responded to the homeowner's enquiry about the float/emergency fund payment immediately. We do not accept, in light of the extensive number of emails from the homeowner, that he would not have raised his concerns about the garden maintenance in correspondence and left it to rest on a telephone conversation.
9. For completeness the tribunal considered that the factors were entitled to apply a late payment charge while there was an omission in the initial version of their Statement. Both statements give a clear indication of when late payment charges will apply and what they are. The amendment clarifies the position in relation to disputed items. As explained above the late payment charges were not applied to disputed items but to those that had been resolved. We were satisfied that the factors investigated and responded to disputes. Accordingly, we find the factors did not fail in their duties.

Appeals

A homeowner or property factor 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.

10 September 2020