

Housing and Property Chamber First-tier Tribunal for Scotland



Decision and Statement of Reasons under Section 19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/19/0970

Re : The Fairways, Flat 6, 823 Clarkston Road, Glasgow G44 3UZ ("Property")

The Parties:-

Geraldine Stewart, The Fairways, Flat 6, 823 Clarkston Road, Glasgow G44 3UZ ("Homeowner")

Sonya Bader, 3 Bishops Gate, Wellknowe Avenue, Thorntonhall, Glasgow G74 5AR ("Homeowner's Representative")

McCarthy & Stone, Retirement Lifestyles Limited, 4th Floor, 100 Holdenhurst Road, Bournemouth, Dorset BH8 8AQ ("Factor")

Tribunal Members:

Joan Devine – Legal Member

Mary Lyden – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factor has not complied with the Code of Conduct for Property Factors as required by section 14 of the Property Factors (Scotland) Act 2011. In all the circumstances the Tribunal proposes to make a Property Factor Enforcement Order ("PFEO").

Introduction

1. 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 is referred to as "the Code" and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"
2. Following on from the Homeowner's application to the Tribunal which comprised documents received in the period 28 March to 3 May 2019 ("the Application"), the Convener, with delegated powers under section 96 of the Housing (Scotland) Act 2014, referred the Application to the Tribunal on 10 May 2019. The Tribunal had available to it, and gave consideration to, the

Application, copy emails and letters provided by the Homeowner, Written Submission provided by the Factor and the oral submissions made by both parties at the hearing.

Hearing

3. A hearing took place at the Glasgow Tribunals Centre on 9 July 2019. The Homeowner attended and was accompanied by her daughter, Sonja Bader who acted as her representative. The Factor was represented by Nicola Brady, Area Manager and Caroline Sanderson, Regional Manager. Moira Stalker was in attendance as an observer.
4. The Tribunal noted that at section 7 of the Application, which refers to the Complaint Details, the Homeowner had said that the Application was proceeding under section 7 (i) of the Code. This was also the position set out in the Homeowner's letter to the Factor of 24 March 2019. However, the Homeowner's letter of 16 April 2019 to the Factor made reference failure to comply with sections 2.2 and 2.5 of the Code. The Tribunal sought clarification of the basis on which the Application proceeded. The Homeowner's Representative clarified that the Homeowner wished the Application to proceed under sections 2.2 and 2.5 of the Code. It was confirmed on behalf of the factor that the Factor was content to proceed on that basis.

Findings in Fact

1. The Property is a flat within a block of 28 at 823 Clarkston Road, Glasgow G44 3UZ ("Development").
2. The Factor performs the role of the property factor of the Development.
3. The Homeowner has resided at the Property since September 2014.
4. The Property Manager employed by the Factor at the Development is Carol Elliot.
5. The Homeowner attended a meeting on 20 June 2018 with Alison Downie, area manager of the Factor. Sonja Bader and Moira Stalker were also in attendance. At the meeting the Homeowner made a complaint.
6. The Homeowner attended a meeting on 28 January 2019 with Nicola Brady and Caroline Sanderson of the Factor. Carol Elliot, property manager was also in attendance.

Summary of Submissions

1. Mrs Bader made submissions on behalf of the Homeowner throughout the hearing.
2. Mrs Bader told the Tribunal that the Property is one of 28 flats in the Development known as The Fairways ("Development"). The Homeowner had resided at the Property since September 2014. She explained that each flat within the Development has its own lounge and kitchen. There is however a communal lounge and communal kitchen available in the common areas of the Development. There is a communal laundry which is shared by all residents within the Development.
3. Mrs Bader told the Tribunal that the Homeowner had lived happily in the Property until the end of 2017. At that point she started to notice a slight difference in manner of the housing manager, Carol Elliott. The Homeowner detected a change of atmosphere. Mrs Bader told the Tribunal that the incident which gave rise to the subject matter of the Application occurred in April 2018. In April 2018 the Homeowner noticed that there were some glasses missing from the communal kitchen. When she asked Carol Elliott about it, Carol Elliott said that there had never been glasses in the communal kitchen and said that she knew nothing about glasses missing. The Homeowner said that she felt intimidated by the way Carol Elliott spoke to her on that occasion. She felt that she had to leave the room as she felt so intimidated by the property manager, who had raised her voice to the Homeowner. In addition, thereafter there was a definite noted change in the attitude of the property manager towards her thereafter. Mrs Bader said that it later became apparent that there had been glasses in the communal kitchen and Carol Elliott was made aware of that. Carol Elliott did not however apologise to the Homeowner for the way that she had spoken to her.
4. Mrs Bader confirmed that the incident in April 2018 regarding glasses missing from the common kitchen was the only incident which she founded upon as regards breach of section 2.2 of the Code.
5. Mrs Bader said that she requested a meeting with the area manager, Alison Downie. This took place on 20 June 2018. It took place at another development owned by the Factor. Mrs Bader said that at the meeting Alison Downie said that she was aware that there were issues at the Development. She was aware of the incident in April 2018. She said that she agreed that Carol Elliott required some additional training. She undertook to investigate.
6. Mrs Bader said that she wanted the Property Manager to adhere to her working hours. She consistently works longer hours. If she was going to be absent she should place an appropriate notice on the communal notice board well in advance. Instead, the Property Manager's practice is to put a notice on the door the night before advising of an absence the next day. Mrs Bader said that the long hours were intimidating for homeowners. It also made them query what Carol Elliott was doing during these long hours. She did not appear to be able to achieve what was required of her even though she was working long hours.
7. Mrs Bader told the Tribunal that on 28 September 2018 another owner, Mrs Morton, came to the Homeowner to say that she had received a note through

her door at 3.30 pm that day saying that the visitor room required to be made ready for a guest having been used by another guest. Mrs Bader said that this was normally the responsibility of the Property Manager. Mrs Bader was concerned that this request was being made very late in the day and the request was being made of elderly homeowners. She said that homeowners duly cleaned the visitor room and changed the linen which was soiled. Mrs Bader said that the Property Manager's hours were meant to be 9.30 am to 2.30 pm. On 28 September Carol Elliott had been at the Development since 7.00 am but it was not until 3.30 pm that she left a note for Mrs Morton regarding cleaning the visitor suite.

8. Mrs Bader said that her concern was that the issues which she had raised with the Factor did not seem to be being dealt with and the complaint being left unresolved had caused a bad atmosphere in the development. Nicola Brady stepped in when Alison Downie was off sick. Mrs Bader said that there had clearly been a breakdown in communication. She told the Tribunal that if managers had dealt with the Homeowner's complaint properly on 20 June 2018 there would have been no need for the application to the Tribunal. She said that the Homeowner had been very upset by the whole situation. Mrs Bader said that the period between June and September 2018 was critical. She noted that the Factor had not retained a written record of the meeting on 20 June.
9. Mrs Bader said that the Homeowner's complaint was about management of staff. The Homeowner owns the Property and pays a Service Charge but is treated as though she is a resident in a care home. Mrs Bader said that the Homeowner does not feel that she is treated with respect. Mrs Bader told the Tribunal that when the relief managers were in place the difference in management style became apparent. Mrs Bader referred to the emergency alarms requiring to be checked quarterly and yet had not been checked since January 2019.
10. Mrs Bader was asked to clarify specific issues which lead the Homeowner to feel that she was treated as though she was living in a care home. Mrs Bader cited instances as follows:
 - Carol Elliott puts notices up in the laundry explaining how to work the machinery.
 - Carol Elliott rearranges things in the communal kitchen.
 - Carol Elliott buys extra towels for the communal kitchen.
 - Carol Elliott is always present at the Development.
11. Mrs Bader noted that her mother, the Homeowner, had been told not to discuss the issues raised with other homeowners and yet, other homeowners at the Development appeared to know about the issue. Mrs Bader therefore questioned who had told them.
12. As regards the remedy sought, Mrs Bader said that the Homeowner does not want Carol Elliott sacked. She did however think that she should be moved to another development run by the Factor. Mrs Bader said that Carol Elliott has

indicated to other residents that working at the Development has caused her to be ill. Mrs Bader said that it would therefore appear to be for the benefit of all if she worked elsewhere.

13. Mrs Bader told the Tribunal that Nicola Brady met with the Homeowner on 22 January and advised her that Carol Elliott would be returning to work on 23 January. Mrs Bader said that the Homeowner had consistently said that she wished an apology. Mrs Bader spoke to Human Resources at the Factor expressing the view that Carol Elliott should not be allowed to return to work at the Development until she had given an apology to the Homeowner.
14. Mrs Bader explained that a meeting was arranged with the Factor for 28 January 2019. This was to take place off site. It was arranged for the meeting to take place in the neighbouring care home. However, the meeting was arranged for a room on the third floor of the building. The lift was out of order. Mrs Stalker was attending the meeting and she could not manage the stairs. In those circumstances, the meeting took place at the Development in the communal lounge. The meeting was attended by the Homeowner, Mrs Stalker, Nicola Brady, Caroline Sanderson, Carol Elliot and Mrs Morton. Mrs Bader said that at the meeting Carol Elliott apologised to Mrs Morton who accepted the apology. She then refused to apologise to the Homeowner and in referring to the incident in April 2018 said that it was the Homeowner who had raised her voice to Carol Elliott. Mrs Bader was not present at the meeting in January 2019.
15. Nicola Brady told the Tribunal that the Factor takes every complaint seriously. She noted that it was clear from the papers provided that the complaint had been investigated at every level over a number of months. She invited the Tribunal to note that the timeline produced as part of the Factor's written submission showed that the matter was given a lot of attention.
16. Nicola Brady referred to the meeting on 28 January 2019 and said that it was a very detailed meeting. She said that the meeting dealt with every complaint. She told the Tribunal that Carol Elliott admitted at the meeting that she sometimes showed poor judgment. She said that Carol Elliott apologised in respect of every issue raised. Nicola Brady told the Tribunal that the only action minuted after the meeting was that it was agreed that everyone would greet each other in a friendly manner. She said that Richard McLaughlin, a relief manager, had reported that since the meeting when he has been at the Development the Homeowner does not appear to acknowledge Carol Elliott. Nicola Brady told the Tribunal that the Factor had put in place support for Carol Elliott. As regards the location of the meeting, Nicola Brady told the Tribunal that the Factor had wanted the meeting to be off site. This had not been possible. She said that the Factor took every step to ensure the meeting was conducted in a confidential way.
17. Nicola Brady said that the Factor requires to consider other homeowners at the Development. She said that she has received unsolicited support for Carol Elliott from other residents at the Development. Nicola Brady said that the Factor also needs to be mindful of their own staff. She said that there has been a visible physical change in Carol Elliott. Nicola Brady told the Tribunal that there are two area relief managers. Since Carol Elliott's return to work in

January 2019 Nicola Brady had sought to ensure Carol Elliot is supported by the area relief managers.

18. Nicola Brady explained that the Factor often carries out anonymous surveys to obtain feedback on specific issues but the Homeowner had asked that there should not be a specific survey at the Development.
19. The Tribunal asked Nicola Brady if the Factor carried out regular surveys to obtain feedback. She said that they did and these were carried out by an independent company on a UK wide basis. Caroline Sanderson told the Tribunal that the Factor has a national regular survey. As matters presently stand it is not carried out annually. The Factor attempting to establish a regular pattern. She told the Tribunal that if there is a specific issue then a separate survey may be run.
20. As regards the hours worked by Carol Elliott, Caroline Sanderson noted the concerns raised. She told the Tribunal that the longer hours worked by Carol Elliott are unpaid. Nicola Brady said that she had asked Carol Elliott to call her any time she required to work additional hours. This had taken place. She told the Tribunal that Carol Elliott always had an a specific reason for working late such as an emergency call had been activated..
21. Reference was made to the timeline produced with the Factor's submission. Mrs Bader confirmed that the timeline was broadly accurate. She did however note that in her view it showed that it took too long for the Homeowner's complaint to be dealt with. By reference to the timeline Nicola Brady said that the Factor could not take steps to resolve the matter while Carol Elliott was off work.
22. The Tribunal asked Nicola Brady about training carried out for staff such as the property managers. Nicola Brady said that the Factor had recently completed a large piece of work around training dealing with professional boundaries. Carol Elliott had undertaken the e-learning element of the training and had also had a one to one session in February 2019 Nicola Brady said that the Factor had a rolling training programme which covered professional boundaries and other issues such as health and safety. She also said that there was a lot of e-learning available, some of which was compulsory. She said that if a member of staff did not carry out the necessary e-learning then that was escalated. Nicola Brady said that the Property Manager attends a monthly meeting with their line manager. There is a structured proforma which forms the agenda for the meeting. In addition, Property Managers have annual reviews.
23. The Tribunal asked the Factor if they had learned any lessons from the issues raised by the Homeowner. Nicola Brady said that the last thing the Factor wants is for complaints not to be resolved. She said that the Factor would rather deal with issues early on. She said that the Factor welcomed complaints.
24. The Factor was asked about their complaints procedure. Caroline Sanderson explained that complaints are logged on a spreadsheet, reported to head office and a decision is taken as to whether the complaint relates to management services or to buildings.
25. When asked by the Tribunal when the issue raised by the Homeowner was logged on the spreadsheet as a complaint Nicola Brady said that it did not seem to ever have been raised as a formal complaint. She explained to the Tribunal

that the way to raise a formal complaint was by completing a form online. She told the Tribunal that the Factor did however seek to manage complaints at a local level. Caroline Sanderson told the Tribunal that the complaint database is now more structured than it was. The information on the database is fed back to the Board.

Remedy Sought

26. In the Application the Homeowner said that she wished the Property Manager removed from the Development. The Tribunal asked Mrs Bader what remedy was sought. She said that the Homeowner wished to receive a sincere apology from Carol Elliot in respect of the incident in April 2018. She also wished to be treated fairly and with respect. She also wished the Factor to be clearer in communications.

The Code

27. Section 2.2 of the Code states:

"You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action)."

28. Section 2.5 of the Code states:

"You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (section 1 referred)."

Tribunal Findings and Reasons for Decision

29. The Homeowner's basis for complaint under Section 2.2 of the Code was the incident described in submissions which took place in April 2018 between the Homeowner and Carol Elliot. The Tribunal determined that there was insufficient evidence before them to enable them to find that the incident constituted a breach of Section 2.2 of the Code.

30. The Homeowner's basis for complaint under Section 2.5 of the Code was the delay in dealing with the complaint raised at the meeting on 20 June 2018.

31. The Tribunal noted that the Factor had in place a complaints policy, as required by Section 7.1 of the Code. The Homeowner's complaint had not been dealt with in accordance with that policy. The Tribunal understood that the policy had

been "extended". It noted however that the policy produced lacked clarity. The tribunal were of the view that it was essential for the Factor to ensure their procedures allowed for complaints to be recognised as such at the earliest opportunity. Thereafter, investigation and response to complaints should be monitored and reviewed. It may be that training required to be carried out for members of staff of the Factor in that regard.

32. The Factor had said that the Homeowner's complaint did not seem to have been raised as a "formal" complaint and had not been entered on the database retained by the Factor in respect of complaints. The submission produced by the Factor contained a timeline which referred to the purpose of the meeting on 20 June 2018 as being to "discuss their complaints". It was therefore apparent that a complaint had been made by the Homeowner at the latest on 20 June 2018. The first written response to the complaint produced to the Tribunal was an email dated 3 October 2018 which indicated the complaint would be investigated. It was apparent from the timeline that both Alison Downie and Carol Elliot were absent during the period 29 June to 16 October 2018. The complaint should however have been recorded and been dealt with notwithstanding the absence of staff members.

33. In all the circumstances the Tribunal determined that the Factor should pay compensation of £250 to the Homeowner in respect of the breach of the Code.

Proposed Property Factor Enforcement Order

34. 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

35. 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.

J Devine

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Signed 
Joan Devine, Legal Member

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Date


11 July 2019