

Housing and Property Chamber

First-tier Tribunal for Scotland



Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference number: FTS/HPC/PF/20/1501

Re: Property at 5D West Bell Street, Dundee, DD1 1EX (“the Property”)

The Parties:

Mrs Huishen Zhang, 2/4 East Pilton Farm Rigg, Edinburgh, EH5 2GD (“the Applicant”)

Rockford Managers of Property, 50 Castle Street, Dundee, DD1 3AQ (“the Respondent”)

Tribunal Members:

Martin J. McAllister, Solicitor, (Legal Member)

Colin Hepburn, Chartered Surveyor, (Ordinary Member)

(the “tribunal”)

Background

This is an application by Miss Huishen Zhang in respect of the Property in relation to the actings of the Respondent as property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act). The application alleges that the Respondent has failed to comply with Sections 2.4, 3.3, 6.3, 6.7, 6.8, 6.9 and 7.1 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors and has failed to carry out the property factor’s duties as defined in the 2011 Act. The application is dated 14th July 2020 and the matter was remitted to the tribunal for determination on 17th September 2020. A Hearing was held on 11th November 2020, evidence was part heard and a further Hearing was held on 11th January 2021.

A Direction in terms of Section 16 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 was made on 11th November 2020. The Direction required the Respondent to produce documentation.

The Respondent submitted written representations and documentary evidence. The Applicant submitted written representations.

Findings in Fact and Law

- 1. The Respondent is the property factor of the tenement in which the Property is situated.**
- 2. In respect of the matters raised in the application, the Respondent has complied with the property factor's duties and has complied with the terms of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.**

The Hearings

The Applicant was present and, at the first Hearing, was supported by her daughter, Miss Han Zhang for part of the time.

At both Hearings, Ms Hazel Young and Mrs Georgia Bedding were present and gave evidence. Both are employees of the Respondent.

Preliminary Matters

It was noted at the Hearing on 11th January 2021 that the Respondent had complied with the terms of the Direction and had lodged copies of contractors' invoices which had been sent to the Applicant together with copies of statements and factoring invoices sent to the Applicant by the Respondent from commencement of its management of the tenement of which the Property forms part.

Ms Young helpfully set out the layout of the tenement at 5 West Bell Street, Dundee and provided some of its recent history. It is a tenement of twelve flats. The tenement comprises four floors above ground level and two floors below ground level. Two flats are situated at basement level and ten flats on or above ground level. The Property is situated on the first floor above ground level. Ms Young said that the tenement is around one hundred and forty years old and she said that it had undergone a complete "bottom up" refurbishment by developers which was completed in October 2017. She said that the developers sold seven of the flats and retained five which they let out. She said that her company acts as letting agent in respect of these five flats. She said that the Applicant had purchased the Property from the developer. Ms Young said that, although an extensive refurbishment programme had been carried out by the Developers, the slate roof was original and had not been replaced.

Ms Young said that, when her company took on the management of the tenement, it had been given £1750 by the developer's solicitors and been told that this was to be spent on repairs to the tenement in the first year or so

Mrs Zhang provided information in support of her application:

She said that another owner in the tenement had told her that the building had been poorly renovated. She said that only the seven owners who purchased flats from the developers had paid a float of £250 and that, because the developers had not paid any float in respect of its flats, the sum which the Property Factor had to spend on the building was less than it should have been and, consequently the other owners had to pay more. She said that there had been three roof repairs carried out in 2020 which

totalled £10,660.08. She said that the most expensive one was in May which was for £6,855. She said that she had bought the Property in what she thought was a newly renovated building and that the roof repairs were too expensive and were not reasonable.

Mrs Zhang said that she had visited the Property on two occasions during its refurbishment and prior to her buying it. She said that she had not had a survey done on the Property before the purchase.

Mrs Zhang said that in “the contract” she was supposed to pay £180 per annum in respect of the cleaning fee but that it is now £200 and the common area is dirty.

The Applicant said that she has often tried to get a meeting of other owners and has asked the Property Factor to arrange this but that this has not been done. She said that she had been able to contact only one other owner in the tenement.

Mrs Zhang said that she had been charged for a repair to a drainage pipe which did not serve her property. Miss Young agreed that this was the case and that this had been an error which had been corrected when investigations had been made.

Mrs Zhang said that, on occasion, she has been late in paying the factoring fee because she is sometimes in China and does not have email access. She said that she owns three flats and understands the obligations with regard to being a flat owner.

Mrs Zhang said that she had concerns about the charges for roof repairs and that the invoices she has had sight of cannot be reconciled with the Statement sent by the Property Factor to homeowners. There was a considerable amount of discussion on this matter at the Hearing on 11th January 2021 and there was an adjournment of just over an hour to allow the Applicant to email her specific concerns to the Property Factor. Once the Hearing re convened, the Applicant and the Property Factor indicated that they were in agreement with regard to how much had been paid by the Applicant for 2020. The Applicant said that she did not agree with how much had been charged with regard to roof repairs in that year and that the charges did not equate with the invoices which she had. She helpfully said that she was sure that this was a matter that she could deal with by direct discussions with the Property Factor and she agreed that this was not something which the tribunal was required to deal with.

It was decided that it would be useful to go through each section of the Code of Conduct which the Applicant considers has not been complied with by the Property Factor.

6.3 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.

Ms Young said that the Property Factor had received no request from the Applicant to show how and why contractors were appointed. She said that they tend to use contractors which are known to them to be qualified, capable and able to do work to a high standard. She said that, for the roofing repairs to the tenement, Opel Access had been attractive because they had done satisfactory work previously and were

cost effective because their operatives could access the roof by use of ropes rather than scaffolding or a cherry picker. Ms Young said that, in repairs which were minor, such as replacing a lightbulb, she would instruct someone to deal with it but that, in respect of major works, such as roof repairs, she would get estimates from two or three contractors. She said that, with regard to such repairs, she would advise the homeowners of the costs. Mrs Zhang said that, on such occasions, she would want to have sight of the estimates received. Ms Young said that she usually did so but would ensure that this was done in future. She referred to Production 13 which was an email dated 20th November 2020 which was sent to homeowners with regard to the cleaning contract and which was accompanied by quotes from two contractors.

6.7 You must disclose to homeowners, in writing, any commission, fee or other payment or benefit that you receive from a contractor appointed by you.

Miss Young and Ms Bedding said that there was nothing to disclose to the Applicant or other homeowners in respect of any commission, fee or other payment or benefit received from any contractor.

The Applicant did not provide any evidence on this matter.

6.8 You must disclose to homeowners, in writing, any financial or other interests that you have with any contractors appointed.

Miss Young and Ms Bedding said that the Property Factor has no financial or other interest with any contractors appointed to work on the tenement and that there was nothing to disclose.

The Applicant did not provide any evidence on this matter.

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 written representations of the Property Factor state that it would actively pursue a contractor or supplier to remedy the defects in any inadequate work or service provided but that it did not believe that any works instructed by them have been defective. Miss Young confirmed this in evidence.

The Applicant stated that, in one year, there had been three roof repairs. She indicated that, because there had been three repairs, it was possible that the works had been defective.

The written representations of the Property Factor state that, in relation to the roof repairs, each repair carried out has been to a different part of the roof. The representations state that "It should be expected by all owners that multiple repairs will be required on a roof of such age. The representations state that owners may consider it prudent to replace the whole roof.

7.1 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. This procedure must include how you will handle complaints against contractors.

Miss Young said that the Property Factor did have a complaints process which is set out in the written statement of services which had been lodged with the Tribunal. At the Hearing on 11th November 2020, Mrs Zhang said that she did not think she received a copy of the written statement of services from her solicitor when she purchased the Property. She said that she had received a lot of documentation and would have to check. At the Hearing on 11th January 2021, Mrs Zhang acknowledged that she had sent a copy of the written statement of services to the Tribunal on 2nd September 2020 when it had been requested.

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

The Applicant said that she had asked the Property Factor on a number of occasions to call a meeting of the homeowners of the flats in the tenement but that it had not done so.

Miss Young and Ms Bedding said that it was a matter for the homeowner if she wanted to call a meeting of homeowners and that this was a provision in the title to the Property. Mrs Zhang said that she did not know the provisions of the title and that her solicitor had not provided her with a report on the title when she had bought the Property.

Miss Young stated that there was a monthly charge for factoring fees and that this was not increased if more work was involved. She said that homeowners were consulted before any major repairs were instructed and she referred the tribunal to the emails which had been lodged by the Property Factor and which she said supported this.

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 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.

Miss Young said that, in error, the annual statement for 2019 was not issued but that it had been now. She referred the tribunal to the statement which had been lodged together with other statements (Production 15). She said that she probably communicated with homeowners on a monthly basis.

The tribunal was referred to copies of emails which had been lodged and which Miss Young said evidenced this. She said that these showed that she regularly advised homeowners of the activities and works carried out in the tenement of which the Property forms part. She said that these emails also show that homeowners are advised about costs for any repairs and about quotations received.

Miss Young said that the £1750 the Property Factor was given at the outset of its management of the tenement was not a float. The representations of the Property Factor refer to the provisions of the Title of the Property and specifically “On the first purchase of a Flat the sum to be contributed by all purchasing owners of Flats is £250 all payable on the purchase of their flat.” Miss Young said that only seven flats had been purchased with five flats remaining within the ownership of the developer. She said that the Property Factor had been handed £1,750 by the developer when it commenced management of the Property and that these funds had been expended.

Miss Young said that a monthly payment was taken from each homeowner to cover the factoring fee and the cleaning costs and that any other sums required were requested when the expenditure was being incurred. Ms Bedding accepted that this was an additional administration burden but said that it was more transparent than the alternative which would be to levy a monthly charge to meet any small items of expenditure/repairs and then account to homeowners.

Discussion and Determination

The tribunal was impressed by the evidence given by the Applicant, Miss Young and Ms Bedding. There were no issues of credibility to be determined. It seemed to members of the tribunal that, although the Applicant and the Property Factor had differing views on the issues about management of the Property, it was a matter of interpretation and not their credibility. It also seemed to members of the tribunal that the fundamental issue for the Applicant was the fact that she was having to pay a significant amount of money for repairs to the roof when she understood that the Property was in a building which had been refurbished immediately prior to her purchase.

The members of tribunal considered each alleged breach of the Code

6.3 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.

The tribunal accepted the evidence of Miss Young and Miss Bedding that the Property Factor had not failed to respond to any request from the Applicant as to why contractors had been appointed. Mrs Zhang did not produce evidence to support that she had had requests which had not been responded to.

The tribunal accepted the evidence of Miss Young that, in respect of major repairs, competitive estimates were obtained and that these were discussed with homeowners. The emails lodged by the Property Factor supported this.

6.7 and 6.8

You must disclose to homeowners, in writing, any commission, fee or other payment or benefit that you receive from a contractor appointed by you.

You must disclose to homeowners, in writing, any financial or other interests that you have with any contractors appointed.

The Applicant led no evidence to support that the Property Factor had received any commission, fee or other benefit from any contractor appointed by it or that it had any financial or other interests with any contractors appointed.

The tribunal accepted the evidence of Ms Bedding and Miss Young that there were no such matters to disclose to homeowners.

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 tribunal accepted the evidence of the Property Factor that it would pursue a contractor to remedy any defective or inadequate works but that there had been no such inadequate or defective works in the tenement of which the Property forms part. It did have sympathy with the Applicant who was finding the Property more expensive to maintain than she had thought would be the case when she bought it. She stated that she would not have bought the Property had she known that the roof had not been replaced. It was considered significant that she had chosen not to get a professional survey done prior to her purchase. The tribunal assumed that there had not been a Home Report since the Applicant had no memory of having seen one and that this could have been the case given the level of refurbishment which had been carried out to the tenement.

The roof was said to be original and, based on the title, it was possibly approaching one hundred and forty years old. The tribunal had no argument with the statement from the Property Factor that owners may require to consider it prudent to replace the whole roof.

7.1 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. This procedure must include how you will handle complaints against contractors.

There is a complaints resolution procedure contained within the written statement of services. The Applicant led no evidence to support that this procedure was not followed by the Property Factor.

2.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).

The Property Factor lodged copies of emails sent to the homeowners of the tenement which supported its contention that it was in regular contact with them. The tribunal accepted the evidence of Miss Young that no additional charges had been made by the Property Factor.

The tribunal had regard to the terms of the title and agreed that there are provisions for a homeowner to call meetings of proprietors and that the Property Factor does not have a responsibility in this regard. It also noted that the Applicant said that her solicitor had not provided her with a report on the title when she bought the Property.

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 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 Property Factor conceded that the statement for 2019 had not been sent to homeowners and it could be argued that, in this regard, it failed to comply with the Code but set against that is the fact that the copy emails lodged by it show a high level of ongoing engagement with homeowners and a clear policy of keeping them advised of how money was being spent and what spending proposals were in contemplation. The emails also show that homeowners were given knowledge on what was happening in the tenement from the Property Factor's perspective.

The tribunal accepted the evidence given on behalf of the Property Factor in respect of the £1,750. The somewhat unusual terms of the title were clear that it was only proprietors of purchased flats who had to contribute £250 and that therefore the developer who had retained five flats did not require to pay £250 in respect of each flat.

Property Factor's Duties

The tribunal had no evidence before it to indicate that the Property Factor had not carried out the property factor duties. The terms of the emails from Miss Young and her evidence showed that the Property Factor fully engaged with homeowners and was extremely active in managing the tenement.

Finding

The tribunal found that, in relation to the application before it, the Property Factor had complied with the Code and had not failed to carry out the property factor's duties.

Note

Although the tribunal found there to be no breach of the Code, it had some sympathy with the Applicant in relation to the annual statements which were produced. These consisted of an annual statement of expenditure paid out by the Property Factor without reference to income raised from each homeowner. It seemed to the tribunal that the more common approach of producing a statement in arrears and specific to a homeowner showing total items of expenditure, allocated costs for the homeowner

to whom the statement was sent and payments made by that homeowner would be more transparent and would provide a clearer record for a homeowner.

Martin J. McAllister, Legal Member

17th January 2021