

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: FTS/HPC/PF/17/0418

Re: Flat 2/1, 3 Meadow Road, Partick, G11 6HX ("the Property")

Parties:

DONNA COOK formerly residing at Flat 2/1, 3 Meadow Road, Partick, G11 6HX ("the Applicant")

PARTICK WORKS LIMITED, Mansfield Street, Glasgow, G11 5QP (represented by their Agent Ms Catherine McQuarrie, Solicitor of T C Young & Co., Glasgow) ("the Respondent")

Tribunal Members:

Mr E K Miller (Legal Member) and Mr Andrew Murray (Ordinary Member)

DECISION

The Respondent had complied with its duties under Section 14(5) of the 2011 Act and there were no breaches of the Property Factor Code of Conduct.

The Respondent had complied with its Property Factor's duties as such duties are defined in the 2011 Act.

The decision was unanimous.

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

On 29 January 2018 a decision was made by a Convener of the Tribunal acting under delegated powers from the President of the Tribunal that there was no prospect of the dispute between the parties being resolved. The matter was therefore referred to the Tribunal for a determination.

In advance of the Hearing the Respondents had submitted written representations dated 6 March 2018. The Tribunal also had had the opportunity in advance of the Hearing to consider the Applicant's submission in her application to the Tribunal dated 7 November 2017 and subsequent written submissions.

Hearing

A Hearing was held at Glasgow Tribunal Centre, 20 York Street, Glasgow. Mr E K Miller, Chairman and Legal Member and Mr A Murray, Ordinary Member were in attendance. The Applicant was neither present nor represented. Ms Jacqueline Riley of the Respondents was present and was represented by Ms Catherine McQuarrie, Solicitor of T C Young & Co., Glasgow.

Summary of submissions

The parties made the following submissions in relation to each of the various aspects of the Applicant's complaint.

Summary of Applicant's submissions:

The Applicant's primary complaint arose as a result of her selling the Property on 21 September and her view that she was entitled to a credit of £94.41 back from the Respondent. An account had been issued by the Respondent advising her that this sum was due to her. The Applicant had raised a formal complaint dated 17 October 2017 via email to the Respondent. complaining about the length of time it was taking to provide her with return of the alleged credit. The Applicant did not accept the Respondent's subsequent explanation , when the Respondent advised there was no credit to be returned and that the £94.41 number had simply been an interim invoice prior to the final calculation being carried out. The Applicant's submission was that the Respondent was still retaining her funds. Subsequently the Applicant was of the view that there had been some form of inappropriate or undisclosed relationship between Bell Group (a contractor of the Respondent) and the Respondent. She alleged that an employee from the Respondent was related to someone at Bell Group. The Applicant also submitted that some works carried out by the Respondent such as a "bin pull out service" and cyclical close painting was unnecessary and that she had been overcharged. The Applicant also submitted that her complain had not been dealt with properly in terms of the Code. She submitted that the Respondents had failed to adhere to their written complaints procedure and to respond the Applicant's complaint in an adequate timeframe.

Summary of Respondent's Submissions:

The Respondent's submission was that there had been no misconduct on their part. They submitted that the dispute regarding the amounts due to or by the Applicant at the point of sale was simply a misunderstanding on her part as to the procedures involved. The Respondent had issued an invoice that stated that there was £94.41 credit due to the Applicant. However, the quarterly charges were applied in arrears and it took a little while for contractor invoices to arrive and a final calculation to be made. There was a larger bill in that quarter's works as a result of rodent repairs that had been carried out. Whilst a retention had been made by the Applicant's solicitor at the point of sale, this did not cover additional works that had been carried out in

that last quarter and also the Respondent's administration fee for dealing with the transfer of ownership. Once the additional works had been added to the Applicant's account there was a net debit of £17. The Respondent had written this off as a gesture of goodwill. In relation to the complaint regarding a connection between the Respondent and Bell Group, the Respondent's position was that there was no such connection. A Declaration of Interest was maintained by them and no connections with the Bell Group had ever been disclosed. They were unaware of any employees of the Respondent who may be working within the Bell Group. In any event Bell Group had ceased carrying out works on behalf of the Respondent some time ago.

In relation to complaints regarding the works carried out by the Respondent the Respondent highlighted that these had been approved by a majority of owners in the block. There was no detailed specification of what the homeowner's complaint about the service was and overall the Respondent was satisfied that they had carried out their duties appropriately.

The Respondents submission was that they had accepted a couple of irregularities in their complaints handling procedure. They had acknowledged and apologised for this. Generally, however, they were of the view that the complaint handling process had been properly dealt with.

The Tribunal made the following findings in fact:

- 1 The Applicant is the owner of Flat 2/1, 3 Meadow Road, Partick, G11 6HX ("the Property")
- 2 The Respondent performed the role of the property factor of the block of which the Property formed part.
- 3 There was no credit due on the Applicant's account of £94.91 by the time all relevant invoices had been added to account. There was, in fact, a shortfall in her account of £17.91.
- 4 The shortfall of £17.91 had been written off by the Respondent.
- 5 There was no evidence of an undisclosed relationship between Bell Group and the Respondent.
- 6 All works by the Respondent appeared to have been done with the necessary consent of owners within the larger block
- 7 There had been no breaches of the Code.
- 8 There had been no breach of Property Factor's Duties as defined by the Act.

Reasons for Decision

General Commentary and background on the basis of the dispute

The primary issue in this matter, in the view of the Tribunal, was the issue to the Applicant on 3 October of a statement of her account with the Respondent which showed a credit of £94.41. This covered the period 1 July 2017 to 30 September 2017 (which went beyond her sale date of 21 September 2017). The reality was, this statement was simply a snapshot of that quarter as the information existed at the date of issue. The Respondent issued invoices quarterly in arrears and, as is often the case, it takes some time for all invoices for the relevant quarter to be received and to show on an individual homeowner's account.

The Tribunal was of the view that it would perhaps have been helpful if the initial statement sent by the Respondents in such circumstances made it clearer that this was not a final account but rather an interim one. It was, however, apparent from the paperwork before the Tribunal that by the time all contractor's invoices were received for works carried out during the relevant period that there was, in fact, no credit on the Applicant's account.

The Respondent was entitled to charge £50 in terms of their written statement of services for dealing with the transfer of the property and by the time this was added, along with one or two other invoices, a debit of £17.91 was left. It may be the case that the Applicant had presumed that as a larger invoice of around £350 had been anticipated in respect of rodent repairs (and had been retained by her solicitor at settlement) that the £94 initial credit would remain and would be available to her. However, the Tribunal was satisfied on the basis of the evidence before it that this was not the case. As set out above, the initial statement was simply a snapshot at that time and before all relevant invoices had been set against the account. Once all relevant invoices had been offset against her account the Tribunal was satisfied that there was indeed a debit due by her. The Respondent had however written this off and so no further sums were due to or by either party. The Tribunal was satisfied that the sums had been apportioned correctly. In due course a final invoice apportioned up to 21 September had been issued and so therefore the Applicant was not paying any sums due for the period between 21 September to 30 September 2017. The Respondent confirmed that the new owner of the Property had been paying from 21 September. It also appeared that the correct apportionment of one eighth of the total cost per invoice had been applied to the Homeowner's account.

The Tribunal was satisfied that the underlying reason for the complaint was unfounded and that it was simply the case that the Homeowner had misunderstood the position in relation to the £94 initial credit. It would perhaps be helpful if the invoices from the Respondent had been clearer.

In relation to the Bell Group and a connection between the Bell Group and the Respondent, the complaint by the Applicant was vague in its terms. It simply appeared to be the case that there was a suggestion/gossip that there was some inappropriate or undisclosed connection between the two parties. The Respondent confirmed at the Hearing that a Register of Interests was kept and insofar as they were aware no party had an interest in the Bell Group. The Respondent was unaware of any employee of theirs who had relatives within Bell Group. On the basis

of the Respondent's explanation and the lack of any detailed information as to who might have caused the alleged conflict of interest the Tribunal was satisfied that there had been no breach in this regard.

The Tribunal noted that the Applicant had complained about historical cyclical close painting invoices in respect of back court maintenance. The Tribunal noted that a majority of proprietors had agreed to these works being carried out. On that basis it appeared to the Tribunal that the Respondents were obliged to carry it out. In any event, the Applicant's complaint in this regard seemed to be borne out of frustration at monies she perceived she was entitled to. There was a lack of sufficient evidence and detail to show in what material way the Factor had not performed these works satisfactorily. Accordingly, the Tribunal was satisfied that there had been no breach by the Respondent in this regard.

The Applicant had also complained about the complaints resolution procedure. In the stage 2 complaint response they had upheld part of the Applicant's complaint regarding the manner in which her initial complaint had been dealt with and the tone of their stage 1 complaint response letter. The Respondent apologised for the reply being overly brusque and not structured in an appropriate fashion. The Tribunal took a different view in this regard. The Tribunal was of the view that the stage 1 complaint response was in reasonable terms and had not been written in any inappropriate fashion to the Applicant. The Tribunal did note that there had been a couple of minor points regarding the complaint handling process in that the Applicant had originally lodged a complaint via email that had not seemed to have made its way to the correct team. One timescale for a reply was also missed. In the scheme of things, the Tribunal was of the view that these were minor points and that generally the complaint had been handled appropriate and timeously through a stage 1 and stage 2 complaint process. The Applicant had been signposted to the Tribunal and, taking an overview of the process, the Tribunal was satisfied that the complaints process had been adhered to. Accordingly, the Tribunal did not propose to make any finding against the Respondent in this regard.

Having set out its view above on the general complaints by the Applicant and the facts surrounding them, the Tribunal then considered in more detail the specific sections that were alleged to have been breached of the Code and the specific alleged breaches of the property factor's duties.

Written Statement of Service Section (c)(i)

It was not particularly apparent what the Applicant's complaint in this regard was. The Tribunal questioned at the Hearing the Respondent as to whether a written statement of service had been provided to the Applicant. It was confirmed that all homeowners of the Respondent had been issued with a written statement of service shortly after the Act came in to force. Section (c)(i) specified that the statement of services must set out any arrangements for collecting payment from homeowners and how matters would be dealt with at a change of ownership. The written statement of service appeared to have been issued to the Applicant and also appeared to cover these matters. On that basis the Tribunal was satisfied that there had been no breach.

Section 2.1 of the Code - You shall not provide information which is misleading or false.

As noted above, the Tribunal was of the view that the initial invoice that stated there was a credit of circa £94 could have been clearer that it was not a final invoice. However, as set out above, the Tribunal was readily satisfied that the correct procedures had been followed and that the financial calculation had been carried out correctly. This was simply an unfortunate case where the Applicant had misunderstood what had occurred. Accordingly, the Tribunal was satisfied that no information that was misleading or false had been given.

Financial Obligations 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. You must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example on sale of the property).

The Tribunal was satisfied that there had been no breach of this section. There was no credit to be refunded to the Applicant. The accounts were billed in arrears. It inevitably took a little while for the true financial position of an account to be assessed. The Tribunal was of the view that the Respondent had carried out an appropriate accounting within an appropriate timescale and appeared to have all necessary procedures in place. Accordingly, there had been no breach in this regard.

Section 6.3 of the Code. On request you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.

and

Section 6.8 of the Code. You must disclose to homeowners, in writing, any financial or other interest that you have with contractors appointed.

It appeared to the Tribunal the Applicant had made a vague allegation that there was some connection between an employee of the Respondent and of a contractor, Bell Group. No formal request in terms of 6.3 appeared to have been made by the Respondent. The Respondent had confirmed that there was an appropriate declaration of interest register. No relevant declarations had been made and they were unaware of any employee being within Bell Group. The Respondent themselves had no interest in Bell Group that would have meant they required to make a disclosure in terms of 6.8.

The Tribunal was satisfied that there had been no breach of these sections.

Section 7.1 Complaints Resolution. You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow.

The Tribunal had reviewed the correspondence relating to the management of the complaint. The Tribunal was satisfied that the Respondent had a standard stage 1

and stage 2 style complaints procedures, which was common in the sector. Generally, this appeared to have been followed bar a couple of minor issues set out above. Viewed in the round the Tribunal was satisfied that the Respondent had acted appropriately in this regard and no finding would be made against the Respondent.

Property Factor's Duties

The headings below follow the narrative set out in the Applicant's application to the Tribunal in respect of alleged failures of the Respondent's property factor's duties;

1. Alleged failure to reimburse credits owing to the Applicant

As set out above, the Tribunal was satisfied that there was no credit to be paid to the Applicant and that she had simply misunderstood the financial position. Accordingly, there could be no breach.

2. Billed for services up to 30 September 2017 when the Applicant left the Property on 21 September 2017

The Tribunal was satisfied that the final invoice had been calculated correctly and apportioned only up to 21 September 2017 for the reasons given above.

3. Family members of Partick Housing winning tenders for work to be carried out

As set out above there was no proper specification of this and only a vague allegation that was insufficient to allow the Tribunal to consider the matter properly. The Tribunal was, in any event, satisfied with the answers given by the Respondent in this regard.

4. Overbilling of services including admin charges by the Factor of £50

There was a lack of specification by the Applicant in this regard. Historical works appeared to have been carried out in an appropriate fashion. Historically the Applicant had been unhappy at having close painting done every 5 years and felt this was excessive. Whilst the Respondent now had in place a more reactive system in this regard, it was not inappropriate for a factor to carry out cyclical maintenance and it appeared that the majority of owners had consented at that time. The written statement of service allowed the Respondent to levy a charge of £50 at a transfer of ownership and accordingly there did not appear to have been any breach of the property factors duties.

5. Complaints procedure sent to me or acknowledgement of original complaint being acknowledged by the Respondent

Overall the Tribunal was satisfied that the Respondent had largely followed the complaints procedure and responded in an appropriate and timely manner. Accordingly, viewed in the round, the Tribunal did not view that there had been a material breach of any property factors duties.

6. Breach of trust due to financial payments taken from me without consent

The Tribunal was not clear exactly what the Applicant meant in this regard from her written submissions but, in any event, the Tribunal was satisfied from the written papers from the Factor and their submissions on the day that the payments against the Applicant were correct and had been correctly apportioned up to the date of sale. In actual fact the Applicant had benefited from a small amount of £17.91 being written off when she was, in fact, still due these to the Respondent. Accordingly, there was no breach.

In summary whilst the Tribunal had noted a couple of minor mistakes in the complaints handling process and did feel that the initial invoice could have been clearer that it was only an interim account, nonetheless there had been no material breach in any regard by the Respondent. The issue had arisen as a result of a misunderstanding on the part of the Applicant. Accordingly, the Tribunal was satisfied that there had been no breach of the Code nor of the property factor's duties.

Appeals

A homeowner or property factor 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.

Ewan Miller

Legal Member and Chair

19/6/18

Date