

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Property Factors (Scotland) Act 2011, section 19(1)(a).

Case Reference Number: FTS/HPC/PF/19/3126

The Property:

135 Greenrigg Road, Cumbernauld, G67 2QB

The Parties:-

Donald Maciver, 18A North Tolsta, Lewis, HS52 0NW

(“the Homeowner”)

and

Apex Property Factor, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH

(“the Factors”)

Tribunal Members:

Adrian Stalker (Chairman) and Andrew Taylor (Ordinary Member)

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 Factors had complied with the Code of Conduct for Property Factors ("the Code"), and with their duties as property factors, determined that the Factors had failed to comply with the Code. It proposes to make a property factor enforcement order, in the following terms:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required to make a payment of £260 to the Homeowner, within 14 days of intimation of this order. Evidence of such payment should be provided to the Tribunal.

Background

1. By an application to the First-tier tribunal for Scotland (Housing and Property Chamber) ("the Chamber") received on 2 October 2019, the Homeowner sought a determination of whether the Factors had failed: (a) under section 14(5) of the Property Factors (Scotland) Act 2011 ("the Act"), to comply with the Code; and (b) to perform the property factor duties, as defined in section 17(5) of the Act, in respect of their factoring of the property. On 13 January 2020, a Convener having delegated powers under section 18A of the Act made a decision, under section 18(1)(a), to refer the application to a First-tier tribunal.
2. The complaint made in the Homeowner's application is straightforward. The property is one of number of maisonettes in Greenrigg Road, Cumbernauld, which are properties managed by the Factors. On or about 5 April 2018, the Homeowner paid the sum of £194.76 to the Factors, being his share of the annual premium for the Block Insurance policy for the properties. The period of cover was 12 April 2018 to 11 April 2019. The policy was arranged through Bruce Stevenson Insurance Brokers.
3. On or about 3 August 2018, the Homeowner sold the property. He considered that he should be reimbursed for part of the sum of £194.76 he had paid in April, because he was no longer the owner of the property after 3 August. He therefore communicated with the Factors by email, and by telephone, to ask them to arrange with the brokers for a reimbursement of the part of his share for premium, in respect of the period of eight months to 11 April 2019. That would be eight twelfths of the payment he had made, being a sum of £130. He expected the Factors to contact the brokers, to arrange for that to be done. The Factors never contacted the brokers. The Homeowner contacted the brokers himself. He was advised that they could not deal with him directly, as their contract was with the Factors. To date, he has never received the reimbursement requested.
4. Along with the application, the Homeowner has provided copies of: (a) a statement of account from the Factors, showing a debit for "insurance", of £194.76, on 5 April 2018; (b) a statement of cover from the brokers; (c) a series of emails from the Homeowner to Mr Neil Cowan of the Factors, several of which refer to telephone calls made by the Homeowner to them. The emails show that the Homeowner asked the Factors to reimburse part of the property insurance premium, as he was no longer the owner of the property.
5. The application also provided a copy of the statement of services issued by the Factors in relation to Greenrigg Road, Cumbernauld, in terms of section 1 of the Code of Conduct. That includes a section headed: "Complaints Handling Procedure". Paragraph (a) states: "We aim to resolve your complaint at the first point of contact and our staff will always check that you are happy with the outcome. A response will be given within 21 working days of receipt of the complaint."
6. After receipt of the application, and at the request of the Tribunal, the Homeowner intimated a complaint, in writing, to the Factors, dated 2 December 2019. This expressly referred to two sections of the Code of Conduct that were said to have

been breached, being section 2 “Communication and Consultation” and Section 7 “Complaints Resolution.” In particular, paragraph 2.5 of the Code was quoted:

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.

7. That letter also contained the following section:

Request for Reimbursement

The request for reimbursement of premiums is a reasonable and accepted custom and practice for a Factor to implement.

Bruce Stevenson confirmed to me the request for a refund of ‘unused’ insurance premiums was reasonable. However, under the terms of the Data Protection Act they were unable to act on my behalf, as I was not their direct client. They affirmed that APEX property factors would have to make the application.

You are also required to confirm whether APEX Factors have in fact been reimbursed the due premiums from Bruce Stevenson.

8. The letter allowed 21 days for a response. No response was received.
9. By letters dated 28 January 2020, the Chamber notified the parties that a hearing would take place in relation to the application on 11 March. They were further advised that any written representations on the application must be returned to the Chamber by 18 February 2020. The Homeowner responded on 10 February, indicating that he intended to be at the hearing, but would not be making any written representations. No written representations were submitted to the Chamber by the Factors in advance of the hearing. Accordingly, neither the Homeowner nor the Tribunal was aware of the Factors’ position in relation to the Homeowner’s complaint, as at the commencement of the hearing.

Hearing

10. A hearing took place in respect of the application on 11 March 2020, at the Glasgow Tribunals Centre. The Homeowner attended. The Factors did not attend, and were not represented.
11. The Tribunal ascertained that the letter from the Chamber of 28 January, intimating the date of the hearing, had been sent recorded delivery. That intimation was returned on 5 March, with an indication that it had not been signed for. However, a copy of the letter was also emailed to the Factors, at the address with which they usually correspond with the Tribunal, on 27 February. In the circumstances, the Tribunal was satisfied that, for the purposes of rule 24(1) of the schedule to the The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, that the Tribunal had given the Factors reasonable notice of the

date, time and place of the hearing. It was also satisfied, under rule 29, that it was appropriate to proceed with the hearing, in the absence of the Factors.

12. The Homeowner confirmed that he had sold the property in August 2018. The transaction settled on 3 August. He confirmed that he had made numerous requests by email and telephone for reimbursement of part of the insurance premium. He had telephoned the Factors about 10 times. He had never received any written response from them, indicating what action, if any, they were taking in relation to his request. They had also not responded to this application.

Decision

13. In the view of the Tribunal, there has clearly been a breach of paragraph 2.5 of the Code, which is quoted at paragraph 6 above. The Factors have never responded to Mr Maciver's enquiry as to whether he can be reimbursed the sum of £130, in the circumstances described.

14. The Tribunal also considers that there has been a breach of section 3 of the Code, "Financial Obligations", in particular paragraph 3.2:

Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor.

15. This paragraph is not expressly cited in the letter of 2 December. However, the nature of the Homeowners request, and his complaint, is very clearly expressed in the letter of 2 December 2019 (see paragraph 7 above), and his prior emails. It would have been apparent to the Factors that the Homeowner's request engaged the obligation in paragraph 3.2. Accordingly, the Tribunal is satisfied, for the purposes of section 17(3)(a) of the Act, that the Homeowner has notified the Factors in writing as to why he considers that the Factors have failed to comply with section 3 of the Code.

16. As indicated in the letter of 2 December 2019, the brokers have confirmed that Homeowner's request for reimbursement is reasonable. The brokers would have been willing to co-operate, had they received authorisation to do so, from the Factors.

17. In the circumstances, the Tribunal decided to order the Factors to pay the sum of £260 to the Homeowner in respect of the breaches of the Code. This sum is considered to be reasonable by the Tribunal. It comprises £130 for reimbursement of part of insurance premium, and a further £130 in respect of the inconvenience suffered by the Homeowner, in having to complain to the Factors on numerous occasions, over a lengthy period of time, to no avail.

18. The Tribunal's decision was unanimous.

19. The Tribunal has accordingly issued a separate Proposed Property Factor Enforcement Order, to which reference is made.

- 20. 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.**
- 21. 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 determined.**

Signed

Date 16 March 2020

Chairman