

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PF/18/0027 and FTS/HPC/PF/18/0029

Re: 12 and 14 Lochlea, Glasgow, G74 3RY ("the Properties")

The Parties:-

Ms Sandra McCorquodale, West Dykehead Farm, Strathhaven, ML10 6RF ("the Homeowner")

South Lanarkshire Council, Housing and Technical Resources, Property Services, Cambuslang Gate, Main Street, Cambuslang, G72 7EX ("the Factor")

Tribunal Members

Ms Helen Forbes (Legal Member)

Mr David Godfrey (Ordinary Member)

Decision

The Tribunal determined that the Factor has not failed to comply with the Section 14 duty in terms of the Property Factors (Scotland) Act 2011 ("the Act") in respect of compliance with Section 6.9 of the Property Factor Code of Conduct ("the Code").

The decision is unanimous.

Background

1. By application dated 18th December 2017 and received in the period from 4th January to 28th February 2018 ("the Application") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for a determination that the Factor had failed to comply with Section 6.9 of the Code. Details of the alleged failure were outlined in the Homeowner's application. Associated documents were lodged, including invoices issued to the Homeowner, letters and emails between the parties, and the Factor's Written Statement of Services. The failure outlined by the Homeowner related

to new front and rear entrance doors and screens fitted by the Factor in the block of properties comprising 4 to 14 Lochlea, Glasgow in early 2014. The Homeowner's complaint about the new doors and screens was as follows: '*Not fit for purpose, not like for like, not wind and watertight, wrong design, wrong size manufactured, sits within base, no weathering, water ingress, poorly installed, not following through/updating on meeting of 24/06/16*'.

2. By Minute of Decision dated 15th March 2018, a Convenor of the Housing and Property Chamber referred the Application to a Tribunal.
3. On 5th April 2018, Notice of Referral and Hearing was sent to the Parties. A hearing was set down for 17th May 2018.
4. On 25th April 2018, the Factor lodged written representations and productions comprising letters from the Factor to the Homeowner, and a copy of the Factor's Written Statement of Services.

Hearing

5. A hearing took place at 10.00 on 17th May 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Homeowner was present. The Factor's Factoring Manager, Mr David Keane, was present, together with Mr Jerry Fawbert, Buildings Services Co-ordinator.

Preliminary Matters

6. The Tribunal did not have a full set of papers in relation to each of the Properties. The Homeowner confirmed that she had lodged two applications with the Tribunal – one each in respect of numbers 12 and 14 Lochlea.
7. The Homeowner had brought two witnesses to the hearing. The Tribunal members were unaware of the intention to have witnesses present. The Homeowner showed the Tribunal her response lodged on 24th April 2018 whereby she had indicated that she would bring two witnesses and named them as James Thomson and Rebecca Thomson. The Homeowner indicated that she intended her husband, James Thomson, to sit with her and address the Tribunal on any matters of a technical nature. She felt it was only fair that she be allowed to have her husband included in the hearing, as there were two people present on behalf of the Factor, and Mr Thomson had been fully involved in the management of the properties. Rebecca Thomson was intended to be there as an observer.

The Factor's representatives indicated that they had no objection to Mr Thomson sitting with the Homeowner and contributing as necessary.

The Tribunal had a short adjournment at this point to discuss matters in relation to the witnesses. Given that the Factor had no objection to Mr Thomson's presence throughout the hearing, the Tribunal agreed that Mr Thomson should be allowed to accompany the Homeowner.

Evidence and Representations

Failure to comply with section 6.9 of the Code

8. Section 6.9 of the Code states: *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.*

Submissions on behalf of the Homeowner

The Homeowner said that matters had been going on over a three year period. The last attempt to resolve matters had been at a meeting in June 2016 attended by herself, Mr Thomson, the owner of 8 Lochlea, and two representatives of the Factor – Brendan Grant, Building Services Officer, and Brian Miller, Technical Officer. At that meeting, she said it was agreed that the Factor would instruct Alastair Welch of Graham and Sibbald to carry out an independent survey of the matters in dispute. Brendan Grant said he would speak to Jerry Fawbert as no other doors of a similar design had been fitted in the area. The Homeowner said that the Factor's representatives would likely dispute her account of what was agreed at the meeting, but she had never heard of Alastair Welch prior to the meeting.

The Homeowner said that her complaint continues. The doors are not fit for purpose, there are no sills, they are the wrong size, there is water ingress and they do not close properly. The back door is swollen and doesn't fit the frame. The front door is letting in water.

The proprietor of the property at 8 Lochlea was also complaining of the same defects. The Homeowner was in possession of some email correspondence between the proprietor at number 8 and the Factor. This had not been lodged with the Tribunal in advance. The correspondence indicated that staff of the Factor had said that a weather strip ought to have been fitted, and repairs should have been carried out to the roof of the front porch.

The Homeowner said she had received correspondence from Mr Fawbert dated 24th June 2015. She disputed his assertions that the front door and screen had been measured, manufactured and installed, and the back door manufactured and installed. She alleged there had been no measurement as the doors never fitted the frame and sat inside rather than outside the frame.

The Homeowner referred to discrepancies in dates included in letters from representatives of the Factor, in particular where Mr Fawbert said in a letter that the work had been completed in May 2015 and Brian Miller said it was completed in June 2014.

The Homeowner said that the work was not like for like. There are still gaps in the base and the front door lets in water. There are faults with the measurements, the installation and the canopy. The fascia was not replaced

at the time that the work was carried out. Brian Miller had said in an email to the owner of 8 Lochlea that the roofing and the canopy had not been replaced. The fascia was later replaced and the numbers refitted at the expense of the Factor. The Homeowner said she was aggrieved that the Factor was asking for money for doors that were not fit for purpose. The weather bar sheds water and a sill is required to take the water away. The Homeowner said that Mr Fawbert had offered to retrofit a sill detail to the new screens and then monitor the situation. The Homeowner did not feel that she should have to accept a retrofit. The situation was going on for years, with the Factor sticking bits on in an attempt to improve matters.

At the meeting in June 2016, the Factor's technical officer could not say that the door was adequate. That was why he mentioned the independent survey.

In January 2017, the retrofitted bar was removed and renewed and an inch of silicone was applied. In February 2017, the Factor said a water test had been carried out and the work was complete. The Homeowner then contacted the Housing and Property Chamber and was told that she would have to raise a complaint with the Factor. She did this, and exhausted their complaints procedure. Despite the complaint, she received a debt letter from the Factor in April 2017. Her complaint had been acknowledged three times by the Factor. She understood that there had been a problem with the Factor's administration and the complaint letter had not reached David Keane. On 18th June 2017, she received a final response from the Factor.

The Homeowner said that the new doors are worse than the old doors in several ways. Three owners within the block are complaining about the doors, but one property is owned by the Council, another is rented to the Council as homeless accommodation, and a third is a private let and the landlord is not in the country. She said she wanted a full replacement of both doors and the bill for the work to the doors to be removed from her account.

The Homeowner produced photographs of the door to numbers 4 to 14 Lochlea and the door to an adjacent block, with what was described as a 'perfect sill'. The photographs had been taken in 2017. Mr Thomson said that the doors to 4 to 14 Lochlea had been measured incorrectly and should have a sill. He thought the decision to offer to retrofit sills was shocking, and the sills would not last. The work carried out was unacceptable technically, aesthetically appalling and it devalued the entrance to the block of flats.

Submissions on behalf of the Factor

Mr Keane reiterated the written submissions lodged previously with the Tribunal. He added that the retrofit had been carried out at no cost to the Homeowners. He said there was no commitment given at the meeting held in June 2016 to having a survey carried out by Graham and Sibbald. He produced a copy of the most recent Written Statement of Services. He refuted that there had been any breach by the Factor.

Mr Fawbert said the Factor provided factoring services to seven blocks of flats

at Lochlea. He produced photographs of the entrance doors to 4 to14 Lochlea. He also provided photographs of some of the other factored blocks. At this point, the Homeowner objected to the photographs being produced as she had lodged photographs timeously and these were not before the Tribunal. The Tribunal agreed to allow the Factor's photographs to be lodged under reservation, indicating that they would request copies of the photographs that had been lodged by the Homeowner from the Tribunal administration.

Mr Fawbert said there were technical differences between the blocks of flats that meant the doors were not all fitted in the same way. There was a concrete plinth at 4 to14 Lochlea that meant there would be a trip hazard if the doors had been fitted differently. The Factor had to install the doors in the same way as they had been previously installed. The weather bar was fitted later due to severe weather. The old doors would also have let in water in the same severe weather. The doors are not designed to be 100% wind and watertight. They are not designed to withstand extreme weather conditions.

Mr Fawbert said he had been at the block several times and he only saw water penetration on one occasion in severe weather. The doors were slightly swollen a year after installation. This kind of snagging is normal. He felt that some of the water seen at the property could have been due to condensation. He acknowledged that a degree of re-sealing was required and carried out, and that this was possibly due to a defect.

There was originally a timber door at the property with no weather bar and no sill. It was only to try and resolve the issues that the Factor installed a sill and a weather bar. This offer was made in good faith, despite these items not being there previously. The screens in the other blocks are identical. There are no issues with the other blocks. There was water ingress during the water test, but the doors are not designed to withstand high pressure waterjets.

The original installation did not include a canopy. The fascia roof detail was replaced later as a gesture of goodwill. Mr Fawbert said that the Factor has always tried to resolve problems for homeowners, taking them at their word.

Responding to questions from the Legal Member as to whether the Factor had previously instructed Graham and Sibbald, Mr Fawbert said they had instructed them for other types of issues, such as structural issues. The men that attended the June meeting on behalf of the Factor did not recall suggesting an instruction to Graham and Sibbald, and they did not mention this to Mr Fawbert following the meeting. This would be an expensive undertaking and not something that the Factor would do for this kind of issue.

Responding to questions from the Legal Member regarding why Mr Fawbert did not inspect the entrance doors prior to January 2017, he said other members of staff had visited and said that the doors were fitted properly and there was no water penetration. He had understood that the doors were working properly at that time. He decided to visit following all the correspondence there had been. There was exceptional wind and rain that

day, with water on the mid-seal and the doors were not closing properly. He had last attended about a year ago, although he had attended recently in order to take photographs. Mr Keane said he had visited two weeks ago and found both doors opening and closing properly and no water ingress.

Responding to questions from the Ordinary Member regarding the Factor's authority to provide services, Mr Keane said the title deeds gave authority as long as the Council retained one property within the block of flats. Otherwise, a majority of owners could elect another factor.

The Ordinary Member pointed out that the Written Statement of Services gave no timescales for responding to repair issues. Mr Fawbert said the Factor responds within 3 hours for an emergency. If an inspection is required, they respond within 5 days, and within 15 days for a routine repair. The Ordinary Member pointed out that homeowners could not be expected to know this if it was not contained within the Written Statement and that the Factor should give this some consideration.

Findings in Fact

9.

- (i) The Homeowner is the proprietor of the Properties at 12 and 14 Lochlea, Glasgow.
- (ii) The Properties are ex-local authority flats within a block of six properties, numbered 4 to 14 Lochlea, Glasgow.
- (iii) The Factor became a registered Property Factor with registration number PF000184 on 17th December 2012. The Factor's duty under section 14(5) of the Act to comply with the Code arises from that date.
- (iv) The Factor provides various factoring services to the development of which the Properties form part.
- (v) Following a repair instructed on 30th January 2014, replacement front and rear entrance doors and screens were supplied and installed by the Factor in the block numbered 4 to 14 Lochlea, Glasgow.
- (vi) An invoice was issued by the Factor to the Homeowner in respect of each of the Properties on 16th September 2014 in the sum of £426.77 in respect of the works carried out.
- (vii) On 3rd October 2014, the Homeowner asked the Factor to put the account into dispute due to her concerns regarding the quality and standard of the works to the doors.
- (viii) On 17th October 2014, the Factor issued a letter to the Homeowner regarding factoring arrears.

- (ix) On 22nd October 2014, the Factor wrote to the Homeowner stating that the matter would be looked into and a response issued within 30 working days or when all information had been collated.
- (x) On 14th April 2015, the Factor provided the Homeowner with a written breakdown of the work carried out.
- (xi) The Homeowner requested details of the specification for the solid core hardwood door and door closers on 17th April 2015.
- (xii) On 5th May 2015, the Factor issued a further letter to the Homeowner stating that the matter would be looked into and a response issued within 30 working days or when all information had been collated.
- (xiii) On 24th June 2015, the Factor wrote to the Homeowner with details and costings for the work carried out, and details of other factoring repairs, offering the Homeowner the opportunity to discuss payment options.
- (xiv) On 6th July 2015, the Factor issued a further debt letter to the Homeowner regarding the overdue factoring arrears.
- (xv) On 9th July 2015, the Homeowner wrote to the Factor complaining about the design and workmanship in relation to the doors.
- (xvi) On 9th July 2015, the Factor issued a further letter to the Homeowner stating that the matter would be looked into and a response issued within 30 working days or when all information had been collated.
- (xvii) On 9th December 2015, the Factor wrote to the Homeowner stating that both doors had been checked and were installed and fitted correctly and up to standard.
- (xviii) On 16th December 2015, the Homeowner wrote to the Factor asking, among other matters, for the Factor to reconsider the charges in relation to the doors, complaining again about the workmanship. This letter was acknowledged by the Factor by letter dated 21st December 2015.
- (xix) On 19th January 2016, the Factor wrote to the Homeowner, stating that the doors had been inspected on 22nd December 2015 following a period of prolonged wind and rain, and the doors required adjustment, having moved and swollen, and that there was a small amount of water ingress at both screens. The Factor acknowledged that there may be a defect in the mid rail at the glazing beads, and that further work had been instructed, and would be carried out at no cost to the homeowners. The Factor also acknowledged that the detail at the bottom of the new screens differed from the original screens and mentioned the possibility of retrofitting a sill, stating that they would monitor the screens after the further works had been carried out, and, if the water ingress continued, they would retrofit the sills, again at no charge.

- (xx) The Homeowner continued to be unhappy with the state of the doors and a site meeting took place on 24th June 2016 to inspect the doors. At the meeting, mention was made by the Factor's staff of instructing an independent survey by Alastair Welch of Graham and Sibbald. No such survey was ever carried out.
- (xxi) On 10th February 2017, the Factor wrote to the Homeowner and stated that an extensive water test had been carried out and remedial works completed, and the charge for payment was now due.
- (xxii) On 28th February 2017, the Homeowner lodged a customer complaint with the Factor. The correspondence was acknowledged by the Factor's Customer Services on 1st March 2017.
- (xxiii) On 21st March 2017, the Homeowner emailed the Factor's Sundry Income Team and asked that her account be put on hold as she had lodged a complaint.
- (xxiv) On 24th March 2017, the Factor's Sundry Income Team emailed the Homeowner and stated that her complaint had been passed to the factoring department.
- (xxv) On 30th March 2017, the Factor wrote to the Homeowner reiterating the breakdown of the costs for the works carried out and advising that there had been no further complaints since the completion of the remedial works.
- (xxvi) On 10th April 2017, the Homeowner emailed the Factor and asked that the account be put on hold as she wished to move to the second stage of the complaints procedure. A further complaint was made by the Homeowner by email on the same date.
- (xxvii) On 18th May 2017, the Factor informed the Homeowner by letter that the repairs had been completed. The Factor gave details of the Housing and Property Chamber in that letter.
- (xxviii) On 23rd May 2017 the Homeowner emailed the Factor and asked that the account be put on hold pending a referral to the Tribunal. On the same date, the Factor confirmed by email that a further temporary hold had been placed on the account.
- (xxix) There were snagging issues with the new doors and screens after they were installed. The Factor attended to the snagging issues, improving the operation of the doors and screens.

Photographs

10. On enquiring with the Tribunal's administration staff after the hearing, it was discovered that the Homeowner had emailed photographs to the Tribunal on

24th April 2018 in a zip file. The Homeowner had been informed that the zip file could not be accessed and the photographs should be attached individually to an email. No further photographs were received from the Homeowner. The Homeowner was offered a further opportunity to submit her photographs on 30th May 2018, which she duly did, submitting 19 photographs indicating various aspects of the doors and screens at 4 to 14 Lochlea, and showing an example of a neighbouring door. The Tribunal decided to take into account all the photographs produced by both parties in reaching its decision.

Determination and Reasons for Decision

11. The Tribunal took account of all the documentation provided by parties and the oral submissions and evidence.

Failure to comply with section 6.9 of the Code

12. The Tribunal did not find that the Factor had failed to comply with this section of the Code. The Tribunal accepted that there were initial problems with the doors after installation. The Tribunal noted that the Homeowner expected 'like for like' – essentially to have doors and screens that were identical to the original installations; however, the evidence on behalf of the Factor was that designs have changed and this was not possible. The Tribunal accepted the Factor's evidence that an installation similar to that of adjacent blocks would have caused a trip hazard due to the concrete plinth at 4 to 14 Lochlea. There was sufficient evidence before the Tribunal to indicate that the Factor had taken steps to remedy the defects, in effect, pursuing the contractor or supplier as envisaged by the Code, albeit the contractor was its own in-house team. The Tribunal considered that it was not unrealistic to expect some snagging difficulties after such work was carried out, and that the doors are not designed to eliminate all water penetration. The Tribunal was satisfied that the Factor had complied with the Code of Conduct.

Observations

13. The Tribunal had some concerns that Mr Fawbert wrote to the Homeowner on 9th December 2015, stating that both doors had been checked and were installed and fitted correctly and up to standard. Yet, when examined a mere 13 days later, the doors were found to have defects. The Tribunal noted that the defects were said to have occurred due to the level of wet weather experienced throughout the year. It may have been advisable for Mr Fawbert to have inspected the doors and carried out tests to satisfy himself, before writing his letter of 9th December.

The Tribunal was also concerned about the issue that arose from the meeting that took place on 24th June 2016. The Tribunal accepted the evidence of the Homeowner that an employee of the Factor mentioned the possibility of having an independent survey carried out. The Tribunal also accepted the evidence on behalf of the Factor that this information was not relayed to the relevant persons at the time. It was unfortunate that this matter was not discussed by parties at an earlier stage, at which time it could have been clarified that the

Factor did not intend to carry out any such survey, whatever was said by a member of staff.

14. Accordingly, the Tribunal found that the Property Factor did not breach section 6.9 of the Code.

Right of Appeal

15. In terms of section 46 of the Tribunals (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.

Legal Member and Chairperson

8th June 2018