

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) Procedure Regulations 2017

Chamber Ref: FTS/HPC/PF/19/2593

Property: Flat 3/1, 8 Whitehall Street, Glasgow, G31 2LJ ("The Property")

The Parties:-

Mr Max Withington, residing at 5 Birch Grove View, Newton Mearns, Glasgow, G77 6NJ ("the Homeowner")

and

Apex Property Limited, having a place of business at 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the Property Factor")

Tribunal Members

Mr James Bauld (Legal Member)

Mr Andrew McFarlane (Surveyor, Ordinary Member)

Decision

1. The Tribunal determined that the Property Factor had failed to comply with certain duties arising from the Code of Conduct for Property Factors ("the Code") and accordingly determined to make a Property Factor Enforcement Order. The decision was unanimous.

Background

2. By Application dated 19 August 2019 the Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with various sections of the Code. In particular the Homeowner alleged that the Property Factor had breached sections 2.1, 2.4, 2.5, 3.2 and 6.6 of the Code. By notice of acceptance dated 9 October 2019, a Legal Member of the Tribunal in terms of powers delegated to her, determined to remit this Application to the Tribunal for determination.
3. The Application having been referred to the Tribunal, a hearing was set to take place on 6 December 2019 at 10am within the Glasgow Tribunals Centre, York Street, Glasgow and appropriate notification of that date was sent to both parties by letters dated 14 October 2019.

Hearing

4. The hearing took place before the Tribunal on 6 December 2019. The Homeowner was present at the hearing. The Property Factor was neither present nor represented at the hearing.
5. Prior to the hearing the Property Factor had sent an email to the Tribunal office enclosing written representations also indicating that the Property Factor wished to attend the hearing. In the absence of the Property Factor at the hearing, the Tribunal took into account the written representations which had been lodged. These representations were brief and contained very little detail.
6. At the commencement of the hearing, the Chair of the Tribunal explained to Mr Withington the procedure which would be adopted and the overriding objective of the Tribunal. The Tribunal then proceeded to ask certain questions of the Homeowner and listened to his responses. The Tribunal noted the position of the Homeowner with regard to each of the alleged breaches of the Code and in this decision will deal with each alleged breach of the Code separately.

Section 2.1 “Providing false or misleading information”

7. The Homeowner raised a complaint in respect of an alleged breach of section 2.1 of the Code. This section of the Code indicates that a Property Factor must not provide information which is misleading or false. The Homeowner indicated that he had received an invoice from the Property Factor which was dated 17 December 2018. The invoice was for the sum of £106.67 and the only details provided in the invoice were “Project Management”. The Homeowner had been in contact with the Property Factor by telephone and email for a considerable period of time after receiving the invoice and was given no information which satisfied him as to the veracity of the invoice. He indicated he had been told by Anne Adams at the Property Factor’s office that the invoice related to works that had been carried out in respect of a proposed roof repair which the owners had decided not to carry out. He was advised that the invoice was a project management invoice to cover the Property Factor’s costs. The Homeowner has asked for a breakdown of the invoice and had done so over several emails and telephone conversations between February 2019 and August 2019.
8. The Tribunal noted that in their written representations, the Property Factor indicated that they had issued a pro-forma invoice for proposed roof works on 23 January 2015. They claimed that the majority of Homeowners paid that pro-forma invoice indicating approval to proceed with work but that the work was not carried out and that further quotations were obtained in October

2017. No explanation is tendered for the invoice which is dated December 2018 nor is any explanation given for the alleged "project management". The written representations from the Property Factor signally fail to answer the complaint raised by the Homeowner.

9. The Homeowner believes that this invoice was only issued after the Property Factor was removed from their position as Factor. That happened in late 2018. The Homeowner believes this invoice was issued by the Property Factor simply to allow them to avoid the return of various floats which had been paid by owners within the tenement. The Homeowner indicated he had paid a float of £50 and this had not been returned. This forms part of another complaint which will be covered later in the decision.
10. The Tribunal, having listened to the Homeowner and considered the representations (such as they were from the Property Factor) accepts the invoice dated 17 December 2018 is misleading in that it relates to work for which no justification has been produced and the Tribunal suspects no work was ever done. Accordingly the Tribunal finds that the Property Factor is in breach of section 2.1 of the Code.

Section 2.4 "Seeking prior approval before carrying out work"

11. The Homeowner indicated that he had given no approval, written or otherwise, to the Property Factor to incur charges over and above the management fee that was being paid to them while they were employed as Factor. He was unaware of any proposed roof works as set out in the written representations. The Tribunal noted that in respect to this complaint, the Property Factor's written representations simply refer to their previous answer. No detail is given at all of any approval being sought from this Homeowner in respect of any repairs. Given the Property Factors have issued an invoice which relates to work which is beyond the agreed service the Tribunal accept the Homeowner's view that the Property Factor has attempted to charge for work for which they have had no prior written approval. Accordingly the Tribunal find that the Property Factor is in breach of section 2.4 of the Code.

Section 2.5 "Responding to enquiries and complaints within prompt timescales"

12. The Homeowner indicated that when he had received the invoice he had immediately queried it. He had made numerous telephone calls to the Property Factor in the period between February 2019 and August 2019. He provided evidence of various emails which had been passed between the parties. The written representation from the Property Factor indicated that they had "endeavoured to answer the Homeowner's queries as fully as possible".
13. The evidence provided by the emails clearly contradicts the assertion in the written representations from the Property Factor. The emails demonstrate that the Property Factor

consistently ignored the reasonable request of the Homeowner to provide further information with regard to the invoice. The Property Factor has failed to provide any supporting evidence to justify the invoice dated 17 December 2018. The Property Factor has failed completely to deal with enquiries and complaints within prompt timescales. The Tribunal finds that the Property Factor is in breach of section 2.5 of the Code.

Section 3.2 “Returning funds at the point of settlement of final bill”

14. The Homeowner indicated that the Property Factor was removed from their office in November or December 2018. He has never received a final account. It is now December 2019.
15. The written representation from the Property Factor indicates “as we consider that the Homeowner has an outstanding balance due to us of £106.67, the float would not be refunded until the outstanding balance is cleared”. The Property Factor does not explain why they did not issue a final bill in which they deduct the float from the alleged amount which they claim is due. That would appear to be what is required in terms of the Code. The Homeowner has spent months asking for the return of his float. No attempt has been made by the Property Factor to provide a final accounting in respect of their management of this property.
16. Accordingly the Tribunal has no hesitation in finding that the Property Factor is in breach of section 3.2 of the Code.

Section 6.6 “Making documents available for inspection”

17. The Homeowner indicates that he has repeatedly asked for documents which prove that project management work was carried out to justify the account which has been sent to him. He has asked for that constantly over a period of more than six months. The written representations from the Property Factor indicate “copy quotations are available on request”. There seems to be no explanation why these copy quotations were not forwarded to the Homeowner by email nor why he was not invited to attend at the Property Factor’s office to view them. The Code is clear that the documentation should be made available for inspection on request free of charge. The Code makes it clear that if paper or electronic copies are requested a reasonable charge could be made for providing them subject to notifying the Homeowner of this charge in advance. The Property Factor has taken neither of those steps.
18. Again the Tribunal have no hesitation in finding that the Property Factor is in breach of section 6.6 of the Code.

Discussion & Decision

19. The Tribunal note that the Homeowner attended the hearing on 6 December. He answered the questions from the Tribunal in a measured and restrained fashion. He made no attempt to exaggerate his complaints and stated quite clearly to the Tribunal that if the Property Factor could demonstrate that the account sent in December was correct he would pay it, subject to deduction of the float. He indicated to the Tribunal that he had been pursuing this matter for almost a year and had got nowhere.
20. The Tribunal noted that the Property Factor, despite indicating they would attend the hearing, had failed to attend and had failed to be represented. The Tribunal is aware of the history of other complaints made against this Property Factor to the Tribunal and the numerous Property Factor Enforcement Orders which have been made against it. The Tribunal is also aware that there have been numerous decisions made against this Property Factor indicating their failure to comply with Property Factor Enforcement Orders.
21. The Tribunal are also aware that a decision was made by the Scottish Ministers to remove the Property Factor from the Register of Property Factors but that decision is currently subject to an appeal and a hearing in respect of that will take place later in December 2019.
22. The Tribunal noted that the Homeowner was seeking a Property Factor Enforcement Order to be made. The Homeowner indicated that the Property Factor was no longer the Factor for the property and accordingly there was no particular merit in the Tribunal making any Order for any specific actions to be taken by the Property Factor. He was simply seeking a payment in respect of the inconvenience which he had suffered in dealing with this matter. He reasonably estimated he had spent about 15 hours in telephoning the Factor, emailing the Factor, preparing the Application and attend the hearing. He indicated that his earnings at his job would be approximately £30 per hour.

Decision

23. The Tribunal have found that the Property Factor is in breach of 5 separate sections of the Code. The Tribunal have no hesitation in deciding that a Property Factor Enforcement Order should be made. A draft of that proposed Order is attached to this decision. It is effectively an Order that the Property Factor should make a payment of £600 to the Homeowner.
24. The parties are invited to make representations to the Tribunal in respect of this proposed Order in terms of section 19 (2) of the 2011 Act. Such representations should be remitted to the Tribunal within 14 days of the date of intimation of this Decision.

Right of Appeal

25. In terms of Section 46 of the Tribunal (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 to appeal within 30 days of the date the decision was sent to them.

18 December 2019

James Bauld
Legal Member

Date