



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

Chamber Ref: FTS /HPC/PF/23/3611

Re: Property at 78 Barlogan Avenue, Craigton, Glasgow, G52 1AG (“the Property”)

Parties: Miss Sinaed Callaghan, 78 Barlogan Avenue, Craigton, Glasgow G52 1AG

(“the Applicant”)

Lowther Homes., Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Kingsley Bruce (Surveyor Member)

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 paragraph 6(4) of the 2021 Code of Practice and Overarching Standards of Practice 6. The Tribunal did not consider that it was appropriate to make a Property Factor Enforcement Order in relation to this application.

Background

1. On 13th November 2023 the Applicant lodged an application with the tribunal under Rule 43 of the First Tier Tribunal Rules of Procedure. This application was accepted by the Tribunal on 1st December 2023. A case management discussion was fixed for 16th February 2024 at 2pm.

2.The Applicant attended the case management discussion and represented herself.Miss Aitken the Factoring Manager for the Respondent attended the case management discussion to represent the Respondent.

First Case Management Discussion

3. At the case management discussion the tribunal had sight of the application, sheets labelled 1-4 lodged by the Applicant, a notification letter, a complaint made to the Respondent together with the Respondent's response,a series of emails, a repairs technical details report, a repairs history document, a contacts report, a common repairs consent form, a photograph, a written statement of services and representations from the Respondent.

4.In " sheet 4 ", a paper apart from the application, the Applicant had set out that she was seeking compensation for stress , a survey cost and the cost of decoration at her property.

5.There was no disagreement that the Applicant was a homeowner in a "four in a block"property , her property being on the bottom left of the building looking at it from the street.The Respondent was the PropertyFactor for all of the homes in the block.These were traditional build properties and there was a balcony at the front with cladding and a canopy above the front door.

6.The Tribunal noted that in her application the Applicant had referred to the Property Factors Code of Conduct overarching standard of practice section 6, written statement of services section 10,communication and consultation sections 2.1 and 2.7,and carrying out repairs and manintenance section 6.4.Miss Callaghan accepted that in her notification letter to the Respondent she had mentioned only overarching standard of practice 6 and section 6.4 of the code of conduct.The Tribunal explained to Miss Callaghan that it could deal only with alleged breaches of the code of conduct which had been notified to the Property Factor and after discussion Miss Callaghan agreed that her application could be restricted to alleged breaches of overarching standard of practice 6 of the Code and section 6.4 in relation to the carrying out of repairs and maintenance.

7.Miss Callaghan advised the Tribunal that she had reported water ingress on her lounge wall in October 2022 to the property factor.She was advised by a maintenance officer in December 2022 that this was rising damp and received a report in January 2023 setting out that this was the issue and indicating that a specialist contractor would be required to look at the issue.The first person to come to the house simply took photos as he as not sure what the problem was but said he would get back to her and did not.She was told that the canopy would be checked but it was not.

8.Miss Callaghan had not considered that the issue was caused by rising damp as there was no smell and the damp areas went black very quickly.She explained that she worked in repairs in social housing and was aware of these types of problems.

9.Miss Callaghan explained that the wall with the dampness backed onto her living room wall.

10. Miss Callaghan complained that it took the Respondent property factor over 4 months to action the matter. She said that any time someone came out to the property or made contact with her there was not a satisfactory outcome. She said that if the Property Factor staff had done their job properly there would have been an effective result. She was told when she contacted the Factor on 16th February 2023 that all internal repairs had been cancelled. She had explained that the issue was in the common parts of the building and this was affecting an internal wall at her property.

11. Miss Callaghan indicated that no one ever got back to her and emails were not answered. She made a complaint. Someone from City Building came to the property in April 2023 but this person told her that someone else would require to attend from the rot and damp team. She felt her time had been wasted.

12. Miss Callaghan understood that attempts had been made to have a survey instructed but that the Factor had not heard back with consent from other owners in the block of properties. She had been irate about the issue taking so long to resolve and had complained.

13. Ultimately Miss Callaghan had instructed her own specialist rot and damp contractor and the survey along with the work was to cost around £1100. She had required to go with her child and live with her mother. She had required to pay a deposit for the work to go ahead in the sum of £320 and the remainder was to be paid, some £886 plus VAT. She had required to make this outlay when her income was reduced and the entire situation she felt could have been avoided if the Property Factor had done their job properly. She said that she had only received communication when she complained. She had not yet decorated as the problem was not fixed.

14. She advised the tribunal that this whole situation had prevented her child from being able to be in the lounge at the property and this had been very difficult for them as this was their home.

15. For the Respondent Miss Aitken accepted that the Respondent was in breach of the code of practice in respect of paragraph 6:4 of the Code and overarching standard of practice 6. She said that it was clear from the initial interaction that there had been communication failures and when Miss Callaghan had first raised the issue a specialist contractor should have been appointed. She explained that the Property Factor had a wide pool of staff but they did not all have in depth knowledge of issues such as this. The property factor now had a dedicated agent for this address and this person was the main point of contact for home owners. She said that Miss Callaghan should have been notified of what was happening and said there had been a complete and utter failure to do that. The question of the survey had been put out to owners for consent and no consent had been obtained and the survey cost was over threshold in the title deeds where they could go ahead without consent.

16. Miss Aitken said that the Property Factor was willing to cover the total survey fees to be paid by Miss Callaghan as well as refunding property management fees which were levied quarterly. Miss Aitken was willing to refund three quarters' management fees to Miss Callaghan which she believed came to £178.73.

17. The Tribunal considered that it was appropriate to allow the matter to be continued to allow Miss Aitken to contact Miss Callaghan to arrange for payment to be made and both were in agreement with this course of action.

18.The Tribunal Legal Member explained that the matter would come back to the Tribunal for consideration given that a breach of the code and overarching standard of practice had been admitted.Both parties would be able to advise of any costs reimbursed to the Applicant when the matter next called before the Tribunal.

Second Case Management Discussion

19.The second case management discussion was on 26th July 2024 at 10am and was attended by the Applicant Ms Callaghan and by Ms McGeehan on behalf of the Property Factor.

20.Miss Callaghan advised the Tribunal that she had received full payment for the survey fee by 29th April 2024 and had not required to pay the full factoring fees.The required works were completed and she had had the living room painted and decorated.All required work was completed and all payments agreed had been made.Miss Callaghan said that she was still angry over the situation and felt that the Factor had not grasped the impact on her and how stressful it was.She said she had received contact from the Property Factor asking if she was withdrawing the application.

21.Miss Callaghan indicated that the walls in the living room had been wet when the problem had arisen and she could not redecorate.She had replaced windows, the skirting had been removed and the room repainted and this had cost £550.She was not seeking the cost of the redecoration as she said she was doing this anyway.She had hoped the Property Factor would have apologised for what had happened.

22.The Tribunal adjourned for Ms McGeehan to consult with colleagues regarding her position.When she returned she confirmed that the breaches were accepted.She confirmed that the Property Factor's internal structure had changed and they now had dedicated trained staff to deal with homeowners and they have a specialist team with factoring qualifications.There was now a dedicated factor for the property.She pointed out that the Property Factor had paid for the survey, the required work had been done, and they had refunded management fees.They had given an apology at an earlier stage when a Stage 2 complaint had been made but she indicated that the Property Factor was extremely sorry for putting Ms Callaghan through the situation she had described.

23.The Tribunal considered that it had sufficient information upon which to make a decision and the proceedings had been fair.

Findings in Fact

23.The Applicant is the homeowner at a traditional "four in a block" property and owns the bottom left property when looking at the block from the street.

24.The Applicant's property has a balcony at the front with cladding and a canopy above the front door.

25.The Respondent is the Property Factor for the block of properties and held this position in 2022.

26.The Applicant noticed water ingress on the wall of her living room in October 2022 and reported this to the Respondent Property Factor.

27.In December 2022 a maintenance officer from the Property Factor advised her that this was rising damp coming from a common area of the building and that a specialist contractor would be required to look at this.

28.It took the Respondent Property Factor over 4 months to action the issue and when the Applicant phoned she was told all internal repairs had been cancelled.

29.The Applicant Miss Callaghan made calls and sent emails to the Property Factor which went unanswered.

30.In April 2023 a contractor from City Building attended and advised that another person would require to attend.

31.The Respondent Property Factor made attempts to instruct a survey but did not keep the Applicant advised when it took time to obtain consent from other owners.

32.The Applicant complained and instructed and paid for her own survey, paying a deposit of £320.

33.For a number of months the Applicant and her young son could not use their living room at the property due to a damp and blackened wall.

34.The Respondent has paid the Applicant for the survey costs incurred by her and the work required at the property to deal with the water ingress has been carried out.

35.The Applicant has not required to pay remaining management fees for the year amounting to £178.73.

36.The Respondent has changed their staffing and now have staff with factoring qualifications,a team of staff trained to deal with queries from homeowners and a dedicated member of staff for the property.

37.The Respondent has paid all charges paid by the Applicant in relation to the work and refunded annual factoring fees of £178.73.

38.The Respondent Property Factor failed to deal with and communicate effectively with the Applicant after she reported water ingress at her property and did not deal with the repair required in a timely manner.

Applicable Law

Code of Conduct for Property Factors 2021

Overarching Standard of Practice 6

You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective

Paragraph 6.4

Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

Reasons for Decision

The Applicant alleged a breach of overarching standard of practice 6 and a breach of paragraph 6.4 of the 2021 code of practice in relation to water ingress at her property in October 2022. The Property Factor accepts that it has been in breach of OSP 6 and paragraph 6.4 of the code in relation to the way it dealt with the Applicant's report of a required repair to a common part of the building. The Respondent accepts a failure to appoint a specialist contractor when the repair was first reported and a failure to keep her advised of progress of the repair. The Tribunal found that there had been breaches of OSP 6 and in relation to paragraph 6.4 of the code. As to steps the Tribunal considered appropriate to take, it noted that specialist staff with factoring qualifications have now been appointed by the Respondent Property Factor and staff trained to deal with homeowner queries and a dedicated Property Factor had been appointed for the building. Ms McGeehan had apologised to the Applicant at the second case management discussion. The Applicant had been repaid for costs she had incurred in relation to the repair and had been refunded for factoring charges for three quarters of one year being £178.73. In all of the circumstances the Tribunal considered that a Property Factor Enforcement Order was not required as the Respondent has repaid the costs incurred to the Applicant and refunded some of her management fees and appointed qualified staff and trained staff to deal with queries from homeowners which should minimize the risk of the code being breached in the future.

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 paragraph 6(4) of the 2021 Code of Practice and Overarching Standards of Practice 6. The Tribunal did not consider that it was appropriate to make a Property Factor Enforcement Order in relation to this application.

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 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

Legal Member

26.7.24

Date