

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision with Statement of Reasons by the First-tier Tribunal for Scotland (Housing and Property Chamber) in an Application under Section 17 of The Property Factors (Scotland) Act 2011 “The Act”

Reference number: FTS/HPC/PF/23/1977

Re: Property at 47E Rosemount Grove, Leven
 (“the Property”)

The Parties:

Mr William Hunter, 47E Rosemount Grove, Leven (“the Applicant”)

Hacking and Paterson, 2 Redheughs Rigg, South Gyle, Edinburgh (“the Respondent”)

The Tribunal comprised:-

Mr Andrew McLaughlin-

Legal Member

Mr Jane Heppenstall -

Ordinary Member

Background

[1] The Applicant seeks a finding that the Respondent has breached their obligations under the Property Factor Code of Conduct "The Code". The Application alleges that the Respondent has breached their obligations in respect of

"The Overarching Standards of Practice;".

"Communications and Consultation;"

"Complaints Resolution."

[2] A previous Case Management Discussion took place on 31 October 2023. It had been decided that a Hearing would be required to determine matters. The Respondent had set out their formal response to the Application denying breaching the grounds and setting out their position and attaching various documents. In advance of that Case Management Discussion.

[3] The Applicant accused the Respondent of *" a lack of honesty by H&P staff in regard to supply of services to homeowners at 47 Rosemount Grove (see attached)"* The attachments had set out a chain of correspondence and complaints that identified the particular grievance as relating to the Respondent allegedly imposing a professional outsourced cleaning service for the common stairwell of the tenement building in which the Property is situated. There were then related complaints raised in respect of the manner in which the Respondent allegedly handled the Applicant's complaints.

The Hearing

[4] The Application then called for an Evidential Hearing at 10 am on 16 February 2024 at The Vine Conference Centre, Dunfermline. The Applicant was personally present. The Respondent was represented by their own Ms Epton.

[5] Neither party had any preliminary matters to raise. The Tribunal began hearing evidence. Each party had the opportunity to cross-examine the other and the Tribunal asked questions throughout. After hearing evidence each party then had the chance to make closing submissions. After hearing parties, the Tribunal makes the following findings in fact.

Findings in Fact

- I. *The Applicant resides at 47E Rosemount Grove, Leven. This property is part of a tenement building which is managed by the Respondent as a Property Factor within the meaning of the Property Factors (Scotland) Act 2011.*
- II. *It was brought to the Respondent's attention in early 2023, that there might be a desire for an external cleaning service to clean and maintain the common parts including the stairwell of the tenement building in which the Property is situated.*
- III. *The residents ultimately objected to this and the idea was never taken forward.*

- IV. *The Applicant has subjected the Respondent to a ream of baseless complaints regarding this matter. The Applicant has effectively harassed the Respondent about the minutia of how they went about canvassing the desire for a stair cleaner even long after the idea was rejected by the occupants and abandoned by the Respondent.*
- V. *The Applicant has phoned the Respondent on numerous occasions, ostensibly to discuss the matter, but has effectively just been harassing them. The Applicant has been rude and unpleasant to the Respondent's staff and unpleasant and spiteful in his communications with them.*
- VI. *The Applicant's baseless complaints, which resemble a never-ending series of emails regarding ever evolving matters, have been handled entirely appropriately by the Respondent.*
- VII. *The Respondent has gone above and beyond their obligations and would have been entirely justified in simply ignoring the Applicant's continuous communications.*
- VIII. *The Respondent has not breached any Section of the Code and this Application has manifestly zero merit in it.*

Note:-

[6] The Tribunal began by hearing evidence from the Applicant. He began by reading out a prepared statement which, on the face of it, set out his grievances quite succinctly. He spoke about how the Respondent had imposed a cleaning contract that the residents didn't want and accused them of deceiving everyone in an attempt to have a cleaner put

in place against the wishes of the occupants of the building. He speculated that it might be for some financial gain but wasn't sure about their motives.

[7] The Tribunal had had the benefit of reading the Respondent's representations in advance of the Hearing. The Tribunal then heard from Ms Epton in response. It was from that point that the conduct of the Hearing unexpectedly took a turn for the worse.

[8] Ms Epton, for reasons unknown, seemed to take great offence at a simple instruction at the outset of her evidence from the Legal Member. She had simply been asked to tell the Tribunal her side of things about the cleaning contract. She incongruously challenged the Legal Member "*not to interrupt her*". The Legal Member hadn't interrupted her. The Legal Member had sought to assist her in the presentation of her evidence because when she was invited to start giving her own evidence in response to the Application, she had looked perplexed and unsure of what she was supposed to do. She then became defensive and exasperated all of a sudden. Her answers were tetchy and defiant. It was most unusual as the Tribunal had simply expected that she would take the opportunity to tell the Tribunal what had happened with the cleaning contract.

[9] Ms Epton's demeanour then clearly influenced the Applicant and both parties then became irascible. They spoke over each other. They interrupted and both needlessly made the atmosphere unpleasant for all.

[10] But it was only in the tetchy exchanges between the parties that it was revealed that the no cleaning contract ever actually ever was put in place by the Respondent and that it had been abandoned after opposition by the residents of the tenement.

[11] In the whole evidence given by the Applicant, reference to this was conspicuous by its absence. Not only that, but in the written response submitted by the Respondent this was not mentioned at all. There was one copy of a letter, deep within the bundle, which appeared to inform residents that the cleaning contract was not to be taken forward. But the Tribunal was astonished that this key fact was not actually mentioned once by the Respondent in their actual written representations, nor in the evidence given by Ms Epton, nor was it mentioned in the Applicant's evidence. It ought to have been centre stage from the get-go.

[12] If Ms Epton had simply followed the Tribunal's instruction to tell the Tribunal about the cleaning contract from her side of things at the start, then much time would not have been wasted. When this fact came out the Tribunal asked both parties to confirm their understanding of this.

[13] This having been done, the Applicant's allegations as set out in the Application are bizarre. It seems that the Respondent canvassed the possibility of a cleaner, it was opposed by the Residents and the idea was taken no further thereafter.

[14] Nothing about that, including all the emails pointed to by the Applicant, gave the Tribunal the slightest concern that there had been any breaches of the Code. The Applicant's fixation with this long after the idea was dropped seems hard to understand.

[15] Both parties gave conflicting accounts of phone calls between the parties and other employees of the Respondent. This was relevant to the Applicant's allegations in respect of their complaint handling obligations under the Code. The Tribunal preferred the evidence of the Respondent when she described the Applicant as being aggressive and

unpleasant in those phone calls. The Tribunal got a flavour of the Applicant's style of delivery and communication when he kept asking Ms Epton the same question over and over again despite being told to move on, and then returning to the theme again.

[16] The Applicant also admitted that he kept asking the same questions over and over on the phone because "*he wasn't getting a straight answer*". He also described his blood pressure rising during the calls. The Tribunal were in no doubt that it must have been deeply unpleasant for the Respondent's staff to have to deal with these phone calls. When he was cross-examining Ms Upton, The Applicant had to be prevented from asking questions about things that were clearly irrelevant. These included topics like whether a building over the road might be supplied with a cleaning contract if the residents wanted it and also references to things which might have been said seven years ago when the residents had previously tried to dispense with the Respondent's services before re-hiring them.

[17] After an exhaustive series of repetitive questions about this and other matters which required almost constant intervention, the Applicant was then clearly trying to make out pointedly that he was being restricted to ask questions and that he "*got the message his time was up*". This was clearly not the case. The Tribunal was just simply trying to stop Ms Upton being asked the same question over and over again. Out with the scrutiny of a Tribunal Hearing, the Tribunal could only imagine how the Applicant might have behaved to the very people whose "*wages*" he appeared to believe he "*paid*". The Applicant had said those very words in the Hearing and had also used them in an email he had sent to the Respondent.

[18] There is ample correspondence before the Tribunal in the form of emails showing that the Respondent dealt with the Applicant's complaints appropriately at all stages.

Quite what the Applicant was expecting is unclear. In any event, his expectations of what the Respondent was supposed to do for him seems entirely misguided. The Respondent did not breach the Code.

APPEAL PROVISIONS

[19] 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.

[20] Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Legal Member:

19 February 2024