



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/22/2829 & FTS/HPC/PF/22/3767

Re: Property at 48 Patriothall, Edinburgh EH3 5AY ("the Property")

Parties:

Mrs Caroline Brown, 48 Patriothall, Edinburgh EH3 5AY ("the Homeowner")

**James Gibb Residential Factors, 4 Atholl Place, Edinburgh EH3 8HT ("the
Property Factor")**

Tribunal Members:

Neil Kinnear (Legal Member) and Kingsley Bruce (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor had failed to comply with sections 2.1, 2.5 and 6.1 of the Code of Conduct for Property Factors (effective from 1 October 2012) and as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal determined that the Property Factor had failed to comply with sections 2.1, 2.7, 6.4 and 7.1 of the Code of Conduct for Property Factors (effective from 16 August 2021) and as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[3] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £750.00 in respect of the Property Factor's failure to comply with the Code of Conduct for Property Factors as required by Section 14(5) of the *Property Factors (Scotland) Act 2011*

[4] The Decision of the Tribunal was unanimous.

Introduction

[5] In this Decision 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 from 1 October 2012) is referred to as "the 2012 Code"; the *Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors* (effective from August 2021) is referred to as "the 2021 Code"; and *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended are referred to as "the Rules".

[6] The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

[7] By applications dated 4th August 2022 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act, and had failed to comply with sections 2.1, 2.5 and 6.1 of the 2012 Code and sections 2.1, 2.7, 6.1, 6.4 and 7.1 of the 2021 Code as required by section 14(5) of the 2011 Act.

[8] On 29th August 2022 and 1st November 2022, a Convenor on behalf of the President accepted the applications and referred them to a Tribunal for a hearing. By letters dated 29th November 2022 both parties were notified that a hearing by conference call would take place at 10.00 am on 16th February 2023.

[9] A Hearing was held on 16th February 2023 by conference call. The Homeowner participated, and was not represented. The Property Factor's Mr Bodden and Miss Docheva participated, and was not represented.

[10] The Tribunal and the parties discussed the various alleged breaches, which resulted in a resolution between the parties that the Property Factor had failed to comply with sections 2.1, 2.5 and 6.1 of the 2012 Code and sections 2.1, 2.7, 6.4 and 7.1 of the 2021 Code as required by section 14(5) of the 2011 Act. All of these breaches related to poor communication by the Property Factor over a prolonged period in relation to the progressing of urgent roof repairs, and failures to comply with its own complaints procedures.

[11] That left the question of what order the Tribunal should make, upon which the parties did not specifically agree. The Property Factor in its submissions to the Tribunal conceded that it should make payment of compensation in respect of its failures to the Homeowner of the sum of £750.00. That sum appeared to the Tribunal to be reasonable compensation to the Homeowner in respect of its accepted failings, having regard to the anxiety and distress caused to the Homeowner by the Property Factor's failures and in respect of the Homeowner's time and inconvenience in dealing with the complaints process and Tribunal proceedings.

Right of Appeal

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.

06 April 2023

Legal Member

Date