



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

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014

Reference number: FTS/HPC/PF/23/4244 & FTS/HPC/PF/24/0011

Re: Property at 3/1 642 Alexandra Parade, Glasgow, G31 3BU (“the Property”)

The Parties:

Mr Alistair Beith, 3/1 642 Alexandra Parade, Glasgow, G31 3BU (“the Applicant”)

W.M. Cumming, Turner & Watt, 40 Carlton Place, Glasgow, G5 9TS (“the Respondent”)

Tribunal Member: Alison Kelly (Legal 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 Conduct 2021 at OSP 2, and Sections 2.4, 2.7, 3.1, 3.5, 3.6, 3.7, 7.1 and 7.2.

Background

1. On 28th November 2023 the Applicant lodged an application in terms of Section 17 of the Property Factors (Scotland) Act 2011 being application by a homeowner to enforce the Property Factors Code of Practice 2021 “the 2021 Code”).
2. Along with the application the Applicant lodged a copy of his Property Factor Code of Conduct letter, which he sent to the Respondent on 5th November 2023, and some additional documentation.
3. On 16th December 2023 the Applicant lodged an application in terms of Section 17 of the Property Factors (Scotland) Act 2011 being application by a

homeowner to enforce the Property Factors Code of Practice 2012 (“the 2012 Code”).

4. The cases were accepted by the Tribunal on 11th January 2024.
5. A Case Management Discussion was fixed for 22nd April 2024.

Case Management Discussion

6. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself. The Respondent was not present nor represented.
7. The Tribunal were satisfied that the Respondent had received the papers and notice of the CMD and decided to proceed in its absence.
8. The Chairperson made introductions and confirmed the purposes of a CMD in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).
9. The Chairperson noted that in the first application the Applicant alleged breaches of the Overarching Standards of Practice (“OSP”) 2 and 9 and paragraphs 2.4, 2.7, 3.1, 3.5, 3.6, 3.7, 7.1 and 7.2, and in the second application paragraphs 2.1 and 3.3 and 3.4.
10. The Tribunal went through each paragraph with the Applicant and considered that the Property Factor Duties letter and the applications gave the facts which the Tribunal were being asked to consider, apart from paragraphs 3.3 and 3.4 of the 2012 Code, which did not seem to fit with the complaint being made. The Tribunal decided that a Hearing was required as documentation was required from each party to allow the Tribunal to properly decide the case. The relevance of the said paragraphs 3.3 and 3.4 will be considered at the Hearing.
11. The Tribunal decided that an in person Hearing would be appropriate and explained to the Applicant that he could bring witnesses to the Hearing to speak to the issues.

Procedure Subsequent to CMD

12. The Tribunal issued Directions to each party.
13. On 21st June 2024 the Applicant lodged some old invoices he had received from the Respondent.

14. On 25th June 2024 the Applicant lodged two bank statements showing payments made to the Respondent.

Hearing

15. The Hearing took place in person at the Glasgow Tribunal Centre on 2nd September 2024. The Applicant represented himself. The Respondent did not appear and was not represented.

16. Mr Allan, Surveyor member of the Tribunal was not able to attend due to illness. In terms of Rule 33 the Chairperson decided to sit alone.

17. The Applicant had two witnesses: his wife, Lois Ots, and his neighbour, Marsalaidh Boag, 1/1 642 Alexandra Parade, Glasgow, G31 3BU.

18. The Tribunal decided to conduct the Hearing by dealing with each alleged breach in turn, and hearing from the witnesses on each point as it was dealt with.

19. The Applicant confirmed that he had owned his property since August 2005. Ms Boag confirmed that she had owned her property since June 2003. They both confirmed that the block comprised of three shops on the ground floor and six flats above. There is no owners association.

20. The Applicant confirmed that the Respondent had factored the property since before he took ownership until September 2023.

21. The Tribunal began with the alleged breaches of the 2012 Code.

2.1 You must not provide information which is misleading or false.

22. The Applicant said that he had been double billed for the electricity for stair lighting for many years. However, he was not able to produce any evidence by way of factoring bills to establish a breach of the 2012 Code.

3.3 You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying,

subject to notifying the homeowner of this charge in advance.

23. The Applicant conceded that any requests he made fell after the change of Code and therefore could not establish a breach of the 2012 Code.

3.4 You must have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their share of the funds (for example, on sale of the property).

24. The Applicant conceded that this paragraph was not relevant to the situation.

25. The Tribunal moved on to the alleged breaches of the 2021 Code.

OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.

26. The Applicant said that the invoices sent by the Respondent were misleading, and they do not respond to enquiries. The Applicant said that he had been double billed for the electricity for stair lighting for many years but had not realised. Ms Boag received a letter in error which was marked for the I/I (landlord). It was delivered to her at flat 1/1. It was from Scottish Power and said that there was a back payment due of £1700. Ms Boag phoned them and the letter was re-directed to the Respondent. He said that in May 2022 the Respondent changed the supplier to Engie, without any consultation with the homeowners. The homeowners could not query anything with Engie as the account was in the name of the Respondent. He made reference to a bill sent to Miss Boag by the Respondent dated 7th September 2021. The bill showed payments to both Scottish Power and Glasgow City Council for stair lighting. He also made reference to an email to Ms Ots from James Weir of Glasgow City Council, dated 25th October 2023, which confirmed that the stair lighting is unmetered, and that invoices for Stairlighting Maintenance Service has been issued to the Respondents by Glasgow City Council since 2005. Ms Boag said that, after making complaints and requesting information by email, she finally went to the Respondent's office in or around August 2023. She spoke with Robert Watt, who said that he knew nothing about the issues, despite many of the emails having been sent to his email address. When she asked him about the charges for stair lighting made by Glasgow City Council he replied "that's just something that they do".

OSP9. You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements.

27. The Applicant said that the Respondent was not able to provide appropriate records in relation to the charges for stair lighting as they had ignored all requests to do so.

2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

28. The Applicant said he, Ms Ots and Ms Boag sent a number of emails to the Respondent requesting copy bills from Scottish Power and asking that the Respondent check them for accuracy and seek energy saving measures. No replies were received from the Respondents. In addition, no information about any closing balance was produced when the Respondent ceased to factor the block.

2.7 A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

29. The Applicant referred to the Respondent's WSS, lodged with the application, which contained the Respondent's Complaints Procedure. The Procedure says that all complaints are treated seriously, professionally and impartially, are dealt with timeously and are treated fairly and competently. It says that in the first instance the complainer should be made to the Property Manager, and should the complainer fail to receive satisfaction they should register a complaint with glasgow@ctwproperty.co.uk. It says that the complaint will be acknowledged within 7 working days of receipt and that they will endeavour to investigate and resolve within 14 days. It goes on to say that if the complainer remains dissatisfied they should write to the Directors, Mr R Watt and Mr N Watt within 28 days and advising that they wish to escalate the complaint. It says that the Directors will conduct a separate review of the complaint and contact the complainer within 14 days to inform them of the conclusions. Further complaint thereafter can be made to the Tribunal.

30. The Applicant raised the matter with the Property Manager, Robert Watt by emails dated 2nd March 2023, 20th March 2023 and 28th March 2023. No response was received and on 5th July 2023 Ms Ots emailed an official complaint on his behalf. No reply was received and on 14th July 2023 Ms Ots sent a further email. She also telephoned the Respondent to advise she had received no reply. She was assured that Robert Watt would be in touch promptly. She has still not received a reply.

3.1 While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor

does not charge for services, the sections on finance and debt recovery do not apply.

31. This paragraph was covered under paragraphs 2.4 and 2.7 above.

3.5 If homeowners decide to terminate their arrangement after following the procedures laid down in the title deeds or in legislation, or the property factor decides to terminate the arrangement, a property factor must make the financial information that relates to their account available to the homeowners. This information must be provided within 3 months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

32. The Applicant said that Ms Boag and Ms Ots had canvassed the other Homeowners on the issue and they had decided to terminate the contract with the Respondent and employ a new factor. The respondent accepted the notice of termination on 8th August 2023 and the contract came to an end on 1st October 2023. Despite requests the Respondent has not supplied the financial information that relates to his account to the Applicant or to any other Homeowners. The Respondent has still not provided the information and invoices requested regarding the stair lighting.

3.6 Unless the title deeds specify otherwise, a property factor must return all funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill, following a change of property factor.

33. The Applicant said that the Respondent still holds his float and there has been no correspondence about returning it, or alternatively confirming that it has been spent. No final bill, nor accounting in relation to the stair lighting, has been produced meaning that the Applicant is unsure if any further funds are owed to him.

3.7 In cases where a property changes ownership, the property factor must confirm the process for repaying any funds that are due and presenting the final financial information relating to the account. This must be provided within 3 months of the property factor being made aware of the actual date of change in ownership (the date of settlement) unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services or the property factor has not been provided with the specified period of notice informing them of the change in ownership).

34. This is covered in paragraphs 3.5 and 3.6 above.

7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement

of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

The procedure must include:

- **The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.**
- **The complaints process must, at some point, require the homeowner to make their complaint in writing.**
- **Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process has concluded.**
- **How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.**
- **Where the property factor provides access to alternative dispute resolution services, information on this.**

35. The Applicant conceded that the Respondent does have a Complaints Procedure. The paragraph says that it should be applied consistently and reasonably. His position is that it has not been applied at all.

7.2 When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.

36. This is covered in paragraph 7.1 above.

37. The Applicant, as per his Application, seeks a copy of the invoices from January 2005 to May 2022 relating to Scottish Power charges for stair lighting, a copy of all invoices from Engie from May 2022 to 1st October 2023 for stair lighting, a refund of all payments made to Scottish Power and Engie, an invoice outlining how much he is owed and when he will receive payment and a refund of the float.

Findings In Fact

- i. The Applicant owns the property at 3/1, 642 Alexandra Parade, Glasgow, G31 3 BU, has done since August 2005, and lives there with his wife, Lois Ots;
- ii. Ms Marsalaidh Boag owns the property at 1/1,642 Alexandra Parade, Glasgow, G31 3 BU, has done since september 2003;
- iii. The factored block contains three shops and six flats;
- iv. The Respondent factored the property from prior to September 2003 to 1st October 2023;
- v. There is no Homeowners or Residents Association;
- vi. Entries appear on the Respondent's bills to the residents of the block for stair lighting to both Scottish Power and Glasgow City Council as per the bill sent to Ms Boag dated 7th September 2021;
- vii. There are multiple entries for sums due to Scottish Power for stair lighting with dates which seem to be duplicated as per the bills sent to Ms Boag on 7th September 2021 and 8th December 2021;
- viii. Glasgow City Council maintain the stair lighting and the electricity supply is unmetered as per their email of 25th October 2023;
- ix. The applicant sent emails to the Respondent on 2nd, 20th and 28th March 2023 requesting copy bills and information and received no reply to any of them;
- x. The Respondent has a formal complaints Procedure, contained in its WSS
- xi. The Applicant complied with the procedure by sending the emails of 2nd, 20th and 28th March 2023, which were not replied to and by having Ms Ots send an email of 5th July 2023 escalating the matter to a formal complaint and sending a chaser email on 14th July 2023;
- xii. Ms Boag met with Robert watt on 8th August 2023 and brought the matter to his attention;
- xiii. The Applicant has still not received a response to his complaint;
- xiv. The Respondent has not sent the Applicant a final account with breakdown of entries;
- xv. The Respondent has not returned the Applicant's float.

Reasons For Decision

38. The Tribunal found the Applicant, Ms Ots and Ms Boag to be credible and reliable, and also extremely frustrated by the situation they found themselves in. They all spoke of the amount of time and effort they had had to put in, and the stress of dealing with the matter.
39. The Tribunal did not consider that the Applicant had been able to establish breaches of the 2012 Code. None of the emails or complaints had been sent while that Code was in force.
40. It was a different matter in relation to the 2021 Code.

41. The Tribunal considers that OSP 2 has been breached. There is no transparency and the invoices do lead the Tribunal to conclude that there is a double charge for stair lighting which has not been explained by the Respondent despite repeated requests to do so.
42. The tribunal does not consider that the Applicant has put forward any evidence or information which would lead to a finding of breach of OSP 9. It is not known what records the Respondent holds.
43. The Tribunal considers that there is a clear breach of paragraph 2.4. Despite repeated requests for information the Respondent has ignored the Applicant.
44. The Tribunal considers that there is a clear breach of paragraph 2.7. The Respondent has completely ignored that Applicant's complaint, which has been made in accordance with their Complaints Procedure and with numerous reminders also having been sent.
45. The Tribunal considers that there is a clear breach of paragraph 3.1. There is no transparency here. The Applicant does not know why he is paying two different providers for stair lighting, and despite numerous requests for information he has been ignored by the Respondent.
46. The Tribunal considers that there is a clear breach of paragraph 3.5. It is well over three months since the factoring arrangement came to an end and the Applicant has still not received final financial information and accounting from the Respondent.
47. The Tribunal considers that there is a clear breach of paragraph 3.6. It is well over three months since the factoring arrangement came to an end and the Applicant has still not received repayment of his float.
48. The Tribunal considers that there is a clear breach of paragraph 3.7. It is well over three months since the factoring arrangement came to an end and the Applicant has still not received confirmation of the process for repaying funds due to him.
49. The Tribunal considers that there is a clear breach of paragraph 7.1. The Respondent has a written Complaints Procedure but has failed completely to apply it.
50. The Tribunal considers that there is a clear breach of paragraph 7.2. The Respondent has a written Complaints Procedure but has failed completely to apply it, and therefore has not confirmed that it's been exhausted and its decision is its final one.

Property Factor Enforcement Order

51. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty and has failed to carry out the property factor's duties, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states

“(1)The First-tier Tribunal must, in relation to a homeowner’s application referred to it ... decide ... whether to make a property factor enforcement order.”

52. The Property Factor has made errors and therefore, the Tribunal proposes to make a PFEO.

53. Section 20 of the Act states:

“(1) A property factor enforcement order is an order requiring the property factor to (a) execute such action as the First-tier Tribunal considers necessary and (b) where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable.

(2) A property factor enforcement order must specify the period within which any action required must be executed or any payment required must be made.

(3)A property factor enforcement order may specify particular steps which the property factor must take.”

54. The Tribunal proposes to make a PFEO to order the Property Factor.

55. Section 19 (2) of the Act states: - “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.”

56. The Tribunal, by separate notice intimates the PFEO it intends to make and allows the Parties fourteen days to make written representations on the proposed PFEO.

Appeal 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.

Chairperson

9th September 2024