



Decision and Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/22/0658 and FTS/HPC/PF/22/1123

Re : Flat 7/4, Kirkmay House, North Market Gate, Crail KY10 3TH ("Property")

The Parties:-

Lorna Allport, 7 Bedcow View, Kirkintilloch, Glasgow G66 3JA ("Homeowner")

Abbey Forth Property Management Ltd, Balcairn House, Viewfield, Dunfermline KY12 8HY ("Factor")

Tribunal Members:

Joan Devine – Legal Member

Elaine Munroe – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") unanimously determined that the Factor has failed to comply with the Code of Conduct for Property Factors as required by section 14 of the Property Factors (Scotland) Act 2011 and has failed to comply with its factor duties in terms of section 17(5) of the 2011 Act. The Tribunal proposes to make a Property Factor Enforcement Order. The terms of the proposed PFEO are set out in the attached section 19(2) Notice.

Introduction and Background

1. In this note 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 effective prior to 16 August 2021 is referred to as the "2012 Code"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective from 16 August 2021 is referred to as the "2021 Code" and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as the "Rules". The Homeowner's application to the Tribunal comprised documents received between 7 March and 19 April 2022. A form C1 was lodged on 19 April 2022. A form C2 dated 3 March 2022 was also lodged.
2. In the Form C1 the Homeowner complained about breach of sections 1,2,3,4,5 and 7 of the 2012 Code. In the Form C2 the Homeowner complained about breach of section 1,2,3,4,5 and 7 of the 2021 Code as well as breach of

sections 2, 4, 6, 8, 9 and 11 of the Overarching Standards of Practice under the 2021 Code. The complaint in the C1 and C2 also related to a failure to carry out Property Factor duties.

3. A Case Management Discussion (“CMD”) took place on 10 August 2022. The Homeowner was in attendance. There was no appearance by the Factor. The outcome was that the Tribunal determined to fix a continued CMD and to issue a Direction to the Parties setting out the further information and documentation required. Reference is made to the Note of the CMD and to the Direction issued, both dated 10 August 2022. On 19 September 2022 the Homeowner lodged copy invoices from the Factor regarding the Property. The Factor did not respond to the Direction.
4. A continued CMD was fixed for 1 November 2022. Neither the Homeowner or the Factor attended. The Clerk contacted the Homeowner by telephone. She said that she had not received intimation of the date of the continued CMD. A fresh date was fixed for the continued CMD of 7 February 2023.
5. A continued CMD took place on 7 February 2023. The Homeowner was in attendance as was Stuart Dalziell of the Factor. The outcome was that the Tribunal determined to fix a continued CMD and to issue a Direction to the Parties setting out the further information and documentation required. Reference is made to the Note of the CMD and to the Direction issued, both dated 7 February 2023. A date was fixed for the continued CMD of 24 April 2023. The Factor did not respond to the Direction.

Continued CMD

6. A continued CMD took place on 24 April 2023. The Homeowner was in attendance. There was no appearance by the Factor. The Homeowner said that she had received no contact from the Factor. She said that the situation had caused her significant stress for which she expected to be compensated. The Tribunal told the Homeowner that it had sufficient information to proceed to make a Decision.

The 2012 and the 2021 Code

7. At the CMD on 7 February 2023 the Homeowner agreed with the Tribunal’s summary that the Application under both the 2012 Code and the 2021 Code proceeded in respect of section 1, failure to provide a WSS; section 2, poor communication; section 3, lack of transparency in charges and section 7, failure to provide a complaints procedure and to deal with complaints. It was accepted by the Factor that there had been a breach of section 1 and 7 as no

WSS or complaints procedure had been provided to the Homeowner and complaints had not been handled well in that communication on the part of the Factor had been poor. Both Applications also proceeded in respect of breach of property factor duties. As regards the 2021 Code, the Application also proceeded in respect of breach of the Overarching Standards of Practice under the 2021 Code.

8. The Factor did not accept that there had been a breach of section 3 of the Code where the Homeowner complained about lack of transparency in charges. The Homeowner's concern was that some charges were split equally amongst homeowners and others were not split equally. In some instances the Homeowner's share was 22.30% or 15.60%. At the CMD on 7 February 2023 the Factor said that he could provide an explanation for each charge made. A Direction was issued in terms of which the Factor was asked to provide that explanation but the Factor did not comply with the Direction.

Findings in Fact

1. The Homeowner has been the proprietor of the Property since 30 April 2013.
2. The complaints raised in the Application relate to the period 30 April 2013 to 3 March 2022.
3. The Factor performed the role of property factor at the development of which the Property forms part in the period 30 April 2013 to 3 March 2022.
4. The Factor did not provide to the Homeowner a written statement of services.
5. The Factor did not have good communication with the Homeowner.
6. The Factor's dealings with the Homeowner regarding financial matters lacked transparency.
7. The Factor did not respond to communications from the Homeowner raising concerns dated 15 February and 22 March 2022.
8. The Factor did not provide to the Homeowner a written complaints resolution procedure.

Reasons for Decision

9. As regards the complaint under section 1 of both the 2012 and 2021 Code, the Factor accepted that a WSS had not been provided to the Homeowner. As the Factor no longer has any involvement with the Property, there is no merit in the WSS now being provided.

10. As regards the complaint under section 2 of both the 2012 and 2021 Code, the Factor accepted that communication on the part of the Factor had been poor. The Tribunal noted that the Homeowner had issued letters to the Factor dated 15 February and 22 March 2022 raising concerns but no response was received. At the CMD on 7 February 2023 the Factor told the Tribunal that they could provide to the Homeowner a full explanation of all charges made. They failed to do so. As noted in both the 2012 and the 2021 Code, good communication is the foundation for building a positive relationship with homeowners leading to fewer misunderstandings and disputes. It was clear to the Tribunal that communication on the part of the Factor had been extremely poor.
11. As regards the complaint under section 3 of both the 2012 and 2021 Code, both Codes note the importance of transparency in financial matters. The Homeowner had raised concerns about the split of charges amongst homeowners at the development of which the Property forms part. The Factor did not adequately address the concerns raised. The Homeowner lodged with the Tribunal copy invoices covering the period 1 December 2017 to 28 February 2022. In many instances the charge was split equally amongst the 6 homeowners at the development of which the Property forms part but in other instances the Homeowner's share was 15.6% or 22.3%. The Property is registered under title number FFE77221. Burden 2 is a disposition by Kenneth Alan Preston to Dennis James Fordham and his executors and assignees recorded GRS (Fife) 30 July 1973 which narrates how charges for various items are to be split amongst homeowners. The split of charges varies depending on the item in question. Determining the split amongst homeowners is clearly not straightforward which makes the need for transparency and good communication all the more important. It was clear to the Tribunal that there had been a lack of transparency from the Factor in financial matters.
12. As regards the complaint under section 7 of both the 2012 and 2021 Code the Factor accepted that a written complaints procedure had not been provided to the Homeowner. The Factor did not produce to the Tribunal a copy of a written complaints procedure to evidence that one existed. The Factor had failed to respond to the letters from the Homeowner dated 15 February and 22 March 2022 raising complaints.
13. As regards the complaint regarding breach of the Overarching Standards of Practice("OSP") of the 2021 Code the Tribunal determined that there had been a breach of OSP 2 as there had been a lack of transparency regarding the split of charges amongst homeowners; OSP 6 as the service had not been provided to the Homeowner using reasonable skill and care in that no WSS

had been provided and communication had been poor and OSP 11 as complaints had not been addressed within reasonable timescales. As regards OSP 4, there was no evidence before the Tribunal to suggest that information had been provided by the Factor that was deliberately or negligently misleading or false. As regards OSP 8, there was no evidence before the Tribunal regarding the level of awareness of the Code on the part of staff and sub-contracting agents. As regards OSP 9 there was no evidence before the Tribunal regarding record keeping.

14. As regards the alleged breach of property factor duties, the Tribunal was of the view that the poor communication by the Factor and lack of transparency regarding charges for management of the common parts was a breach of property factor duties.

Proposed Property Factor Enforcement Order

15. The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) (a) Notice

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014 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.

Legal Member

Date: 24 April 2023