

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision and Statement of Reasons in respect of an Application under Section 17 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/18/0524

**98 Boreland Drive, Glasgow G13 3DX
("the Property")**

The Parties:-

**Mrs. Marion Hillan, residing at the Property ("the Homeowner and Applicant"),
represented by Miss Angela Hillan**

**GHA (Management) Limited t/a YourPlace Property Management, Wheatley
House, 25 Cochrane Street, Glasgow, G1 1HL ("the Factor and Respondent")**

Tribunal Members:-

Patricia Anne Pryce	-	Chairing and Legal Member
Carol Jones	-	Ordinary Member (Surveyor)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Factor has complied with the Code of Conduct for Property Factors as required by Section 14 of the Property Factors (Scotland) Act 2011 ("the 2011 Act") determines unanimously that, in relation to the Homeowner's Application, the Factor has not complied with the Code of Conduct for Property Factors and has failed to carry out the Property Factor's duties.

The tribunal makes the following findings in fact:

- The Applicant is the owner of the property known as 98 Boreland Drive, Glasgow. There are four flats located in the block in which the property is located.
- The Respondent is the factor of the common parts of the building within which the property is situated.
- The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 from the date of its registration as a property factor.

- The Applicant is one of four owners of residential properties located in the block which has been managed by the Respondent since 2003.
- The property suffered damage to the roof as a result of a storm on or about 5 December 2015 causing the roof to leak continuously until the Applicant paid to have the roof repaired on or about 27 April 2018.
- The Respondent placed tarpaulin at the site of the damage of the roof to the property immediately after it suffered the damage.
- The Respondent issued a letter dated 9 August 2016 to the Applicant wherein it advised the Applicant that consent from a majority of the owners had been obtained and that the roof would be repaired within 23 days of the date of the letter.
- As at 26 April 2018, the roof remained damaged and had not been repaired.

Following on from the Applicant's application to the First-tier Tribunal (Housing and Property Chamber), which comprised documents received in the period of 9 March to 27 April 2018, the Convenor with delegated powers under Section 18A of the 2011 Act referred the application to a tribunal on 31 May 2018.

Introduction

In this decision, the tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as "the 2017 Rules".

The tribunal had available to it, and gave consideration to, the Application by the Applicant as referred to above, representations submitted by the Respondent by way of an email dated 27 July 2018 together with Inventory of Productions contained therein together with oral submissions made by both parties at the hearing.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 2.1, 2.3, 2.4, 2.5, and 6.1 of the Code which are referred to for their terms.

Hearing

A hearing took place in the Glasgow Tribunals Centre, 20 York Street, Glasgow on 13 August 2018.

The Applicant attended on her own behalf. The Applicant's daughter, Miss Angela Hillan, attended as the representative for the Applicant.

The Respondent was represented by Miss Donna Baillie and Mr Tom Cuthill, both employees of the Respondent.

Preliminary Issues:-

1. The tribunal noted that the Applicant had submitted further representations by emails dated 3 and 7 August 2018. These emails referred to an issue with the Applicant's bedroom ceiling and asbestos. These were not matters referred to and raised within the present application. The tribunal determined unanimously that it would not consider these further representations as they raised a fresh matter. The parties accepted this determination and the Applicant noted that this additional matter could be the subject of a further application.

Breach of Section 2.1

Miss Hillan submitted that the Respondent had provided false and misleading information to her mother in the letter of 9 August 2016 wherein the Respondent had stated that the necessary repairs to the roof would be undertaken within 23 days of the date of the letter yet the repairs remained outstanding until 27 April 2018 until Mrs Hillan, the Applicant, instructed the common repairs herself and paid £2,500 to have the roof fixed.

The Applicant submitted that shortly after receiving the letter in 2016, she noticed that her neighbours' part of the roof was being fixed. When she asked the workmen why her side of the roof was not being fixed, they advised that they had not been instructed to conduct repairs on her side of the roof. They gave her a job number and she checked this out and discovered that her roof was not going to be repaired, despite the terms of the letter of 9 August 2016. She had found this extremely upsetting. The roof damage caused a continual leak in to her bedroom throughout the whole period until she instructed and paid for the whole repair herself in April 2018. This had caused her great distress and she had required to attend her GP whereupon she received sleeping tablets. Her husband, who is 78 years' old, had to climb up ladders every other day throughout this period to clear out the gathered water to ensure that the electrics in the property were not damaged. This had affected him too as he had undergone a knee replacement operation and had suffered from bowel cancer. Her bedroom ceiling was still damaged and the damage had continued to worsen from 2015 onwards, with parts of the ceiling crumbling. She had to Hoover almost every day to remove the debris from this. In short, both she and her husband had not been able to properly enjoy their property for over two years.

Miss Baillie accepted that the letter of 9 August 2016 had been confusing. In short, she confirmed that the consent of the owners had not been obtained for the repair reported by Mrs Hillan. She also confirmed the repair carried out at that time related to a different issue concerning the roof at the central chimney of the 4 in a block property and not the problem reported by Mrs Hillan relating to the roof at the

chimney on the hip end which was causing the leak above number 98 Boreland Drive. However, she accepted that the terms of the letter stated that the repairs to the Applicant's side of the roof would be undertaken. She accepted that there was no intention to mislead but that the effect was that the information contained within that letter had been entirely misleading. She offered a full and frank apology to the Applicant at the hearing. In addition, both she and Mr Cuthill explained that the Respondent had taken a lot of learning from the present case and had, as a result, changed its procedures. In particular, the Respondent now relies far less on standard pro forma letters when dealing with repairs issues.

The tribunal noted that, although the terms of the letter of 9 August 2016 were entirely misleading. As a result of this letter, the Applicant had fully expected her roof to be repaired and had even been provided with a timescale within which the repairs would be commenced.

Given this, the tribunal finds that the Respondent breached Section 2.1 of the Code.

Breach of Sections 2.3 and 2.4

Miss Hillan confirmed that she did not wish to insist on these breaches of the Code as the Respondent had provided contact details and did have the relevant procedure in place, albeit it had not been followed in this case. She confirmed that she had misunderstood what these sections of the Code involved.

Breach of Section 2.5

Miss Hillan submitted that, as stated within the application, the responses of the Respondent were generally very poor, not made timeously and were intermittent at best. She advised that, despite complaining to the Respondent, the Respondent had made no effort to resolve the case until the present hearing had been arranged and intimated.

Miss Baillie fully accepted that the Respondent had breached this section of the Code. She further apologised to the Applicant that the Applicant was not afforded the opportunity to go through the Respondent's complaints' procedure.

In light of the foregoing, the tribunal finds that the Respondent breached Section 2.5 of the Code.

Breach of Section 6.1

Miss Hillan accepted that the Respondent had procedures in place allowing its customers to notify re repairs etc. However, she advised that the Respondent had failed to notify the Applicant of the progress of the work. In short, the Respondent had not provided the Applicant with any further information about the repairs after the letter of 9 August 2016.

Miss Baillie fully accepted that the Respondent had failed to keep the Applicant informed in respect of these repairs. She accepted that the Respondent had breached this section of the Code.

In light of the foregoing, the tribunal finds that the Respondent breached Section 6.1 of the Code.

Failure to carry out the property factor's duties

The Applicant complained about the failure of the Respondent to carry out these duties by reference to pages 8, 10, 26 and 28 of the Respondent's written Statement of services ("WSS") which are produced by the Applicant and referred to for their terms. Miss Hillan confirmed that the Applicant was no longer insisting on the reference to page 8 (no insurance) as she accepted that insurance had always been in place.

Miss Hillan submitted that in terms of page 10, she opined that the Respondent had failed to consider alternative solutions in this case as there was a risk to the health and safety of her parents. In relation to page 26 of the WSS, Miss Hillan submitted that she had submitted two complaints which had remained unanswered. The Respondent had failed to follow its own complaints' procedure.

Miss Baillie confirmed that she fully accepted that the Respondent had failed to carry out its property factor's duties in terms of pages 10 and 26 of the WSS. She explained that the Respondent had not considered any alternative options here when it could not obtain the consent of the majority of the owners when it should have done. The Respondent could have done so much more. In addition, she fully accepted the failure of the Respondent to follow its own procedures when dealing with the Applicant's complaints. However, she submitted that the Respondent had learned from the present case and has implemented new procedures to try and ensure that a case such as the present one did not arise ever again.

As page 28 refers to the Code of Conduct the tribunal considered this aspect to have been covered by the above references to the specific code breaches which was accepted by the Applicant.

The Applicant confirmed that the last almost three years of her life had been very badly affected by the Respondent's failures. Her health had suffered badly. She had been consumed by this whole situation and could not escape it as it affected her bedroom. She had also been worried about the effect that this was having on her husband. This situation had cost her a lot of money, with the repairs along costing her £2,500. She confirmed that she had further costs in terms of heating and fuel and loss of enjoyment of her property.

The Respondent did not take issue with the Applicant's views as noted above.

In light of the foregoing, the tribunal finds that there was a failure by the Respondent to carry out the property factor's duties as the Respondent had

failed to consider alternative solutions as outlined by its own WSS together with failing to implement its own complaints' procedure.

Observations

The tribunal noted that the Respondent was readily accepting of its breaches of the Code and its failure to carry out its duties. The tribunal also noted that the Respondent had attempted, in the five weeks prior to the hearing, to reach an amicable settlement with the Applicant. It is not unsurprising, however, in light of almost three years of broken promises and inaction on behalf of the Respondent, that the Applicant chose to proceed with the hearing. She did not have much faith left in the Respondent to resolve matters.

However, the tribunal noted that the Applicant had required to ensure a lengthy and extremely stressful situation. The Applicant required to resort to instructing and paying for these common repairs herself. The Applicant had required to pay out a substantial sum of money and had been subjected to both loss and inconvenience throughout a period of two and a half years. She had suffered a loss of enjoyment of her property throughout that time. This situation had caused her a great deal of distress. The tribunal also noted that the Respondent accepted in evidence that it would be happy to pay any costs it was required to pay. The tribunal opined that the sum of £5,000 is a fair and reasonable sum which the Respondent should be required to pay to the Applicant.

Reasons for Decisions

Section 19(1)(b) affords the tribunal discretion as to whether or not to make a Property Factor Enforcement Order. The tribunal opined that in light of all of the matters noted in this decision, such an order should be proposed. The Respondent fully accepted the breaches and failures as noted above.

Property Factor Enforcement Order

The tribunal proposes to make the following property factor enforcement order:-

Within 28 days of the date of communication to the Respondent of the property factor enforcement order, the Respondent must:-

1. Pay to the Applicant the sum of £5,000.
2. Provide documentary evidence to the tribunal of the Respondent's compliance with the above Property Factor Enforcement Order by sending such evidence to the office of the First-tier Tribunal (Housing and Property Chamber) by recorded delivery post.

Section 19 of the 2011 Act provides as follows:

“(2) In any case where the tribunal proposes to make a property factor enforcement order, they must before doing so—

- (a) give notice of the proposal to the property factor, and
- (b) allow the parties an opportunity to make representations to them.

(3) If the tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the tribunal must make a property factor enforcement order.”

The intimation of this decision to the parties should be taken as notice for the purposes of section 19(2) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal's office by no later than 14 days after the date that this decision is intimated to them. If no representations are received within that timescale, then the tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

In terms of section 46 of the Tribunals (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.

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Chairing Member

13 August 2018

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Date

