



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/PF/21/2636

Re: Property at 6/16 Couper Street, Edinburgh, EH6 6HH (“the Property”)

Parties:

Ms Lynne Todd, 74A2 High Street, Dunbar, EH42 1JH (“the Applicant and Homeowner ”)

Redpath Bruce, Crown House, 152 West Regent Street, Glasgow, G2 2RQ (“the Respondent and property factor ”)

Tribunal Members:

Jim Bauld (Legal Member) and Andrew Murray (Ordinary Member)

Decision (in absence of the applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed

Background

1. By application lodged on 23 October 2021, the homeowner applied to the Tribunal for a determination on whether the factor had failed to comply with various sections of the Code of Conduct for Property Factors (which was introduced by section 14 of the Property Factors (Scotland) Act 2011) and to carry out the property factor’s duties in terms of section 17 (1) (a) of the Property Factors (Scotland) Act 2011 (hereafter referred to as “the Act”).
2. On 14 December 2021 the application was accepted by the tribunal and referred for determination by the tribunal.
3. A hearing was set to take place on 11 February 2022 and appropriate intimation of that hearing was given to the parties.

The Initial Hearing

4. The initial Hearing took place on 11 February 2022
5. The applicant homeowner was present and the respondent property factor was represented by Mr Stuart McMillan one of their directors.
6. The tribunal initially heard from both parties with regard to the matters raised in the application. During the course of the discussions the parties indicated that they wished to have discussions to see whether the matters contained in the application could be resolved by agreement between them.
7. The tribunal allowed the parties time to have discussions and at the conclusion of the discussions the parties indicated to the tribunal that an agreement had been reached.
8. The parties indicated to the tribunal that it had been agreed the property factor would make a payment of £200 to the homeowner and additionally would issue a £500 credit payment to the other owners in the block.
9. Further the parties indicated that there was an assurance that communications from the factor to the homeowner would improve, that a progress report on actions promised at the block AGM would be provided and that appropriate information would be obtained from other owners with regard to their preference for dealing with snagging issues in respect of certain repairs.
10. The parties indicated that they would contact the tribunal within 14 days to confirm whether these matters had been implemented and whether the application could be treated as withdrawn.
11. On the basis of this agreement the tribunal decided to adjourn and issued no decision

Further contact from the parties

12. By email of 25 February 2022, the homeowner indicated to the tribunal that in her view all of the matters agreed at the tribunal had been completed with the exception of evidence that the credit payment to the block to be made. She also indicated that she did not regard the agreed action with regard to the progress report on the various actions outstanding the EGM had been completed. She wished to wait until 31 March confirm whether matters were concluded to her satisfaction.

13. By later email of 25 February the property factors responded to the homeowner and to the tribunal. The property factors took the view that all matters which had been agreed at the tribunal hearing had been concluded. They provided a copy of the credit payment allocated to the development and the indicated that in terms of the AGM actions item, the agreement was that a report was to be provided confirming the status of ongoing progress and dates for completion of the various matters. It was not a requirement that these issues and works were to be completed by 25 February. It was their position that they had fully complied with the undertakings agreed by the parties of the tribunal and the matter should be brought to an end.
14. A further email was received from the applicant on 31 March 2022. In that email she indicated that in her view the property factor had not completed the actions from the AGM in October 2021 and she requested a further hearing. She also indicated that the property factor had given notice of their intention to resign as factor at the block.
15. The tribunal reviewed the email received from the homeowner and decided to fix another hearing as a remote conference call. That hearing was fixed to take place on 14 October 2022 and appropriate information was sent to both parties.

The hearing of 14 October 2022

16. By email dated 8 October 2020 to the homeowner indicated that she was unable to attend the hearing owing to work commitments and asked that her email be read during the telephone case conference.
17. In her email she repeated her position that the property factor had failed to deliver their actions in an appropriate manner and on the timescale agreed at the tribunal. She indicated her view that the tribunal process is ineffective and that fines of a few hundred pounds have no impact on property factors. She indicated that she had now sold all properties owned by her where Redpath Bruce were the factor.
18. The hearing took place on 14 October. As indicated the homeowner was not present. The property factors were again represented by Mr Macmillan.
19. The tribunal read to Mr MacMillan the terms of the email received from the homeowner. It remained his position that all matters which had been agreed at the tribunal hearing on 11 February 2022 had been concluded.
20. He accepted that Redpath Bruce were no longer the factors of the property and he indicated to the tribunal that it was his view there was no merit in continuing with this application. He asked the tribunal to dismiss the application

Discussion and decision

21. The tribunal carefully considered all the documents which had been provided since the initial hearing on 11 February 2022. The tribunal noted that the applicant was no longer the owner of the property in question and that the respondents were no longer the property factor of the property in question.
22. The tribunal noted that the homeowner had received a compensation payment from the property factors at a level which she had agreed and that the property factors had also undertaken a number of other steps, involving further credit payments to other homeowners in the block.
23. The tribunal having considered all the evidence which had been presented decided that the application should be brought to an end. It now related to a property in which neither party had any involvement. The homeowner had received an agreed amount of compensation from the property factor
24. The tribunal decided to dismiss the application.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

28/10/2022

Legal Member/Chair

Date