



Written Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 17 of the Property Factors (Scotland) Act 2011.

Reference number: FTS/HPC/PF/23/3699

The Parties:

Mr Martin Lamond, 7 Gillburn Gate Gillburn Road Kilmacolm Inverclyde PA13 4AG ‘the Homeowner’).

James Gibb Residential Factors 65 Greendyke Street Glasgow G1 5PX. (‘ the Property Factor’’).

Property: 7 Gillburn Gate Gillburn Road Kilmacolm Inverclyde PA13 4AG (‘the Property’’).

Legal Member: Lesley Anne Ward

Ordinary Member: Nick Allan

1. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Practice in relation to paragraphs 2(7) 6(4) 6(6) and 7(1) of the 2021 Code of Practice and Overarching Standards of Practice 6.

The Tribunal made a Proposed Property Factor Enforcement Order, which should be read with this decision.

2. This was a hearing in connection with an application in terms of rule 43 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017, ‘the rules’ and section 17 of the Property Factors (Scotland) Act 2011, ‘the Act’. The Applicant attended the hearing. The Respondent was represented by Mr Alasdair Wallace Operations Director of James Gibb Residential Factors (hereafter for ease of reference referred to as ‘the Property Factor’). The hearing took place in person in Glasgow Tribunal Centre.

Background

3. A case management discussion ('CMD') took place on 14 February 2024. It was ascertained that the sections of the code at issue were 2, 6 and 7 and overarching standards 1, 2 and 6. The Tribunal made the foregoing directions.

The Applicant (ie the Homeowner) is required to provide:

- (1) Photographs of the areas he considers repairs have been outstanding in the property namely the soffits: lintels and window surround; bin store; rough casting and eaves.**
- (2) An itemised list of the repairs he considers are outstanding to the property such as the soffits, lintel and window surround; bin store; roughcasting and eaves and details of when he brought this matter to the attention to the Respondent. He should make reference to emails already submitted or alternatively provide further emails in support of his complaint.**
- (3) Evidence of management fees paid to the Respondent during his period of ownership.**
- (4) Any other documents he has to substantiate his position.**
- (5) A list of witnesses he intends to give evidence at the hearing.**

The Respondent (ie the Property Factor) is required to provide:

- (1) Details of the system of inspection used for the Property including the frequency of the inspections, who carries out the inspection and how outstanding repairs are organised and prioritised.**
- (2) Any other documents they have to substantiate their position.**
- (3) A list of witnesses who will be giving evidence at the hearing.**

The said documentation should be lodged with the Chamber no later than close of business on 14 March 2024.

4. Both parties had lodged documents in response to the directions. The Tribunal also had the following documents before it:

- Application dated 19 October 2023.
- Written statement of services.
- Applicant's complaint dated 3 September 2023.
- Respondent's submission of 19 December 2023.
- Applicant's submission of 31 January 2024 and 12 February 2024.

Preliminary matter

5. Both parties had received the documents each had lodged. From the terms of the documents lodged by both parties and the matters that were agreed at the CMD, it was clear that there was no factual dispute between the parties. The Respondent had already conceded that various aspect of the code had been breached. The Tribunal anticipated that a Property Factor Enforcement Order would be the likely outcome. The Property Factor had already made an offer to the Homeowner of a refund of part of his management fee. The Homeowner did not wish to accept the offer or to enter into negotiations, as he wanted the decision to be a matter of public record. The Tribunal proceeded with the hearing.

The Applicants' position:

6. As set out in the CMD note the Homeowner is the owner of a top floor flat in a two storey property. There are Velux windows in the roof and two roof repairs have been carried out. He made a formal complaint to the Respondent on 3 September 2023 after becoming frustrated at the lack of progress regarding other outstanding repairs to the property, some of which date back to around August 2021. The Applicant identified issues with the following:

- A bird's nest in the soffit to be removed and damage to the soffit to be reinstated.
- The wall around the bin store is damaged and likely to be dangerous
- The roughcast needs attention.
- The eaves need to be painted.
- The lintel and area around the windows are in need of repair.

7. There has been a high turnover of staff and the Applicant has had to constantly chase staff and seek progress with the repairs. The Applicant only received a reply to his formal complaint of 3 September 2023 on 9 February 2024. The Applicant updated the Tribunal to state that although there was no progress with the outstanding repairs in the two months after the CMD, there had been recent movement. He understood that the holding company which owns the Property Factor may have taken over another Factoring company, Speirs Gumley, and was in the process of merging the two. He had met with the new development manager and was hopeful that the repairs would soon be instructed. He acknowledged that he asked for a refund of his management fees in his application however, his principal objective was to have a public record of the Property Factor's actions and for them to do their job and get the repairs done. Now that an up to date new quote has been obtained the Homeowner did not anticipate that there would be any difficulty in the other 7 owners contributing to the costs.

8. The Homeowner had been inconvenienced as a result of the failures of the Property Factor. Each summer he had had to move out of his bedroom into his spare room as the nesting birds made noise every morning at 4 am. He has had the worry of the bin store being unsafe and he has had the frustration of seeing his property deteriorate. He has also had the inconvenience of sending a succession of emails to the Property Factor that culminated in his complaint of 3 September 2023.

The Respondent's position:

8. As set out in the CMD note, the Property Factor accepts that there has been a delay in carrying out the repairs listed by the Homeowner, at least since 2021. Part of the delay was due to the pandemic and to the roof repairs being a priority. He acknowledged that the roof repair was completed in November 2022 and that there had been no progress since then. The Property Factor also conceded that the Homeowner had only received a response to his complaint of 3 September 2023 on 9 February 2024. In their letter to the Applicant of 9 February 2024 it was also conceded that the Applicant had not received 'timely updates'. The Property Factor was not able to give any explanation for why the repairs, for example the repair to the soffit caused by the bird's nest, had not been carried out despite this being first noted in July 2020. The Property Factor confirmed that Strathspey are the parent company of James Gibb Residential Factors and they have recently taken over Speirs Gumley. There will be an integration of the management structure. An updated quote has been obtained for the outstanding work around April 2024. The contactor has not quoted for all of the lintels so they have been asked to revise their quote to include these. The work is likely to be in the region of £5000 plus vat and this will be divided between 8 properties. It is likely that the owners will be asked to put the Property Factor in funds in the next two weeks. The work will be instructed if the majority of owners agree. The Property Factor took issue with the Tribunal giving the Homeowner a complete refund of the management fees between 2021 and 2024 given there was work done to effect a roof repair in 2022.

9. Findings in fact

- The Homeowner is the owner of the top floor flat of the property and has been the owner for around 4 years.
- The Property Factor has been the factor throughout the Homeowner's ownership.
- The Homeowner has identified various essential repairs to the property since 2020.
- The only repairs carried out since then have been two roof repairs.
- A soffit repair has been outstanding since 2020.
- The remaining repairs to the bin store, lintels, soffit and rough case have been outstanding since July 2021.
- The Property Factor has been aware of the outstanding repairs since July 2021.
- The Property Factor's inspection of February 2023 failed to identify that the bin store was damaged, in need of repair and not in use.
- The bin store has deteriorated since February 2023 and is in an unsafe condition with loose bricks.
- Despite the Homeowner's numerous emails from July 2021 to August 2023 no action was taken by the Property Factor to arrange the repairs beyond them instructing quotes.

- The quotes were never sent to the other owners in the development.
- The quotes are now out of date and require to be updated.
- The Homeowner's written complaint of 3 September 2023 was not dealt with timeously and in line with the Property Factor's complaints procedure.
- The Homeowner's level 2 complaint was not dealt with timeously and in line with the Property Factor's complaints procedure.
- The Property Factor has obtained a new quote for the outstanding 5 areas that need attention and these are being finalised before being sent to the 8 owners for approval.
- The Homeowner has paid management fees to the Property Factor for 2021 of £28.32 per quarter, 2022 of £29.23 per quarter, 2023 of £31.57 per quarter and 2023 onwards at £34.85 per quarter.
- The Homeowner has been unable to sleep in his main bedroom in the summer months in 2020 to date due to the noise of the nesting birds from 4 am each morning.

10. Parts of the code at issue

Section 2 Communication and Consultation

It was conceded by the Property Factor that they had not responded to the Homeowner timeously and in terms of the timescale set down in their WSS. The Tribunal had read the emails from July 2020 to August 2023. The Homeowner had constantly to chase the Property factor for a reply and when he stopped pursuing matters between January 2022 and May 2023, nothing was done. This was a clear breach of the paragraph 2(7) of the code.

Part 6 Carrying out Repairs and Maintenance

It was conceded by the Property Factor that they had not carried out the repairs identified by the Homeowner in his email of 5 July 2021. They had been prioritising the roof repair but this was completed in November 2022. It was also acknowledged that the inspection report of February 2023 did not accurately reflect the condition of the bin store and although repairs to the soffit and lintels were identified as needing done no action was taken. This was a clear breach of paragraph 6(4) and 6(6) of the code.

Part 7 Complaints Resolution

It was conceded by the Property Factor that they had not handled the Homeowner's complaint 3 September 2023 in line with their complaints procedure in relation to stage 1 or stage 2. This was a clear breach of paragraph 7(1) of the code.

Overarching Standards of Practice

OSP1

There was no evidence to suggest that the Property Factor has not complied with relevant legislation. The Tribunal was not satisfied that OSP1 had been breached.

OSP2

There was no evidence to suggest that the Property Factor had not been open transparent and fair in their dealings with the Homeowner. This was not considered to be a breach.

OSP6

It was conceded by the Property Factor that they had not been timely in dealing with the Homeowner's concerns or his complaint. For example, the damage to the soffit and birds next was identified in 2020 and this was still unresolved. It was not disputed that when there is a changeover of staff the new managers have not been appraised of the outstanding repairs and this has contributed to the delay. This was a clear breach of OSP6.

Reasons

11. The application was in relation to the current version of the code which came into force in August 2021. Some of the matters raised in the application pre date this version of the code but all of the breaches identified occurred after August 2021. The Tribunal was satisfied that there had been clear breaches of the code. The Homeowner had set out matters clearly in the application and accompanying documents and there was not factual dispute between the parties. The Property Factor conceded that breaches had occurred.

12. Turning to the penalty, the Tribunal decided it was fair to refund the management fee the Homeowner had paid for 2021, 2023 and 2024. The Tribunal also decided it was fair to refund half of the fee from 2022 given a major roof repair was carried out in November of that year. The fee in 2021 was £113.28 plus vat, 2022 was £116.92 plus vat (one half being £58.46, 2023 was £139.40 and assuming the Homeowner has paid 2 quarterly payments in 2024 this amounts to £69.70. This comes to £380. The Tribunal took into account the inconvenience the Homeowner has had in pursuing matters and having to move bedrooms. The Tribunal decided that a global sum of £1000 to reflect the Inconvenience and upset and to cover a refund of the management fee was fair, proportionate and just in all of the circumstances. The Tribunal did not consider it was appropriate to make any other order given the outstanding matters were being addressed by the Property Factor and the Homeowner was hopeful that the work would finally be carried out given the recent change in management. The Homeowner did anticipate that if the matter was not resolved within a reasonable length of time he would be forced to make a new application to the Tribunal.

13. Section 19 of the Act states: -

- (2) In any case where the First-tier Tribunal proposes to make a Property Factor enforcement order, it 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 it.
- (3) If the First-tier 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 First-tier Tribunal must make a property factor enforcement order.

14.. The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) 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 by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties. Failure to comply with a PFEO may have serious consequences and may constitute an offence.

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.

Lesley Anne Ward
Chairperson of the Tribunal
Dated: 30 May 2024.