

Housing and Property Chamber

First-tier Tribunal for Scotland



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

DECISION ON HOMEOWNERS APPLICATION – Property Factors (Scotland) Act 2011 Section 19 (1) (a)

Chamber Ref: FTS/HPS/PF/17/0276

**Flat 0/1, 9 Mansionhouse Gardens, Glasgow, G41 3DB
("The Property")**

The Parties:-

**MS PAULA MUNRO, residing at the Property
("the Applicant")**

**ROSS & LIDDELL LIMITED, 60 St Enoch Square, Glasgow, G1 4AW
(represented by their agent, Mr Michael Ritchie, Solicitor, Hardy McPhail, 5th Floor,
Atlantic Chambers, 45 Hope Street, Glasgow, G2 6AE)
("the Respondent")**

Tribunal Members:-

**Graham Harding (Chairman & Legal Member)
David Hughes-Hallett (Ordinary Member) (Housing)**

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") having made such enquiries as it saw fit for the purposes of determining whether the Respondent has complied with the Code of Conduct for Property Factors as required by Section 14 of the Property Factors (Scotland) Act 2011 and also whether the Respondent has complied with its duties under the Act determined unanimously that in relation to the Applicant's Application the Respondent has complied with the Code of Conduct for Property Factors and has not failed to carry out its Property Factor's duties.

INTRODUCTION

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 2016 are referred to as "the Rules".

The Respondent became a Registered Property Factor on 1 November 2012 and its duty under Section 14(5) of the 2011 Act to comply with the Code arises from that date.

By application dated 12 July 2017 the Applicant applied to the tribunal for a decision as to whether the Respondent had failed to comply with the code or failed to carry out its duties. By minute dated 22 September 2017 a convener with delegated powers referred the application to the tribunal and a hearing took place on 6 December 2017. Both parties submitted written representations to the tribunal and both parties attended and made submissions at the hearing. The Respondent's witness was Mr Brian Fulton. The Respondents Solicitor was Mr Michael Ritchie.

The Tribunal makes the following findings in fact:-

1. The Applicant is the owner of the Property known as and forming Flat 0/1, 9 Mansionhouse Gardens, Glasgow, G41 3DB. The development comprises 91 flats and 42 townhouses. The block of which the Applicant's property forms part has 9 flats.
2. The property is burdened *inter alia* with a Deed of Conditions recorded GRS (Glasgow) 19 November 1984 (as amended by Supplementary Deed of Conditions recorded GRS (Glasgow) 10 April 1985). In terms of Clause Ninth of the said Deed of Conditions, each feuar such as the Applicant was obliged to join and was automatically made a member of an Owners Association. The Owners Association and its committee are in control of decision making in respect of any repairs or maintenance of the development of which the Applicant's property forms part.
3. So far as can be established, the Owners Association Committee have powers delegated to them to make decisions in respect of any repairs and maintenance. The Owners Association Committee instruct the Respondent to carry out committee decisions.
4. The Owners Association Committee determined that the dwarf walls adjacent to the Applicant's property required to be removed and rebuilt. They instructed the Respondent to obtain quotes for the work. The Respondent obtained three quotes, the cheapest of which was from Hugh Scott, Hunter Building Services. The Respondents wrote to the owners affected. The majority of owners accepted the quote and the work was carried out. The Applicant did not agree to the work carried out until a fully detailed quote was obtained showing a breakdown of the cost of materials and labour.
5. The Applicant attached a cable from her property to the external wall. The wall is common property. This was discussed at an Owners Association committee meeting. The Respondent was instructed by the Committee to write to the Applicant regarding the cable belonging to the Applicant that was attached to common property. The Owners Association Committee subsequently gave the Respondent no further instructions with regards to the cable after the Applicant pointed out that other property owners had cables attached to common property.
6. The Applicant complained to the Respondent with regards to the Respondents failure to obtain a fully costed quotation for the removal and rebuilding of the dwarf wall adjacent to the Applicant's property.

7. The Applicant complained to the Respondent regarding the cable attached to common property on the basis that she was being singled out when other proprietors had cables.
8. The Applicant complained to the Respondent that her data protection rights had been breached as personal billing information had been provided by the Respondent to the Owners Association.

THE LEGAL BASIS OF THE COMPLAINTS

9. The Applicant complains under reference to Sections 2.2 and 3 of the Code and also that the Respondent had failed to carry out its duties as Property Factor.

THE CODE

10. The elements of the code relied upon in the Application are as follows:-

2.2

"You must not communicate with homeowners which is in any way abusive or intimidating or which threatens them (apart from reasonable indication that you may take legal action)."

Section 3

"Whilst transparency is important in the full range of your services, it is especially important for building trust and financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved."

THE PROPERTY FACTORS DUTIES

11. The Applicant in her Application stated that the Property Factor had failed to provide her with a breakdown of costs for proposed structural work to the building. The Applicant also said in her Application that her data protection had been breached as residents had been advised of her personal billing information. Communications from the Respondent had been intimidating towards her and that there was a failure to provide transparency with accounts.

THE HEARING

12. The Applicant had provided the Tribunal with additional correspondence shortly before the Hearing. This correspondence related to a complaint about the Owners Association Accounts. As a preliminary matter, the Tribunal sought to ascertain from the Respondent's representative whether the Respondent had any objection to this matter being considered and after hearing from the Respondent's representative, the Tribunal decided to consider the Applicant's further submissions under reservation that if necessary the Respondent would be given more time to answer the complaint.

13. The Applicant confirmed that she thought that the Respondent ought to have provided a full detailed breakdown of the material and labour costs before it was decided to go ahead with the work. The Applicant did not think there was any need for the work to be done at all. She explained that the work had been completed without her consent.
14. Mr Ritchie for the Respondent explained that in terms of the Deed of Conditions affecting the Property and in particular Clause 9, the Owners Association have the power to decide which works were carried out and they also had the power to delegate instructions to the Respondent. The Respondent sought quotes from three different contractors and wrote to the owners affected. The Respondent could not compel the contractors to provide more information than had been contained in the quote and subsequent correspondence.
15. Mr Fulton for the Respondent explained to the Tribunal that the Owners Association Committee met on a regular basis and any defects in the development were noted. In respect of the dwarf walls, they had not had a coping stone when built and as a result the condition of the walls had deteriorated. The Owners Association had obtained a Report from the husband of a committee member who made recommendations with regard to the removal and re-building of the dwarf walls.
16. According to Mr Fulton for the Respondent so far as the Respondent was aware, the committee of the Owners Association had authority to delegate instructions to the Property Factors since about 1984. However, when it came to any significant works it would be normal to look to a majority of owners agreeing and also for payments to account to be made.
17. The Applicant was of the view that a detailed breakdown of costs was necessary. The Respondent was of the view that to obtain such a breakdown would require a Bill of Quantities to be prepared by a quantity surveyor. The Owners Association Committee had not instructed the Respondent to do this. Had the Owners Association Committee requested such a course of action there would have been additional costs involved. Mr Fulton said that the work had been done as the majority of owners in the Applicants' block had agreed and paid their share of the cost.
18. The Applicant explained that she had been shocked to discover that two homeowners were aware that she had decided to opt out of contributing to the development's window cleaning contract other than in respect of her share of the cost of cleaning windows in the common parts. She complained that her decision to opt out of the window cleaning contract had been discussed at a Committee meeting. She was of the view that there had been no need to mention her name at the meeting.
19. Mr Fulton for the Respondent said that he was of the view that it was appropriate to provide the Owners Association Committee with full information. It was not in his opinion a breach of data protection to mention the Applicant by name at an Owners Association meeting.

20. Mr Fulton explained that it had been brought to his attention at an Owners Association Committee meeting that the Applicant had a white cable coming from her property and attached to the external wall. He had been instructed by the Committee to write to the Applicant to ask that the cable be removed as it was unsightly. Mr Fulton acknowledged that there were other cables that were attached to the building and that some were more obvious than others.
21. Miss Munro was of the view that by being singled out to have her cable removed, this was intimidating. She also complained that the minutes of a committee meeting which had been prepared by Mr Fulton mentioned her by name and ended a sentence about her with an exclamation mark. She said that this was also intimidating.
22. Miss Munro complained that she had been told by the Respondent that she had to attend a meeting of the Owners Association Committee if she wished to make a complaint. Miss Munro again felt that she was being singled out and that there was nothing in the Deed of Conditions that stated she had to attend a committee meeting to make a complaint. Mr Fulton said that apparently if homeowners had an issue to raise with the Owners Association they were expected to attend a committee meeting.
23. With regards to the Owners Association accounts, Miss Munro said that she was, as an owner, entitled to know what happened to the funds held by the Owners Association. Mr Fulton for the Respondent explained that his Company did not hold these funds. They were in a Bank Account that was operated by the Owners Association Committee and was not something that he had any control over.

REASONS FOR THE DECISION

24. The Tribunal was satisfied that the Respondent was acting on the instructions of the Owners Association Committee. Whilst it may well be the case that other owners were not written to by the Respondent in respect of cables belonging to them, it appears to the Tribunal that the Applicant's complaint really lay against the Owners Association Committee rather than against the Respondent. In any event as at the date of the Hearing it was clear that the Respondent had not been instructed by the Owners Association to take any further action with regards to the Applicant's cable and therefore at least for the time being it appeared that the Applicant could leave the cable in situ.
25. With regards to the alleged breach of Section 3 of the Code, the Tribunal was of the view that the information provided by the Respondent to the Applicant with regard to the breakdown of the costs of the repairs to the dwarf walls was adequate in the circumstances. It would be for the Owners Association Committee to decide the type of quotes that the Respondents were obliged to obtain and whether a detailed Bill of Quantities prepared by a quantity surveyor was appropriate.
26. Whilst the minutes of the Owners Association Committee had been prepared by Mr Fulton from the Respondent the Tribunal were of the view that although adding an exclamation mark at the end of a sentence involving the Applicant was

unnecessary and perhaps inappropriate, it did not amount to intimidating or abusive behaviour on the part of the Respondent.

27. With regards to the Applicant's complaint about the lack of transparency in the Owners Association accounts, the Tribunal was of the view that these accounts had not been prepared by the Respondent and were outwith the control of the Respondent. It was the Tribunal's view that if the Applicant had concerns about the Owners Association accounts, the appropriate forum for raising concerns would be at a meeting of the Owners Association.
28. Accordingly the tribunal unanimously agreed that the Respondent had not broken the codes nor failed to carry out its property factors duties.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

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 d.

Graham Harding
Chairman & Legal Member

28 December 2017