

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision: Section 43(2)(b) of the Tribunals (Scotland) Act 2014.

Chamber Ref: FTS/HPC/PF/18/1584

**Re: Property at Flat 0/1, 65 Cherrybank Road, Merrylee, Glasgow G43 2NL
(the Property)**

Parties:

Mr Nathan Murdoch, residing at the property ("the homeowner")

and

**YourPlace Property Management Ltd, registered under the Companies Act 1985,
No SC245072 and having its Registered Office at Wheatley House, 25 Cochrane
Street, Glasgow G1 1HL ("the factors")**

Tribunal Members:

David Preston (Legal Member) and Carol Jones, Surveyor (Ordinary Member).

Decision:

The tribunal, having reviewed its Decision dated 25 February 2019 and the proposed Property Factor Enforcement Order (PFEO) has determined after very careful deliberation of all representations, not to vary the decision nor the proposed PFEO and determined to issue the PFEO in terms of the Notice of Proposed PFEO.

Background:

1. Following the issue of the Notice of Proposed PFEO dated 25 February 2019, the factors, by email dated 13 March 2019 applied to the tribunal for review of its decision.
2. By email dated 4 April 2019 the homeowner submitted representations in response to the factors' application. He said that he was happy for the tribunal to carry out its review on the representations already submitted.

3. The factors' pro forma response dated 3 April 2019 stated that they did not wish to attend a review hearing and wished to add nothing further to the comments in the application for review.
4. The tribunal convened on 9 July 2019 to carry out its review of the Decision in the absence of the parties.
5. The factors asked us to review our decision under section 6.1 and 6.2 of the Code. They disagreed with our conclusions in relation to Documents I and L of the Productions lodged by the homeowner in relation to 6.1 and points a, b, c and d of our decision in relation to 6.2.
6. The factors said that they would like it noted that the complaint relating to Document I was not raised under section 6.1 and they did not respond directly to it and dealt with it under the complaint on section 6.2. However, the tribunal notes that the homeowner specifically related Documents I and L to the section 6.1 complaint in his list of documents upon which he relied in support of his complaints, which he submitted on 2 December 2018 in response to the tribunal's Note following the Case Management Discussion. The factors subsequently responded to the Direction on 19 December 2019.
7. The tribunal considers that for the job relating to the temporary repair of a sewage pipe to be closed off for whatever reason without any follow up by the factors, without them having to be reminded by a further complaint, is unreasonable and falls short of the standard laid down in section 6.1 of the Code. The tribunal does not accept that for the factors to make good a temporary repair, even in the absence of consent for the full repair, could be seen as circumventing the consent process. The factors had carried out a CCTV survey of the drain as a result of which the inspection plate had been damaged and a temporary repair effected. Consent forms for the necessary works identified in the survey report were then issued, but there were insufficient returns. The factors applied flash-band, which is still a temporary repair. The job was closed off and, in terms of the factors' email of 18 May 2019, the homeowner or a co-proprietor would need to report the matter again to the factors to have the job re-opened, or a new job opened. It is not unreasonable to expect the factors to ensure that jobs are not closed off, particularly in relation to sewage matters, until permanent repairs have been carried out or to expect the factors to provide updates on ongoing repair issues. The homeowner was not given a progress report to advise that the job had been closed. Even although consent was not forthcoming for the work required to resolve the issues identified in the survey report the damaged pipe should not have been left with a temporary repair. Alternatively, the homeowner should have been given a progress report to the effect that the full works could not be carried out and that the temporary repair would be left as such.
8. In relation to Document L the email of 10 May 2018 from the factors makes it clear that it is standard for the factors to close off jobs that cannot be completed due to safety or product guarantees during inclement weather. The tribunal considers this to be unacceptable. It requires the homeowner

or a co-proprietor to re-submit a report of a fault which had previously been reported. A homeowner should only be required to report a problem once and is entitled to expect that a full repair is carried out, or reasons provided if the full repair cannot be effected, together with regular progress reports and on-going reasons for the delay in completing the work. That is not possible if the factors have closed off the job. While the tribunal notes the factors had admitted a failure in relation to the roughcast repair referred to under Document L and apologised to the homeowner, this issue was not resolved, according to the factors until May 2018 after the hearing in relation to the previous case, reference pf/18/0293 and it was not referred to in the decision.

9. The tribunal's reference in its decision to the breach established in case pf/18/0293 was by way of comparison of the continuing failure of the factors to address the problem identified above that jobs are closed off prematurely for whatever reason. It did not suggest that the particular complaint had already been dealt with by a tribunal.
10. In relation to the findings in respect of section 6.2 of the Code the factors, in their request for review refer to various reference points in the Decision. For clarification, reference points a. and b. set out summaries of the positions of the respective parties as presented to us. Reference points c. and d. set out our findings in relation to the evidence presented to us. The factors' request for review of these matters raises nothing which we did not take into account in our initial deliberations.
11. For further clarification, the tribunal finds that the problem with the factor's system of dealing with the repairs and works in this case, whether emergency or otherwise, was that they closed off the jobs referred to by the homeowner prematurely, resulting in a situation where he had to report the same issue on more than one occasion before the factors re-visited it to complete the work. These are further examples of the issue which formed the substance of case number pf/18/0293 but form distinct issues upon which we were making determinations.
12. Accordingly, the tribunal determined to adhere to its decision.

David Preston

18 July 2019