

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 ("the Act")

Reference number: FTS/HPC/PF/21/1676

Re: Property at 22, Neilston Road, Paisley, PA2 6LN ("the Property")

The Parties:

Mr. Ian Young residing at the Property ("the Homeowner") and James Gibb Property Management Ltd., having a place of business at 65, Greendyke Street, Glasgow G1 5PX ("the Factor")

Tribunal Members

Karen Moore (Chairperson) and Andrew McFarlane(Ordinary Member)

Decision

The Tribunal determined as follows:

The Factor did not fail to comply with the Section 14 of the Act in respect of compliance with the Code of Conduct for Property Factors ("the Code") in respect of Sections 2.5, 6.1 and 7.2 of the Code.

The Factor did not fail to comply with the Section 17 of the Act ("the property factors' duties").

Background

1. By application received between 14 July 2021 and 6 September 2021 ("the Application") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with Sections 2.5, 6.1 and 7.2 of the Code and had failed to comply with the property factors' duties.
2. The Application comprised the following documents:
 - i) Application Form dated 25 June 2021;
 - ii) Copy letter from the Homeowner to the Factor intimating the breaches of the property factors' duties dated 30 August 2021 together with the Factor's acknowledgement response dated 6 September 2021;
 - iii) Copy emails between the Parties and
 - iv) Copy of the Factor's Written Statement of Services ("WSoS");

3. The Application was accepted by the Tribunal on 22 September 2021 and an initial procedure was fixed for 18 November 2021 at 10.00 by telephone conference. Prior to that date the Parties lodged written representations and documentary productions with the Tribunal.

Procedure before Tribunal

4. The proceedings took place on 18 November 2021 at 10.00 by telephone conference. The Homeowner was present and unrepresented. The Factor was present and represented by Ms. Lorraine Stead, its Regional Director, Mr. Alasdair Wallace, its Operations Manager and Mr. Craig Massey, its Development Manager. The Parties indicated to the Tribunal that they were prepared to proceed and have the Tribunal hear the Application without further adjournment. Accordingly, in terms of Rules 2, 3 and 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), the Tribunal proceeded to hear the Parties on the Application.
5. From the Application and the Parties written representations, the Tribunal noted that the Homeowner’s complaints arose mainly from a dampness issue in the common stair of the Property and the way in which the Factor has dealt with this issue, including complaints raised by the Homeowner, over a number of months. There were two other issues in respect of a “No Parking” sign and the installation of spikes to prevent pigeons roosting.
6. The Homeowner’s evidence comprised his written representations being email chains dated 11 and 18 October 2021 and his oral evidence at the Hearing. The Factor’s evidence comprised its written response to the Application, the fifteen Appendices lodged by it and the oral responses made by its staff at the Hearing. For the sake of clarification, the oral evidence is not set out verbatim but is set out as noted by the Tribunal.

Code Heading: 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).

7. The Homeowner explained that he had made around five complaints centering on the dampness but only one had been acknowledged as such and given a reference number, He complained that the Factor failed to meet its response time as set out in the WSoS and routinely failed to return phone calls. He stated that he had made around 100 calls over many months but that calls were not answered, even if a message to call back had been left. When asked to refer to specific incidents, the Homeowner stated that in September 2020 he had reported an overflow repair which was not dealt with until October 2020 and that the matter was still not resolved. He stated that a complaint of broken guttering also reported in September 2020 was not acknowledged or mentioned by the Factor until 30 June 2021.

8. On behalf of the Factor, Ms. Stead referred the Tribunal to the documents lodged by the Factor, being copy emails and emails chains, which showed responses within the timescales as set out in the WSoS. With reference to the two incidents mentioned by the Homeowner, Ms. Stead referred the Tribunal to relevant emails which showed prompt responses.

Code Heading 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 attention. 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.*
9. The Homeowner accepted that the Factor has procedures in place in compliance with the first sentence of this part of the Code.
 10. The Homeowner's position in respect of this part of the Code was that he had made eight separate repair notifications to the Factor and that contractors had only been sent out for two of these and the others had been ignored. He accepted that Mr. Massey had responded in respect of the overflow pipe repair but did not accept that the matter could not be dealt with as it was not a common repair. He stated that he had not seen the survey report on the dampness until it was lodged in evidence by the Factor, even though the survey was carried out in August 2021.
 11. With regard to the eight notifications, the Tribunal heard as follows: -
 - i) Dampness at ground floor level. The Homeowner stated that he had reported this in February and March 2020 and that the issue remains unresolved as the Factor maintains that this is as result of the adjoining building and outwith the Factor's control. Ms. Stead and Mr. Wallace for the Factor referred to the emails lodged by them and explained that as far as they were aware the problem emanated from the derelict building next door and that they had attempted to have Renfrewshire Council step in and take action.
 - ii) Bird spikes. The Homeowner stated that this had been dealt with as a formal complaint but that there had been delays and that his calls to the Factor had been ignored. Ms. Stead and Mr. Wallace for the Factor agreed that this had been treated as a complaint which was now resolved and that there had been delays in obtaining quotations.
 - iii) Second floor dampness. The Homeowner stated that this had appeared and had been reported in the last three months. He had received an email from Mr. Massey about appointing contractors but he had heard nothing further. Ms. Stead for the Factor referred to the emails lodged by the Factor which showed that Mr. Massey had reported back to the Homeowner and on the appointment of contractors, although the Homeowner disputed having received this information.
 - iv) Overflow pipe. The Homeowner stated that this had been running for ten years and that the Factor had taken no action. Mr. Wallace for the Factor stated that this is a private pipe which the Factor could not repair and that the Homeowner had been so advised.

- v- vii) Broken guttering, vegetation and broken and missing pipework. The Homeowner stated that the Factor had done nothing about obtaining quotes for the guttering and that it had been he who had asked the contractor installing the bird spikes for a quote. Mr. Wallace for the Factor referred to the emails lodged by the Factor which showed that quotes were above the Factor's delegated authority and so owner consultations would have to take place, but agreed that this had not yet been done and explained that there were financing issues with the development.
- viii) "No Parking" sign. The Homeowner stated that he had emailed on 8 July 2021 to ask for a "No Parking" sign and that, although Mr. Massey got back to him with a quote, he had heard nothing further. Mr. Massey for the Factor explained that he had obtained a quote at the beginning of September, which although it was within the Factor's delegated powers, was costly and that he intended to obtain other quotes. He stressed that this was not a common repair but an additional enhancement.

Code Heading: 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.

12. The Homeowner's position was that only one of his complaints was treated as such and that he had not been told by the Factor that he had recourse to the Tribunal. Ms. Stead and Mr. Wallace for the Factor explained that they had not treated the correspondence in respect of the dampness as complaints as it was not a matter which they could resolve. With reference to the emails lodged by them, they explained that they had been in contact with the Homeowner and had communicated that they could not resolve the issue with the adjacent building.

Property Factor Duties: The Application sets out the property factors' duties as the way in which the Factor has dealt with the Homeowner and carried out its duties in respect of the dampness and the Code as outlined above.

- 13. The Homeowner's complaint and the Factor's response in respect of this part of the Application were broadly the same as the points narrated above and so the Tribunal does not propose to set it out in detail again.
- 14. The Homeowner's additional comments centered on the lack of progress made in carrying out repairs and that the development was suffering as a direct result of the Factor's inaction, particularly in respect of the dampness.
- 15. Mr. Wallace for the Factor explained that action had been taken and the contractors had been instructed to give a view on the dampness. He agreed that the Factor had focused on the dampness emanating from the adjacent derelict building. He explained that the Factor had tried to track down the owner and has been in contact with Renfrewshire Council and agreed that the homeowners had not been informed of the actions taken, other than the letter sent to all homeowners by Mr. Massey on 9

September. He explained that when the Homeowner got back in touch with the Factor again mid-2021 with details of contractors named Matheson, the Factor attempted to have Matheson appointed to its approved contractors list, without success, and instructed two other contractors to provide quotes which were received. The Homeowner disputed having been given this information by letter or on the Factor's portal.

16. With regard to the survey report lodged by the Factor, Mr. Wallace agreed that the report mentioned defects to the roof and a possible failing damp proof course which could contribute to the dampness and that roofing contractors had not yet been instructed.
17. With regard to buildings insurance claims, Mr. Wallace and Ms. Stead agreed that claims had not been pursued and that they did not know if the dampness was an insured matter. Later Ms. Stead indicated that if dampness emanating from the adjacent building could be stopped by others, a claim for consequential damage to the Property could be made.

Findings in Fact

18. The Tribunal made the following findings in fact based on the whole information before it being the Application and supporting documentation, the written representations submitted and the documents lodged by both Parties, whether specifically mentioned in this Decision or not.
19. The Homeowner is the owner of the Property which forms part of a development managed by the Factor.
20. There is an issue of dampness in the ground floor common stair of the development which abuts a derelict building next door.
21. The dampness has been reported by the Homeowner on several occasions since February/March 2020.
22. The visible effects of dampness have been increasing since that time and dampness has now appeared at the second floor of the common stair.
23. The ownership of the derelict building is not known but it does not form part of the development managed by the Factor.
24. The Factor has focused on that cause of the dampness being the derelict building and has focused on the fact that responsibility for that derelict building was outwith its control.
25. The Factor instructed a survey report in August 2021 and notified the development owners of this on 9 September 2021.
26. The Factor has corresponded by email with the Homeowner by email on numerous occasions.
27. The Factor did not treat the Homeowner's contact with it regarding the dampness as a series of formal complaints.

Decision of the Tribunal and reasons for the Decision

28. The Tribunal was satisfied that it had sufficient detailed evidence upon which to reach a fair determination of the Application. The Tribunal's decision is based upon the Tribunal's its Findings in Fact.

Code Heading: 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).

29. The Homeowner's complaint was that the Factor failed to meet its response time as set out in the WSoS and routinely failed to return phone calls. He stated that he had made around 100 calls over many months but could not substantiate these, nor could the Factor substantiate when and how frequently calls were returned. Both Parties were fair in this regard. In any event this part of the Code relates only to written correspondence. With regard to email correspondence, the Factor submitted twelve examples of email correspondence between the Parties. The response times illustrated by this correspondence show that emails were responded to on occasions on the same day and, in the main, within the timescales set out in the WSoS. The Tribunal accepts that, in the Homeowner's view, the correspondence relating to the dampness is unresolved. However, this part of the Code and the WSoS relates to acknowledgement of correspondence and not to the issue of a final resolution.
30. Accordingly, the Tribunal finds that the Factor has not failed to comply with this part of the Code.

Code Heading 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 attention. 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.

31. The Homeowner accepted that the Factor has procedures in place in compliance with the first sentence of this part of the Code.
32. The Homeowner's position in respect of this part of the Code was that the Factor had not followed up and kept him apprised of progress of works. The Factor's position was that, other than the installation of the bird spikes, no works are in progress. The Factor is not responsible for and so did not instruct a repair of the overflow and the dampness issue is in progress. In any event, the Factor has evidenced by the email correspondence and other documents lodged by it that it has reported to the Homeowner. Whist, the Tribunal considers that the Factor might have acted in a more pro-active and informative way in this regard, the Tribunal had regard to the fact that the Factor's staff have been working from home for a considerable part of the period of complaint and that this would have had an impact on service delivery.

33. Accordingly, the Tribunal finds that the Factor has not failed to comply with this part of the Code.

Code Heading: 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.

34. The Tribunal accepted that Factor's position that it did not treat the Homeowner's correspondence in respect of the dampness as complaints as it was not a matter which they could resolve.

35. Accordingly, the Tribunal finds that the Factor has not failed to comply with this part of the Code.

Property Factor Duties: The Application sets out the property factor duties as the way in which the Factor has dealt with the Homeowner and carried out its duties in respect of the dampness and the Code as outlined above.

36. The Homeowner's complaints centre on the ways in which the Factor has conducted itself response in respect of his repair reporting, the dampness in particular, and its compliance with the WSoS in respect of communication and complaint handling.

37. With regard to the dampness issue, the Tribunal recognises the Homeowner's extreme concern in respect of the dampness at the Property and his frustration at the lack of action on the part of the Factor with regard instructing repairs. The Tribunal also recognises the difficulty which the Factor has found itself in with regard to the source of the dampness being, to an extent, outwith its control. The Tribunal also recognises that the Factor is an agent of the homeowners in the development and has a financial limit in respect of the costs which it can properly incur on behalf of those homeowners. The Tribunal accepted the Factor's evidence that it had made enquiries with Renfrewshire Council, had instructed contractors to give quotes and had attempted to find out who owned the adjacent building. The Tribunal considered that the Factor could have and should have been more transparent with the Homeowner in respect of the actions it was taking and, had the Factor done so, the Homeowner might have had a better understanding of the difficulties facing all parties. The Tribunal took the view that the Factor focused too much on the adjacent building being the only source of the dampness and ought to have instructed the survey at an earlier stage. With regard to the survey, the Factor ought to have addressed the recommendations more swiftly and impressed upon the homeowners in the development the pressing need for repairs more strongly.

38. The issue for the Tribunal is whether or not the Factor's conduct is a failure to comply with the statutory property factor duties, the Tribunal's view is that whilst the Factor's actions were lacking at times, on balance, the Factor did not fail to comply with the duties: it failed to communicate its compliance.

39. With regard to the Factor's compliance with the WSoS in respect of communication and complaint handling, the Tribunal's views are those set out under the Code headings.

40. Accordingly, the Tribunal finds that the Factor has not failed to comply with the property factor duties.

Observation by the Tribunal

41. In view of the Tribunal's criticism of the Factor, the Tribunal recommends that the Factor reviews all matters and actions relating to the dampness to date and provides the Homeowner and the other homeowners in the development with a comprehensive report on this and, going forward, provides regular updates as they progress, including any progress made with the buildings' insurers, Renfrewshire Council and the adjacent owner. This should provide the Homeowner and the other homeowners in the development with informed options, with costs where appropriate, to deal with the dampness in their property.

42. This decision is unanimous.

Appeal

43. 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.

Karen Moore

Chairperson 24 November 2021