



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

Decision: Property Factors (Scotland) Act 2011 Section 17

Chamber Ref: HOHP/PF/15/0123

Re: 2/1, 139 Gatehouse Street, Sandyhills, Glasgow, G32 9BZ ('the property')

The Parties:

Mrs Isabel Marshall, Re: 2/1, 139 Gatehouse Street, Sandyhills, Glasgow, G32 9BZ ('the homeowner'), represented by Ms Deborah Carmichael, solicitor.

Your Place Property Management, Granite House, 177 Trongate, Glasgow G15HF ('the property factor')

The Homeowner Housing Committee: Martin McAllister, legal member and Kingsley Bruce, surveyor member.

Decision by The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') under section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act).

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for property factors, as required by Section 14 of The Property Factors (Scotland) Act 2011 (the 2011 Act), Determines that, in relation to the homeowner's Application, the factor has not complied with the Property Factors (Scotland) (Act) 2011 Code of Conduct for Property Factors (the Code) and has not complied with the property factor's duties, as required by Sections 10(5) and 17(5) of the 2011 Act and proposes to make the following property factor enforcement order:

1. The property factor is to pay the sum of £2500 to the homeowner in respect of compensation and that such sum is to be paid within twenty eight days of the service of the property factor enforcement order.
2. The property factor is to provide an undertaking to the Tribunal that it will, in future, prior to seeking approval for any works requiring to be done to properties it factors, ensure that it takes all reasonable steps to properly ascertain the actual extent of any works which may be required and to carry out such investigative work as may be required to ensure that homeowners are not put to unnecessary expense by agreeing to work which is not

required. Such undertaking is to be given within twenty eight days of the service of the property factor enforcement order.

Background

This is the third Hearing of this matter and this Decision requires to be read along with Decisions issued in respect of Hearings on 5th and 31st May 2016. It is in respect of an application made to the Homeowner Housing Panel by the homeowner on 1st September 2015 and falls to be determined by the Tribunal since the transfer of functions on 1st December 2016.

The first Hearing had been on 5th May 2016 and had been adjourned to 31st May 2016. The adjournment had primarily been to facilitate attendance of a particular witness who is an employee of the property factor. On 5th May the property factor agreed that it would arrange to have Peter Cox carry out an examination of the Property to ascertain what work would be required to the Property and it stated that it would be responsible for the cost. For administrative reasons the Hearing of 31st May did not proceed and no evidence was led although the parties gave information to the Committee about progress of works. On that date, the property factor lodged a report from Peter Cox indicating that the necessary works could be completed for less than the original quotation. For various reasons the matter could not be further considered until 2nd December 2016.

On 29th November 2016 the property factor sent the Tribunal a letter by email in which it stated that it no longer wanted to appear at the Hearing nor to make oral representations or lead evidence. They made written submissions in their letter and referred the Tribunal to earlier written submissions dated 2nd March 2016. On 1st December 2016 the solicitor representing the applicant emailed the Tribunal expressing disappointment that the property factor was choosing not to attend the Hearing and thus deny the homeowner the opportunity of putting her case to the property factor and one witness in particular.

In the papers lodged by parties it was noted that the homeowner had engaged with the property factor's complaints process and that it had been acknowledged that the property factor had been lacking as far as communication with the homeowner was concerned.

The Hearing

The homeowner was present and was accompanied by her husband. She was represented by Ms Deborah Carmichael, solicitor. Both Mr and Mrs Marshall gave evidence.

Preliminary Matters

Ms Carmichael said that her client was very disappointed at the failure of the property factor to attend and participate in the Hearing. She said that her client was

particularly upset that she would not be able to put questions to Mr Cuthill. Ms Carmichael said that she considered that the property factor's intimation so close to the Hearing that it would not attend was disrespectful of her client and the Tribunal.

Summary of Current Position

The Tribunal thought it useful to review the position with regard to work in the bathroom of the homeowner's property. In the property factor's letter of 29th November it was stated that the works to the Property had been completed. The letter also stated that the cost of the common works amounted to £1577 with the cost of the individual work to the Property being £242. Mrs Marshall confirmed that the works had been completed in July 2016 at a cost significantly less than the original quotation. She said that Peter Cox had initially carried out a disruptive survey and had then provided the property factor with a quotation for the works, as agreed at the hearing on 5th May 2016. Ms Carmichael referred the Tribunal to the document lodged, being the Peter Cox Survey report dated 25th May 2016 and the fact that the original quotation for the common aspect of the works was £6528.56 and for the individual works to the Property was £3898.40

Evidence

Mrs Marshall said that the disruptive survey by Peter Cox had taken around fifteen minutes. She said that the surveyor told her that the cause of the leak had not been from the shower as had been previously thought but from the drainage pipe from the bath, although the cause was not stated in the survey report provided. Mr and Mrs Marshall said that the work involved taking out the bath, lifting about two square metres of flooring in the kitchen, removal of tiles and subsequent reinstatement of the kitchen and the bathroom. Mrs Marshall said that she and her family were out of the house for one night only as opposed to the three week period that they had been told would have been necessary in terms of the original works quoted by the factor. Mr Marshall stated that, although the quotation for the original works referred to the bathroom and kitchen being reinstated, he had been told that it was unlikely that this would have been achieved and that they would have had to replace the kitchen and the bathroom fitments at an additional cost to them.

Mrs Marshall said that, from the time that they had realised that there was an issue with the bathroom, they had not used the bath. She said that she did not accept the property factor's position as set out in its written representations that the bath could be used. She said that the photographs which the property factor produced which showed a flat of similar type with rot affected joists reinforced her view that the bath could not be used. She mentioned in particular her young daughter and that she did not want to risk her being in the bath if there was a possibility that the floor was rotten. She said that she had a real fear about the bath being used. Mr Marshall said that he often had to shower at work and Mrs Marshall said that she used family member's bathing facilities not only for her child but also herself. Mr and Mrs Marshall expressed their concerns and upset about the inability to use the bath. The property factor's position with regard to use of the bath is outlined in its letter of 2nd March 2016 and it was that the shower should not have been used owing to the cause of the rot which it stated to be water coming down the wall from the shower. The letter stated that the property factor's staff advised that the bath was useable.

The written representations from the homeowner stated that Mr Cuthill, an employee of the property factor had told her that "the first time people realise they have rot is when the bath falls through the floor." The written representations of the homeowner also stated that she had received advice from Peter Cox that, if the bath was continued to be used, this would cause further ingress of water into the problem area causing further rot and decay.

Mrs Marshall said that the property factor frequently sent her letters which were addressed to her in her former name. She produced a copy of an invoice which she had received in the previous two weeks and which was addressed to her in her former name. She said that she had repeatedly told the property factor what her correct name is. She said that the property factor had also sent correspondence to her with the wrong postcode and the tribunal was referred to the written documentation which had been lodged.

Mrs Marshall said that the property factor's communication with her was poor. She said that she could not understand why the property factor did not answer the questions she asked about the costings for the proposed works. She said that she felt that the property factor treated her as the "enemy."

Mrs Marshall said that when the work was finished Mr Wilson of the property factor said to her "that is a result for you Mrs Marshall." Mrs Marshall said that he was referring to the fact that the sum she had to pay was less than the original quotation and that she found this to be offensive. She said that she and her family had endured a great deal of stress and she certainly did not consider the outcome to have been "a result." Mrs Marshall said that she would have expected the property factor to have inspected the property after the work had been completed to ensure that it had been done properly but that this had not been done.

The tribunal noted the written statements made by the homeowner's solicitor in relation to the events leading up to the application and also the written representations made by the property factor.

The fault had been reported to the property factor on 31st March 2015. In its letter of submissions dated 2nd March 2016 the property factor stated that the initial report from the homeowner was in relation to mould. This is not accepted by the homeowner. A member of staff of City Building (the approved contractor) attended the Property on 7th May 2015 along with a member of staff of the property factor and inspected the issue reported. In its letter of representations dated 2nd March 2016 the property factor stated that the inspection of 7th May included the taking of photographs and that the homeowner was advised that a consent process would be initiated. No intrusive inspection was carried out. On 18th May the homeowner had heard nothing on the matter from the property factor and telephoned to be informed that the necessary letters of consent were in the post. By 4th June 2015 no letter had been received by the homeowner and on contacting the property factor was told that the letter of consent would be resent. Nothing had been received by 12th June 2015 and the homeowner contacted the property factor and, in response, was sent a copy of a letter to her (in her maiden name) which had been sent to the wrong address and which concerned the individual works to her property. It consisted of a breakdown of works with no costs. At that stage the homeowner had not received details and costings of the common works. On that date the homeowner was advised

by Mr Cuthill of the property factor that the cost of the individual works required to the property amounted to £3898.40. The property factor's position, as stated in its letter of 2nd March 2016, is that it was not possible to provide a "bill of quantities" type of quote because they work on a schedule of rates system. The homeowner was provided with a brief schedule showing the proposed works.

On 17th June 2015, in response to a query by the homeowner, the property factor refused to provide the homeowner with a breakdown of costings because of what it stated to be commercial sensitivity.

On 2nd July 2015 the homeowner received a quotation from Peter Cox Ltd for the individual works which was lower than the quotation from City Building. The homeowner's written submission was that the property factor did not ask for a copy of this.

The written submission of the homeowner was that she was never provided with a breakdown for each individual element of the works proposed in respect of either the common or individual aspects. The homeowner also stated that she was never advised that, if any of the work proposed was found to be unnecessary, then only the required work would be undertaken.

Submissions

The property factor's written representations state that a full breakdown of costing as requested by the homeowner was not possible but that full information on the works to be done had been provided. The submission states that the work requiring to be done was less than had been anticipated but that, whichever contractor had been engaged, "only the lesser work would have been done and charged for as only disruptive survey or commencement of work could confirm the extent of work required." The submission states that the property factor does not accept that it was responsible for any stress caused to the homeowner and her family and that, if the homeowner had provided consent for the work, it would have been completed shortly after 12th June 2016. The submission states that the property factor accepts that communication did not "achieve the required clarity" but that this was not as a result of a specific failing on either side.

Ms Carmichael referred the tribunal to the written representations she had lodged. She said that her clients considered that they required to get legal representation and, subsequent to the Hearing, she emailed the Tribunal office indicating that the cost of this was in excess of £5000. Ms Carmichael said that the property factor should not have treated the homeowner the way that it did. She indicated to the tribunal the stress that the homeowner had endured as a result of the matter. Ms Carmichael said that if a disruptive survey had been carried out at the outset the homeowner would have been reassured and the work could have been done.

Discussion

The members of the tribunal considered that the crucial issue in considering the application is whether or not the property factor behaved reasonably and appropriately in dealing with the repair to the bathroom of the homeowner. What is not in dispute is that the repair took from March 2015 to July 2016 to be resolved. The property factor stated in its representations that part of the time involved in this

delay was due to the homeowner not consenting to the proposed works. For most of that period the homeowner's position is that the bath could not be used although this is not accepted by the property factor and it is stated by them that there is no reason why the bath could not have been used. What is also not in dispute is that the original sum estimated for the repair was £6528.56 for the common repair (to be shared amongst the proprietors in the tenement) and £3898.40 in respect of the individual works due to be paid for by the homeowner and that the actual sum for the repair was £1577 for the common repair and £242 for the individual works.

The tribunal did not accept that the property factor dealt properly with assessing the extent of the repair which was required initially. No intrusive survey or exposure work was carried out to ascertain the true extent of the issue. In its letter of 29th November 2016 the property factor conceded that the extent of the work could only be ascertained by disruptive survey or after commencement of the work. It seemed to the tribunal that a disruptive survey could easily have been done, prior to providing a quotation for the works as Peter Cox eventually did. The tribunal accepted the evidence of the homeowner that this survey was completed in approximately fifteen minutes. It was clear from the representations made by the property factor and the evidence of Mr Wilson that it placed great reliance on assumptions based upon its experience of the Type 26 tenement. It produced photographs of a flat of similar construction showing extensive rot. Mr Wilson said in evidence that it was his experience that when there was rot in the bathroom floors of such tenements the wall between the kitchen and the bathroom has to be removed to allow replacement of joists. It appeared to the members of the tribunal that the property factor had approached the matter with something less than an open mind albeit on the basis of previous experience. This was borne out by the fact that it did not contemplate doing a disruptive survey but rather to have the homeowner and her family make arrangements to move out of the property for three weeks. The property factor's position was that if, after commencement of the work, it was found not to be necessary to do the whole schedule of works then the lesser amount would have been done but this would have been against a background of the homeowner having made arrangements to be out of the house for three weeks.

Had it gone ahead with the repair schedule which it proposed it would have cost the homeowner and her neighbours considerably more.

The tribunal accepted the evidence of Mr and Mrs Marshall with regard to their reasons for not using the bath and the inconvenience that this caused them for more than a year. The homeowner was clear in expressing her fear and concern at using the bath especially after she had been shown the photographs of extensive rot in the flooring of a flat of similar construction. It seemed entirely reasonable and proportionate that the homeowner took this approach.

The tribunal accepted that the property factor had not provided clear information on the costings involving the proposed works. The schedule of works which was provided to the homeowner was insufficiently detailed but the property factor did not properly respond to her requests for further information.

The tribunal considered the question raised in the application as to whether or not a written statement of services had been sent to the homeowner. The homeowner stated that she had not received it and the property factor stated that it had been

sent to all proprietors. The homeowner gave evidence of correspondence going to the wrong address. The tribunal could make no finding in relation to the matter.

The tribunal considered the application and the alleged breaches of the Code:

Written Statement of Services

The tribunal had no evidence before it with regard to any deficiency in the content of the Statement and it arrived at no finding with regard to whether or not the Homeowner had received a copy of the Written Statement of Service.

Ms Carmichael's written submission addressed what she considered to be failings by the property factor in relation to the Written Statement of Services but the tribunal formed the view that any departure by the property factor in following its Written Statement of Services can be dealt with under other headings of the Code.

Communication and Consultation

2.1 You must not provide information which is misleading or false.

Ms Carmichael conceded that there was no falsehood involved but she considered that misleading information had been given to the Homeowner. The tribunal considered that, no matter how strongly the property factor believed that the issues with the flat required the major works it proposed, the guidance and information provided to the homeowner were misleading or ill advised, in relation to the matter.

2.2 You must provide homeowners with your contact details, including telephone number. If it is part of the service agreed with homeowners, you must also provide details of arrangements for dealing with out of hours emergencies including how to contact out of hours contractors.

There was an issue where Mr Cuthill's email address had been changed without this being provided to the homeowner and the tribunal considered that this was careless of the property factor and demonstrated a failure in its processes.

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 (Section1 refers).

There was evidence of delay in dealing with the homeowner's enquiries in relation to progress with the repair. The property factor conceded this after it had considered the matter as part of its complaints process. The tribunal considered that the property factor, in general terms, had not dealt promptly and efficiently with the homeowner in relation to the works required. This was further exacerbated by letters

being sent to the wrong address and to the homeowner in her maiden name when the property factor knew the correct name and address.

3.3 You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of the charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.

The homeowner's position was that it was reasonable to provide her with detailed information on the costs of the proposed works particularly in relation to the individual works so that she could look at alternatives. The property factor's response was that the arrangements it had with its contractor was that such information was not available and, what was available, was commercially sensitive. It was clear that the homeowner had serious concerns about the works requiring to be done and these concerns were found to be well founded. The tribunal found that the property factor has breached this section of the Code in not properly addressing the concerns of the homeowner.

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.

The tribunal accepted that the property factor failed to advise the homeowner with regard to progress of the work.

6.6 If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request, free of charge. If paper or electronic copies are requested, you may make a reasonable charge for providing these, subject to notifying the homeowner of this charge in advance.

The property factor stated that it could not provide such information and the tribunal had little evidence before it to assist in its Determination. It came to no view on the matter.

Property Factor's Duties.

Part of the works requiring to be done to the Property involved common works and the tribunal, having considered the terms of Sections 10 (5) and 17(5) of the Act , determined that it was appropriate to consider whether or not the property factor had fulfilled the property factor's duties. For the reasons stated previously the tribunal considered that, in relation to the property factor's treatment of the works requiring to be done, the property factor had not complied with the property factor's duties.

In arriving at its Decision the tribunal had regard to all the written documentation and submissions lodged by the parties. It considered it regrettable that the property factor had chosen not to attend the Hearing. In particular, it would have welcomed the opportunity of hearing evidence from Mr Cuthill and, in general terms, evidence surrounding the property factor's practice in relation to scoping/ determining the extent of works required and the obtaining of prices for such works. In the absence of the property factor's attendance the tribunal relied on the written submissions and documentation before it and the oral evidence heard at both Hearings. It also had regard to the submissions made by Ms Carmichael.

The central set of facts is straightforward. Repairs were required and the property factor took a certain view on the extent of the works and the methodology to be applied. The homeowner disputed the extent of works and the methodology. The homeowner sought reassurance and information from the property factor which was not forthcoming. The property factor produced no evidence that only the work actually required would be undertaken. The tribunal came to the view that the property factor should have undertaken a disruptive survey at the outset to determine the true extent of works required and this would have been entirely reasonable. The fact that the property factor was accepting that the family would be out of the house for three weeks and would have to make arrangements for this, reinforced the tribunal's view that the property factor fully expected that the full extent of the work, which it had originally assumed or intimated, would require to be done. This was not a repair to an external door, a gutter or to a window but to the only bathroom in the Property. The bath was out of action for over a year. The stress, inconvenience and worry caused to the homeowner and her family was significant. In the particular circumstances of this case the tribunal determined that the property factor should pay compensation to the homeowner and that this should be at a level of £2500 to reflect the understandable effect on the homeowner. The tribunal considered that the compensation should be paid within twenty eight days of service of the property factors enforcement order. The tribunal also determined that the property factor should provide an appropriate undertaking with regard to future conduct.

A homeowner or property factor aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Martin McAllister

Martin J. McAllister
Legal Member,
Housing and Property Chamber
First-tier Tribunal for Scotland
19th December 2016

