

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19(1)(a) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/18/2240

Re: Property at Flat 2/1, 10 Rannoch Street, Glasgow G44 4DG ("the Property")

Parties:

Mr Iain Begg, residing at 7 Old Rectory Gardens, Wheathampstead, AL4 8AD ("the homeowner")

and

The Glasgow Housing Association Ltd, (PF Number PF000287) per YourPlace Property Management Ltd, registered under the Companies Act 1985, No SP2572RS and having its Registered Office at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL ("the factors")

Tribunal Members ("the tribunal"):

David Preston (Legal Member) and Andrew Murray, Surveyor (Ordinary Member).

Decision:

The tribunal, having made such enquiries as it saw fit for the purpose of determining whether the factors had complied with the Code of Conduct for Property Factors ("the code") and its property factors' duties as defined in the Act determined that the factors were in breach of Section 2.5 of the Code but had not failed to carry out their property factor duties.

The tribunal determined to impose a Property Factor Enforcement Order.

The decision was unanimous.

Background:

1. By application dated 5 September 2018 the homeowner applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) ("the Tribunal") alleging a failure on the part of the factors to comply with their duties under the Act and Sections 1.1aB; 2.5; 6.1; 6.9; and 7.2 of the Code.

2. In relation to the factors' duties, the homeowner alleged that the factors: failed to undertake a maintenance request on common parts of the building and the delay in making repairs resulted in serious damage to the property through water ingress. He maintained that the delay in instructing contractors and carrying out repairs that resulted in damage to the property and loss of amenity for his tenant.
3. The homeowner pointed out that factors acknowledged that they caused a delay and they upheld the homeowner's complaint, however they disputed some of the resultant damage and refused to pay compensation for loss of use of a bedroom for a period of 7 months. He sought recompense of direct expenses in: supplying a dehumidifier; provide temporary storage; and repair of a wardrobe; plus compensation request from his tenant since one bedroom was unusable for approx. 7 months. He calculated the sum sought as follows:

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|---|-----------------|
| a. Supply of dehumidifier | £89.94 |
| b. Supply of fabric wardrobe for temporary storage of clothes | £32.99 |
| c. Dry Cleaning | £43.97 |
| d. Additional electricity & gas | £82.71 |
| e. Repairs to wardrobe | <u>£150.00</u> |
| Sub-total | £399.61 |
| Compensation to tenant | £2065.00 |
| Total | <u>£2464.61</u> |

4. The President of the Tribunal referred the application to this tribunal for determination.

Hearing:

5. A hearing took place at Glasgow Tribunal Centre on 16 May 2019. The homeowner participated by teleconference and the factors were represented in person by Mr David Adams and Ms Heather Voisey, Business Improvement and Development Manager. Ms Voisey explained that Ms Susan Mackie, Regional Business Manager had been responsible for handling the case, but she had not returned to work as yet and the matter had been taken over by Ms Voisey. The homeowner's former tenant, Mr Andrew McGowan also participated by telephone. The tribunal was advised that the applicant wished Mr McGowan to have an opportunity to answer some of the factors' representations in relation to the condition of the property. Mr Adams advanced no objection to Mr McGowan's participation, nor his attendance on the phone throughout the hearing.
6. At the outset, Mr Adams was invited to expand upon and clarify the information in his email of 2 May 2019 in respect of the identification of the factors. He explained that The Wheatley Group Ltd is the parent company for both The Glasgow Housing Association Ltd and YourPlace Property Management Ltd. YourPlace Property Management Ltd carry out factoring management services as an agent of The Glasgow Housing Association Ltd, who are the factors in respect of the property as demonstrated on the Register of Property Factors. He confirmed that he had no objection to the application being amended to reflect the true position.
7. The homeowner agreed to such an amendment which was allowed by the tribunal.

Summary of Homeowner's Position

8. The homeowner referred to his written representations and documents lodged by him with the application and following the CMD.
9. The homeowner was invited to expand on his representations. He said that he wanted the tribunal to make a finding on the extent of the factors' responsibilities to him as owner of the property when, in his view, they had caused damage to his property through their failure to avoid delays in resolving the damage caused to his flat and its contents as a result of water ingress. He explained that he owned a number of properties in Glasgow and where there was no factor, he was able to attend to necessary repairs and ensure regular maintenance of his properties without delays. In the case of this property when there is a factor, he was required to make use of them to organise necessary work and had no control over their actions. He said that as a responsible landlord he had felt an obligation to his tenant to ensure that there were no on-going issues with his properties. He explained that an offer of mediation had been made at the last hearing but on enquiry of the mediation service he felt that the outcome would not provide him with any idea of the extent to which a factor is responsible to him for damage caused by their actions or inactions.
10. The homeowner said that in this instance he had reported the damage to the factors on 7 November 2017, but they had failed to react at that time, and it was not until he chased them up at the end of December that action was taken. Thereafter the initial work was carried out on 2 February 2018 and further external work was completed in March 2018. He accepted that the external work had been completed in March after a significant delay. As a result of the delay there had been significant damage to the interior of his property rendering one of the two bedrooms in the flat uninhabitable. His tenant had complained about the problem which had persisted and worsened throughout the delay. On 15 January 2019, after an inspection the factors maintained that the damage to the flat was due to condensation, which he contested and obtained a report which said that the damp was caused by problems with the box gutter over the bay window and adjacent guttering.
11. While the factors accepted responsibility for the delay from 7 November to 27 December 2018, they denied responsibility for the internal damage, although they did carry out remedial work to plaster and decoration at their expense. They had refused to accept responsibility for damage to a fitted wardrobe, or to tenant's belongings in it. The internal work was eventually carried out at the end of May until which time the bedroom was affected by mould and damaged plaster which, in his view meant that the room was unusable. He calculated that the loss of one room from a two bedoomed flat, would justify the rent being halved and he had based his calculation of compensation to his tenant on that basis over a period of 7 months. He said that the tenant had put up with a lot and that he could have left, in which case he would have been unable to re-let the flat due to its condition.
12. The buildings insurer had rejected the homeowner's claim on the basis that the damage had been the result of poor maintenance of the building, which was not an insurable risk. He had also attempted to submit a public liability claim against the factors, which was also rejected, on the basis that the factors had not been negligent and the work had been carried out competently.

13. The homeowner referred the tribunal to the chronological record of events which formed part of the 'Additional Information' lodged by him which outlined the extent of his involvement in chasing the factors in relation to both the external and internal work.
14. The homeowner questioned the benefit to him of the external work not being charged to the other proprietors. He did not see why they should benefit when they had not suffered the loss and inconvenience experienced by his property.
15. Mr McGowan had been the tenant throughout this period, and he had been denied the use of the room. He referred to the comments of the factors' inspectors and explained that it had been necessary to store boxes etc in the wardrobe rather than have them lying around the other rooms. He said that he had explained that to the inspector. He referred to photos he had taken in February 2019 showing the condition of the walls.

Summary of Factors' Position

16. The factors adopted their written representations and documents submitted in response to the homeowner's representations. They had always accepted responsibility for the human error resulting in no progress of the initial complaint of damp. However, when they had been alerted to this on 27 December 2018, they had fulfilled their obligations and had the work completed within their stated timescales. Any perceived delay after December 2018 was due to adverse weather conditions when access to the roof could not be achieved. When the initial external work had been carried out on 2 February 2019, further work was identified which then required scaffold to be erected and this was carried out in early March, completing the necessary work.
17. In relation to the internal damage, the factors relied on the report of their Asset Officer carried out on 15 January 2019 and referred to photos which their inspector had taken showing the belongings and clothes in the wardrobe after the damp had occurred. They had carried out the internal repair work at no expense to the homeowner, although did not accept responsibility for the wardrobe or its contents as Mr McGowan had a duty to minimise his loss and should have removed the contents from the wardrobe.
18. Their written response dealt with the specific complaints relative to the Code of Conduct and their duties. They had not only carried out the internal work at no expense to the homeowner, but they had also carried out the external repairs at no cost to the proprietors.
19. The factors pointed out that two insurers had rejected claims by the homeowner, and in particular referred to the rejection of the public liability claim. They referred to their Litigation Team's rejection on the basis that the water ingress was not as a result of poor workmanship. The Loss Adjuster also rejected the claim on the basis that they did not believe that the administrative error on the part of the factors in delay in initially progressing the repairs had led to new damage arising within the property.

Tribunal's Deliberations

Code of Conduct

1.1a.B. Services Provided

The core services that you will provide. This will include the target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the core service).

20. Section 1 of the Code applies to the provision of a Written Statement of Services (WSS) by factors and specifies the requirements for such. While the tribunal is satisfied that the WSS submitted complies with those requirements, it is wholly defective in that it makes no reference to the factors as identified in this case. The WSS refers to Wheatley Group and to YourPlace Property Management (Registration number PF000212) but makes no reference to The Glasgow Housing Association (Registration number PF000287). The provisions relate entirely to YourPlace. We can see no reason for this omission and it clearly leads to considerable confusion amongst homeowners to whom The Wheatley Group of companies in one form or another provide services. All homeowners are entitled to be fully advised of the identity of their factors and it is a matter of serious concern to the tribunal that such a basic requirement has not been met.
21. It follows that as the factors in this case have not provided a WSS applicable to the factors, they are in breach of Section 1 of the Code.

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).*

22. By their admission throughout, the factors accept that they failed to comply with the terms of the WSS in that the initial complaint was not actioned until the homeowner chased them up on 27 December 2018, which was a delay of 7 weeks. We accept that once started (on 27 December 2018) and taking account of the holiday period at that time, the work was instructed and carried out within reasonable timescales.
23. We must therefore find that the factors are in breach of Section 2.5 of the Code.

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 maintenance. 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.*

24. We find no fault on the part of the factors under this section. The chronological record submitted by the homeowner shows that after the initial delay, the homeowner was chasing the factors before the elapse of what might be regarded

as a reasonable time. We accept the evidence of the factors that the adverse weather prevented safe access. This was contested by the homeowner to the extent that a storm was not likely to continue for a number of weeks. Although while the homeowner's assertion may be true, we accept that where scaffold is required it would be unreasonable for the factors to be expected to act instantaneously to carry out the work. There must be a degree of planning, scheduling and preparation allowed for once a storm has passed. The time taken for the initial external work to be carried out (27 December 2018 – 2 February 2019) was not unreasonable. On carrying out that work, further work was identified which required scaffold and this work was completed before 14 March 2019. The evidence of the photographs lodged confirms to us that the damage to the tenant's belongings did get worse over the time taken overall.

6.9 You 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. There was no evidence of any defects or inadequacy in any work carried out or service provided by the contractor. Accordingly, we find no breach of this section of the Code.

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.*

26. We found no fault on the part of the factors in relation to the formal complaints process as applied in this case.

Factors Duties:

The factors failed to undertake a maintenance request on common parts of the building and the delay in making repairs resulted in serious damage to the property through water ingress.

27. In the intimation letter to the factors, the homeowner expanded on this complaint as follows:

Page 11 Written Statement of Services: "It is best to report repairs as soon as you are aware of issues, this prevents further damage to your property." I reported the initial small damp patch on 8th November 2017, however, YourPlace failed to take any action until the 11th January 2018. This caused further damage to my property. As this was an appointment repair and the

timescale is 15 days, however, the repair was not finished until 5 months after I reported it.

Page 26: "We will respond to your letters, emails, faxes and text messages within 5 working days". However, on 7 occasions I received no response to my emails. Dates were 14th Feb, 6th Mar, 7th Apr, 9th Apr, 12th Apr, 19th Apr, 25th Apr and these are described within my first formal complaint letter sent on 10th June 2018 where each instance is highlighted with 'no reply' in yellow.

Having made a formal complaint, this was investigated and the complaint was upheld and you have admitted that the delays in dealing with the repair were caused by Your Place however you have denied any liability for the further damage caused to my property as a result of this delay.

28. The matter of the initial delay in responding to the homeowner's report of water ingress, has been adequately addressed above and we make no further finding in respect of the factors' duties.
29. In relation to the complaint about unanswered emails, we are satisfied that responses were in fact sent by the factors, although some may have slightly over run the strict timescale. The factors were liaising with the contractors to obtain the information being requested by the homeowner. In the context of the on-going correspondence and the actions taken by the factors, we do not find that this complaint is upheld.

Property Factor Enforcement Order (PFEO)

30. Having determined that the Factors were in breach of the Code, the tribunal then considered the terms of a proposed PFEO and considered that the factors should pay to the homeowner the sum of Seven Hundred and Ninety Nine Pounds (£799) to the Applicant within a period of 30 days after service of Notice of PFEO.
31. The tribunal considered that by attending to the internal works in relation to mould removal etc at no cost to the homeowner, it was illogical of them to refuse to accept the damage to the wardrobe and the associate direct costs detailed in the homeowner's summary of complaint totalling £399. We accept that there was an element of contributory negligence on the part of the homeowner through the action or inaction of the tenant in not removing his belongings from the wardrobe sooner, but the dry cleaning costs claimed by the homeowner are insignificant.
32. In relation to the sum claimed as compensation to the tenant, we consider that a payment is appropriate, although we do not accept the basis of calculation adopted by the homeowner.
33. In relation to the principle of whether the tribunal can order such a payment, the factors said that it was not competent through the application process. We do not agree. Section 20(1)(b) of the Act provides the tribunal with a wide discretion allowing "such payment to the homeowner as the tribunal considers reasonable". We find that the homeowner is entitled to recover such a direct cost from the factors as he may incur to his tenant where the reason for compensation flows from fault on the part of the factors. We do not regard the

acceptance or rejection of an insurance claim as relevant. The claim against the buildings policy was rejected by the insurers on the basis that the damage was not caused by an insured risk – ie maintenance as opposed to storm damage. The public liability claim was rejected for the reasons set out by Cunningham Lindsey in the factors' representations of 8 January 2019 who did not consider "that the delay in initially progressing the repairs has led to new damage arising within the claimant's property as a result of the ingress." We do not agree. We find, on a balance of probabilities that the delay from 7 November 2018 until 8 January 2019 was more likely than not to have caused the damage complained of and that the subsequent delay, albeit occasioned by weather, until February 2019 would have worsened the position, particularly in view of the fact that it was the weather conditions which prevented the work. Had the factors taken action in November 2018, the external work could well have been completed before the holiday period in December, thus avoiding any long term consequences of the water ingress. The fact that the factors have accepted fault and apologised for the initial lack of action does not exonerate them from the consequences of that delay. The refusal of the insurers to accept liability is a matter between the factors and their insurers and not for the homeowner.

34. So far as the claim for compensation is concerned, we do not agree with the basis on which the homeowner has proceeded. There is no justification in the rent being halved. It is more appropriate to consider what rent might reasonably be achieved for a one bedroom as opposed to two bedroom flat and on that basis we consider that a reasonable figure would be £100 per month for the period for which the room was unavailable to the tenant between January and May 2019 being 4 months (£400). We consider that the period should begin in January which allows a reasonable period (November to January) during which the work could have been done but for the inaction of the factors.

David Preston

23 July 2019