



Decision of the Homeowner Housing Committee
In an Application under section 17 of the Property Factors (Scotland) Act 2011
by

Darren Heaney, 6/2, 104 Lancefield Quay, Glasgow G3 8HF ("the Applicant")

Property Factor: Hacking and Paterson Management Services, 1 Newton
Terrace, Glasgow G3 7PL ("the Respondent")

hohp Ref: HOHP/PF/14/0145

Re: Property at 6/2, 104 Lancefield Quay, Glasgow G3 8HF ("the Property")

Committee Members:

John McHugh (Chairman) and Andrew Taylor (Surveyor Member)

DECISION

The Respondent has failed to comply with its duties under section 14 of the 2011 Act.

The decision is unanimous.

We make the following findings in fact:

- 1 The Applicant is the owner of Flat 6/2, 104 Lancefield Quay, Glasgow (hereinafter “the Property”).
- 2 The Property is located within a modern development of 322 flats (hereinafter “the Development”).
- 3 The Respondent is the property factor appointed by the owners of the flats within the Development.
- 4 The Property has a balcony.
- 5 Since on or around November 2013, a water leak has been present affecting the balcony.
- 6 In or around November 2013, the Applicant reported the leak to the Respondent and requested that they arrange for it to be addressed.
- 7 The Respondent engaged contractors, Hugh Scott, to investigate and address the cause of the leak.
- 8 No timescale for completion of the remedial works has been provided by the Respondent to the Applicant.
- 9 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor (1 November 2012).
- 10 The Applicant has, by his correspondence, including that of 5 June; 26 July 3 October 2014, notified the Respondent of the reasons as to why he considers the Respondent has failed to carry out its obligations to comply with its duties under section 14 of the 2011 Act.
- 11 The Respondent has unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

Hearing

A hearing took place at the offices of the HOHP, Europa Building, Argyle Street, Glasgow on 11 May 2015.

The Applicant was neither present nor represented at the hearing, having indicated his intention to rely upon his written submissions. No witnesses were called on his behalf.

The Respondent was represented by one of its directors, David Kingham. No witnesses were led on its behalf.

Introduction

In this decision we refer to the Property Factors (Scotland) Act 2011 as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”; and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 as “the 2012 Regulations”.

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

The Committee issued a Direction on 27 January 2015 in terms of which the Applicant was required to confirm the paragraphs of the Code upon which he was relying in the Application.

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicant does not complain of a failure to carry out the property factor's duties.

The Code

The Applicant complains under reference to Sections 6.1 and 6.9 of the Code. In response to the Committee's Direction of 27 January 2015, the Applicant, in his letter of 29 January 2015, clarified that these were the only sections of the Code relied upon.

The elements of the Code relied upon in the application provide:

“...SECTION 6: CARRYING OUT REPAIRS AND MAINTENANCE

This section of the Code covers the use of both in-house staff and external contractors.

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....

...6.9 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...”

The Factual Complaint

The sole factual matter underlying the complaint is the alleged failure of the Respondent to adequately communicate with the Applicant in relation to addressing the water leak which affected the Property's balcony area. The Respondent employed contractors who have carried out a number of visits to inspect and attempt to repair the problem. There were various delays and difficulties surrounding access and the attempted repairs have thus far been unsuccessful.

The Respondent's position was that it had not breached either of Sections 6.1 or 6.9 of the Code.

Mr Kingham advised that he accepted that the Respondent had failed to meet the Applicant's expectations as a customer. He confirmed that the Respondent had apologised for that and paid the Applicant the sum of £100. Although he identified this failure, he was clear that the Respondent considered there to have been no breach of the Code.

In relation to Section 6.1, the first sentence does not appear relevant to the Application. The second sentence appears partially relevant. The relevant part appears to be the wording: "*You must inform homeowners of the progress of this work, including estimated timescales for completion...*"

The Applicant contends that there was a failure to keep him informed of the progress of the work and to provide him with an estimate of the timescale for completion.

As regards informing the Applicant of progress, the Respondent has produced a timeline showing all of the relevant communications between 21 November 2013 and 7 January 2015. The Respondent accepts the Applicant's criticism that approximately two thirds of these contacts were instigated by the Applicant as opposed to the Respondent. The Applicant appears to accept the accuracy of the timeline although he alleges that there are other communications by him not recorded in the timeline, although he has produced no evidence of this. The Respondent denies that there are any such communications other than a single identified email dated 18 July 2014 which the Applicant appears to have sent but which the Respondent has not received. We accept the Respondent's evidence on this point.

Having regard to the quantity of correspondence which has been exchanged between the parties over the relevant period, we do not consider that there has been a failure to keep the Applicant informed of progress.

Turning now to the second part of the relevant sentence within Section 6.1, we have seen no evidence that the Respondent ever advised the Applicant of the estimated completion date even in approximate terms. The Applicant set out in his email of 17 October 2014 that he believed that no timescale had ever been

provided. That followed upon the Respondent's letter of 14 October 2014 which acknowledged that no timescale for completion had been provided because of the nature of the problem and the need for investigative and monitoring works. When questioned on the matter, Mr Kingham advised that he had reviewed all of the emails on the topic and the emails which he had seen did provide estimates for completion. These emails have not been produced to the Committee. No specific emails were identified, nor were we advised of what these emails are said to have stated by way of estimated completion date. We found Mr Kingham's answer on this matter to be given in a vague and "off the cuff" manner and we have difficulty in reconciling his evidence in this matter with the correspondence available to us, which appears to demonstrate that the Applicant was consistently complaining of an absence of information regarding the date by which the problem was going to be rectified.

We do recognise that the problem causing the leak was a difficult one to identify and that investigation and trial and error might reasonably be required. Indeed, it appears that the problem is yet to be rectified. Nonetheless, the clear wording of the Code does require estimated timescales for completion to be provided. There is no reason why such estimates could not be stated to be subject to certain contingencies or presumptions, or why they could not be revised depending on changing circumstances such as investigations revealing previously unknown information. There appears to have been no attempt to provide any timescale in this case.

We consider there to have been a breach of Section 6.1 of the Code.

Mr Kingham expressed the view that Section 6.9 was intended to deal with the situation where a factor has instructed a contractor to perform works which works have been found to be defective and then failed to pursue the contractor. He thought that that Section had no application to the present facts.

We consider there to have been no breach of Section 6.9 of the Code. The second sentence of that Section is obviously of no relevance to the present circumstances. The first sentence is concerned with a failure by a property factor to pursue a contractor in respect of inadequate work or service. The Respondent maintains that it did pursue the contractor, Hugh Scott, to progress the necessary investigations and repairs and has produced evidence of the contacts between the Respondent and Hugh Scott. There is no direct evidence to contradict this. We accept the Respondent's evidence in this regard.

Observations

We found Mr Kingham to be a credible and reliable witness other than in respect of the evidence which he gave on the "estimated completion date" which we did not accept for the reasons noted above.

The Committee, in the absence of the Applicant, ensured that the matters contained in the Applicant's submission were put to the Respondent at the hearing and fully considered.

PROPERTY FACTOR ENFORCEMENT ORDER

We propose to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached document.

APPEALS

The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides:

- "...**(1)**An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or a homeowner housing committee.
- (2)** An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

JOHN M MCHUGH

CHAIRMAN

DATE: 17 May 2015