

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)**

The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 ("the 2017 Regulations")

Chamber Ref: FTS/HPC/PF/20/0214

**College House, Flat 29, 94 Inchview Terrace, Edinburgh EH7 6TF
("The Property")**

The Parties:-

Mr James Hunter, residing at College House, Flat 29, 94 Inchview Terrace, Edinburgh EH7 6TF ("the Applicant") and

**James Gibb Property Management Ltd, 4 Atholl Place, Edinburgh, EH3 8HT
("the Respondent")**

Tribunal Members:

**Mr G. McWilliams (Legal Member)
Mrs H. Barclay (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to reject the Application in terms of Section 18(2)(c) and (d) of the Property Factors (Scotland) Act 2011 ("the 2011 Act")

Introduction

1. The Respondent is the registered Property Factor for the development within which the Property is situated and they have a duty to comply with the Code, under Section 14(5) of the Act. The Applicant submitted an Application to the Tribunal by lodging documents with the Tribunal between 23rd January and 29th April 2020. In his Application, the Applicant complained that the

Respondent had breached Sections 2.1 and 3.4 of the Code and failed to comply with their Property Factor's duties.

The Hearing

2. A Hearing proceeded remotely by telephone conference call at 10am on 7th October 2020. The Applicant attended. The Respondent was represented by Ms J Bole, Technical Manager (Legal) and Ms A. Kirkwood, Operations Director. Mr P Brown attended as an observer. He stated to the Tribunal that he was an Applicant in another case.

Preliminary Matter

3. In their written submission, lodged in advance of the Hearing, the Respondent stated that the Application should not proceed as the Applicant's complaints had been made in his previous Application Reference FTS/HPC/PF/18/2968. The Respondent relied on Section 18(2) (c) of the 2011 Act in this respect.
4. The Tribunal heard at length from both parties regarding the preliminary issue. The Applicant disputed that the complaints in this Application were the same as those in his previous Application. The Parties agreed that the previous Application had been resolved by way of the Applicant's withdrawal of that earlier Application after an agreement was reached following discussions between the parties at the Hearing on 23rd April 2019.
5. After both parties had given oral evidence and made submissions the Tribunal adjourned the Hearing for further consideration and determination. The Tribunal asked that the parties submit relevant papers in respect of the previous Application to assist the Tribunal in its determination. The parties duly lodged further documents.

Reasons for Decision

6. The Applicant, in the Application and in his oral evidence and submissions at the Hearing, referred to different quotations for roofing works having been issued by the Respondent, in 2016. In short, the Applicant complained that the Respondent's initial request to homeowners for funding for the works referred to the homeowners each having a 1/35 share of liability for the cost of those works, when the share of liability was 1/36. The Applicant complained that this error constituted provision of information which was false or misleading and established that the Respondent had inadequate procedures for dealing with homeowners' advance payments, in breach of Sections 2.1 and 3.4 of the Code. The Applicant stated that due to the error in the funding request homeowners were overcharged and the Respondent had breached their Property Factor's Duties.

7. The Respondent, in their written and oral evidence, and submissions, conceded that that there had been an error in the funding request, in respect of homeowners' shares of the liability for the cost of the roofing works. They stated that the error had been corrected and that the roofing works were paid for and completed in 2017. They stated that this issue had been dealt with in the settlement agreement which the parties reached at the Hearing in April 2019.
8. Section 18(2) (c) of the 2011 Act provides that the Tribunal, acting under delegated powers from the Tribunal Chamber President, may reject an Application if the Applicant has previously made an identical or substantially similar Application in relation to the same property. Section 18(2)(d) states that the Tribunal may reject an Application if the dispute to which the Application relates has been resolved.
9. The Tribunal considered the evidence and submissions of the parties, as well as additional papers lodged by them, following the Hearing. The Tribunal, in particular, noted the terms of the Respondent's invoices which were sent to the Applicant in respect of the roofing works. In his oral evidence the Applicant agreed that the invoices, for example that dated 27th August 2017, referred to homeowners' correct 1/36 liability share of the costs of those works. The Tribunal also noted the terms of the Respondent's letter to the Applicant dated 24th April 2019, following the Hearing the previous day. That letter refers to the differences in the funding requests, which resulted from the error regarding liability shares, and confirms the terms of the agreement of the parties which resolved the issue. The Decision of the previous Tribunal, dated 23rd April 2019, also confirmed the settlement agreement of the parties, made specific reference to the difference in stated shares of liability for the cost of the works, and noted the Applicant's withdrawal of his earlier Application.
10. Having considered all of the evidence, submissions and additional papers, in particular that referred to in the preceding paragraph, the Tribunal found in fact and law that the Applicant had previously made a substantially similar Application in relation to the Property and that the dispute in the current Application was resolved in the settlement of the previous Application. The Tribunal accordingly determined that the Application be rejected.

Observation

11. The Applicant and Ms Bole and Ms Kirkwood, to all of their credit, communicated with each other in a very straightforward and respectful manner at the Hearing on 7th October 2020. It is to be hoped that, having done so, the parties will now be able to move forward and have positive dealings with each other regarding arrangements for the development in which the Property is situated.

Appeal

12. In terms of section 46 of the Tribunals (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 within 30 days of the date the decision was sent to them.

G McWilliams
Legal Member

18th December 2020