

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision on Homeowner's application: Property Factor (Scotland) Act 2011 Section 19(1)(a)

Chamber Ref: FTS/HPC/Property Factors /22/2635

Re: Property at B/1, 46 Bentinck Street, Glasgow, G3 7TT ("the Property")

The Parties:-

Emily Raine, B/1, 46 Bentinck Street, Glasgow, G3 7TT ("the Homeowner")

Hacking and Paterson, 1 Newton Terrace, Glasgow, G3 7PL ("the Property Factor")

The Tribunal:-

Melanie Barbour (Legal Member)

Helen Barclay (Ordinary Member)

Decision

The Factor failed to comply with its property factor duties in its written statement of services in relation to investigating complaints of inadequate work or service from contractors and pursuing them to remedy these, and dealing with homeowners' communications and enquiries. The decision is unanimous.

Introduction

1. In this decision the Property Factor (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factor (Scotland) Act 2011 Code of Conduct for Property Factor 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. The Factor is a Registered Property Factor and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that registration.
3. By application dated 25 July 2022, the Homeowner complained to the Tribunal that the Property Factor had failed to carry out its Property Factor duties in relation to two matters:
 - a. that it related to a failure to carry out the Property Factor's duties, namely they have failed in their duty to keep the common close in a reasonable state of repair and cleanliness. They have breached their duty to maintain the common areas by appointing suitable contractors (Terms of Service: Sections 3.1/3.2). The homeowners sought by way of resolution an effective deep clean completed by a reputable company. Having a more in-depth regular clean as opposed to just mopping for a few minutes every fortnight. An apology from the Property Factors for the time, effort and injury that this has caused.
 - b. That the property factor had failed to carry out their property factor duties by failing to uphold the title deeds and therefore charge fairly for common maintenance and repair. By way of resolution, they advised that they like their title deeds to be adhered to and therefore pay a lower proportion of the 1/11th share. They also asked that this be backdated to at least the date when they first contacted the property factor (August 2021).
4. By Notice of Acceptance dated 19 August 2022 a legal member of the Tribunal with delegated powers accepted the applications and a case management discussion ("CMD") was assigned to take place on 1 November 2022; that CMD was subsequently postponed with a new date being fixed for 11 January 2023. Written representations were submitted by the Property Factor on 16 September 2022.

5. The CMD took place on 11 January 2023. It was attended by the Homeowner, Miss Raine and also the other homeowner Mr Wilson; and Mr Henderson attended on behalf of the Property Factor. The CMD proceeded as a discussion by telephone. Reference is made to the full terms of the CMD note. A Direction was issued reference is made to its terms. Both parties submitted documents in response to the direction.
6. The Property Factors advised that they would not attend the second CMD and would rely on their previous submissions and their supplementary paperwork submitted in response to the Direction.
7. Both homeowners attended the second CMD on 18 April 2023.

DISCUSSION

COMPLAINT 1: CLEANING CONTRACT

8. Reference is made to the terms of the parties' submission as set out in the CMD note of 11 January 2023.
9. In addition, the homeowners advised that after the last CMD, there had been a site visit undertaken by the Property Factors. The homeowners advised that they had also, now had a chance to see what the cleaning specification was for the common close, as this had been submitted in the papers that the Property Factors had lodged after the Direction had been issued. They advised that they had no issue with the terms of the specification. It appeared to be reasonable.
10. The remaining concern was with the standard of cleaning. They did not consider that the cleaners had worked to a professional standard or carried out the cleaning to the frequency set out in the specification. They were certain that the cleaners had not

been attending in accordance with the specification, i.e., they were not cleaning the property every 14 days.

11. Since January 2023 the Property Factors had been at the property to review its condition, and the homeowners had received an email from the Property Factors dated 6 April 2023 advising that they had now appointed new cleaners. They assumed therefore that the Property Factors must accept that the cleaners had not been working to a suitable standard.
12. The Homeowners advised that they did not know who the new cleaners were. They were also not sure when they were going to commence cleaning.
13. The Homeowners considered that the property had been poorly cleaned for 2 years now. They considered that the issue had first started with the renovation. The condition of the flooring deteriorated due to the renovation works. They considered that the cleaners had been doing an acceptable job before the renovations, however, they considered that it had been a mistake for the Property Factors to have stopped the cleaners during the renovations, and in view of the state of the flooring after the renovations, they thought that the cleaners had not carried out cleaning to an acceptable standard after that time.
14. They advised that the hotel had not carried out a deep clean as they had advised that they would do. They thought that the cleaners could not keep up with the mess that had been caused by the workers. They had seen a deterioration of the cleaners over time. They believed that removing the cleaners when the renovation works were being carried out was a poor decision on the part of the Property Factors.
15. They advised that the hotel had never carried out a deep clean, as they said they would. There had been no deep clean carried out by the cleaners either, it was just a slightly longer clean than they usually carried out.

16. In terms of their ongoing concerns, the homeowners advised that they were unhappy with the time and effort they had to put into sorting this matter out; there had been numerous emails back and forth dealing with this matter; they were promised quotes from the property factor which were not sent; and they were given contradictory information as to why the quotes were not sent to them; they considered that there was a lack of transparency and the Property Factors had not been doing what they said they would do. It was frustrating.

17. The Homeowners were asked about what they would want to see in order to address their complaint regarding the cleaning. They advised that:-

- a. They were no longer still seeking a deep clean, if the new cleaners were competent, and working to the frequency and terms of the specification this should address the issue. If the cleaning was done properly they thought that there was no need for a regular deep clean. They thought that the specification was sufficient. Before they brought the complaint to the tribunal, they had only been given verbal advice as to what the cleaner's specification was, they now had it in writing.
- b. They do not know who the new cleaning contractors are, and so do not know if they are any good. They do not know when they will commence cleaning the building.
- c. They would also like a meeting to be arranged with the other Homeowners. There are a number of flats in the building which are rented out and the Homeowners did not have contact details for all of the other Homeowners. They would like the Property Factors to write out to the other Homeowners and set up a meeting. They advised that this is set out in the WSS, yet no yearly meeting is called by the Property Factors.

COMPLAINT 2: APPORTIONMENT OF CHARGES

18. The Homeowners advised that the titled deeds set out in Burden 4 show that they have a contribution to the common charges of 1/16th and not 1/11th. They are charged 1/11th share of the common charges by the property factors.
19. They considered that the division of the block was complicated, but that said they did not agree with the Property Factors, that one property "had been removed". Given the complexities they considered that resort could be had to the tenancy management scheme. This would determine common charges by floor space in the building. They considered this would be fairer.
20. They said the amount of insurance they have to pay is unfair. Particularly as there is a commercial property which is part of the building. They pay insurance per year of £1,600, it is £15,000 for the full building. They had obtained a quote for insuring their own home and the quotes coming in were in the region of £200 a year.
21. They considered that the evidence provided by the Property Factors does not show that the Property Factors were entitled to rely on *custom and practice* as a means of apportioning the charges 1/11th each. They said that even if they accepted that there was evidence of custom and practice being used to apportion the charges, it was extremely prejudicial to them and why should they pay the insurance premiums at the increased rate they do in comparison to other homeowners and at an increased % of the property that they own as a part of the whole block. They advised that the Property Factors only have evidence about custom and practice being in place from 2006.
22. The Homeowners advised that there was no consultation underway regarding the apportionment of the common charges. They advised that the consultation had ended as two top-floor flats had not responded.

23. They would also be happy if the apportionment of the charges was based on the title deeds. The Property Factors had said that the shares did not add up to 100%. The property factors had written to homeowners on 31 August 2022 advising that they were going to charge based on the title deeds in light of legal advice they had received.

24. By way of resolution, they asked for the charges to be paid based on floor space.

FINDINGS IN FACT

25. In relation to complaint 1 - cleaning contractors the tribunal finds the following facts:-

- a. The Homeowners own the flat at B/1, 46 Bentick Street, Glasgow. That flat is part of a larger building.
- b. The property factors appointed in relation to the larger building are Hacking and Paterson.
- c. In 2021 the commercial premises "hotel" which is also part of the larger building commenced renovation works. These works took place over a few months around May – November 2021.
- d. The renovations caused building dust and debris in the common close. Debris and dust were accumulating over a number of months.
- e. The Homeowner raised the issue about the cleanliness of the common close with the Property Factor, writing to them about the condition on a number of occasions.
- f. The Property Factor cancelled common close cleaning during the renovation works.
- g. The Property factor contacted the hotel to ask them to clean the common close. The hotel indicated that they would carry out regular cleaning during the renovation works, but failed to do so.

- h. There were ongoing issues raised by the Homeowners to the Property Factors about the standard of cleaning in the common close since at least the renovations were completed.
- i. The Homeowner complained about the inadequate work carried out to the cleaning of the common close. The Property Factors obtained quotes from other cleaning providers to consider changing the cleaning contractor from around June 2022.
- j. In April 2023 the property factor confirmed that they had instructed a new firm of cleaning contractors for the building.

REASONS FOR DECISION

COMPLAINT 1: CLEANING

26. The Homeowner complained that the Property Factors had failed to keep the common close in a reasonable state of repair and cleanliness, and they had failed in their duty to maintain the common areas by appointing suitable contractors. This was in breach of the written statement of services 3.1/3.2.

The Terms 3.1 of the WSS on 31 August 2021 was in the following terms :

".. as factor ... offer the following core factoring services... arranging and administering maintenance of common property by appointing contractors and service suppliers.

HPMS appoint contractors and service suppliers who they believe are qualified and suitable to carry out common works and services.

Investigating complaints of inadequate work or service from contractors ... and pursuing them to remedy these.

Dealing with homeowners' communications and enquiries."

27. The tribunal considers that the property factor has breached its duties in relation to Investigating complaints of inadequate work or service from contractors ... and pursuing them to remedy these.
28. The tribunal notes that cleaners contracted to clean the common close before the renovation works commenced appeared to have been carrying out their work to a suitable standard. We find therefore that the property factor had appointed contractors who were qualified and suitable to carry out the common works.
29. The problem appears to have arisen with the renovation works being carried out at the hotel. The use of the common close by hotel builders appears to have led to a build-up of dust and debris. It appeared to the tribunal that the Property Factors had acted appropriately in liaising with the hotel about these works and seeking to put in place a practical resolution.
30. It appeared that the hotel however had not carried out the deep clean or regular cleaning that they offered to do.
31. We consider that the Property Factor did err in removing the contracted cleaners from cleaning the common close during the renovation works, however, the Property Factor appear to accept that this was an error on their part, and it was at in part based on the fact that they believed that the hotel would keep the close clean during the works.
32. What then appears to have occurred was a reduction in the quality of cleaning being carried out to the common close by the regular cleaners after the end of the renovation works. We assume that the Property Factors must agree that the cleaners were no longer suitable for carrying out this work, as they began to consider appointing other cleaners around June 2022 and then appointed new cleaners in April 2023.

33. We find that the Property Factors did investigate the complaints of inadequate work or service by the cleaning contractors and did pursue a remedy. In relation to discharging this duty, however, we consider that there was a breach of the Property Factors duty due to the time it took them to action the complaints received from the Homeowners. We consider that it would have been reasonable for them to pursue a remedy for the complaints more quickly after they had investigated the matter, and determined that the complaints were well made.

34. We also consider that while the Property Factors did deal with the Homeowners' complaints, they could have dealt with them more appropriately by responding in better detail to the matters raised by the Homeowners, for example by providing details of the specification of the cleaning contract or details about who the new cleaners are and when they are to commence work. It is the lack of a proper response that was frustrating to the homeowners.

COMPLAINT 2: APPORTIONMENT OF CHARGES

35. In terms of the complaint about the apportionment of the charges, at the present time, the tribunal does not consider that it can proceed to make a decision. We consider that there is further information we require from the property factors.

36. The information sought is an explanation:-

1. As to why all the title deeds for the properties which form part of the larger building, do not amount to a 100% share; an explanation as to what shares are owned by whom; where are the missing shares?
2. About the meaning of the email of 31 August 2022 to the Homeowners advising that following legal advice the property factors would apportion common charges in accordance with the terms of the title deeds; why has this revised apportionment not been actioned?

37. We shall issue a further direction setting out what further information we seek.

REMEDY

38. We consider that the Property Factor requires to pay compensation to the Homeowner of £100 as compensation for the delay in resolving the unsuitable cleaning; £20 to pay for a contribution to a deep clean; and £150 as compensation for the time involved by the Homeowners in dealing with the matter and the inconvenience caused. The total compensation awarded under Complaint 1 is £270.00.

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER

39. The Tribunal proposes to make a property factor enforcement order ("Property Factors EO"). The terms of the proposed Property Factors EO are set out in the attached Section 19(2) (a) Notice.

Appeals

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.

Melanie Barbour Legal Member and Chair

17 May 2023 Date

