



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/24/1914

Property: 30/3 Abbey Lane, Edinburgh EH8 8JH (“the Property”)

The Parties:-

Mrs Margaret Judge, 63 Glazert Road, Dunlop KA3 4DE (“the homeowner”)

Myreside Management Limited, registered in Scotland (SC213664) and having their Registered Office at 3 Dalkeith Road Mews, Edinburgh EH16 5GA (“the property factors”)

Tribunal Members: George Clark (Legal Member/Chairman) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber decided that the application could be decided without a Hearing and determined that the property factors have not failed to comply with Section 6.5 of the Property Factors Code of Conduct effective from 16 August 2021.

Background

1. By application, dated 24 April 2024, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged a failure to comply with Section 6.5 of the Property Factors Code of Conduct effective from 16 August 2021 (“the 2021 Code”).
2. The homeowner’s complaint was that, on 23 December 2023, the power to the communal areas of 30 Abbey Lane failed. As a result, there were no lights in the stairs and corridors and no lift. The door entry system and communal television aerial were also affected. It was reported to the property factors at 11am and they attended at 1pm. Their representative reported a problem with the fuse box and said that he needed to contact Scottish Power. At 3pm, a representative of Scottish Power was given access to the building by a resident as no-one from the property factors was there. The Scottish Power engineer confirmed that the connection from the grid to the building was fine, but water was dripping into the fuse box and, for safety, he cut the supply and

said he would contact the property factors to advise them that an electrician was required to attend to the fuse box.

3. On the morning of 24 December 2023, a resident contacted the property factors for an update, but was told that they could not find an electrician to attend before 27 December. The homeowner and her husband then contacted the property factors and stressed that the situation was extremely urgent, as the stair was in complete darkness and there were vulnerable residents in the building, The battery supplying emergency lighting had run out and the contacts on the fire doors were jammed open. The property factors insisted they could not arrange for an electrician to attend. The homeowner asked that the issue be escalated to senior management but at 12.53pm, the property factors responded that they had done everything they could, but residents were welcome to try and find an electrician. The homeowner again asked that senior management call her back, but the property factors did not call back. At 13.50pm, the residents found an electrician who agreed to attend immediately. They informed the property factors, who did not offer to attend to ensure the electrician gained access to the building. The electrician carried out repairs to the fuse box and advised that it was safe for the power to be turned back on. A resident tried unsuccessfully to contact the property factors to arrange this and then made direct contact with Scottish Power, who attended at 17.50pm and reinstated the power.
4. The homeowner stated that, as a result of the property factors' failure to make arrangements with trades to provide emergency cover over the festive period, she was obliged to spend several hours on 24 December 2023 sourcing an electrician. In addition, the owners were obliged to pay travel time at premium rates. The homeowner wanted an acknowledgement from the property factors that their procedures were lacking by failing to have made arrangements with trades in the event of an emergency and that this would not happen again. She also wished an apology and compensation for the additional costs the owners incurred.
5. On 12 July 2024, the property factors made written representations to the Tribunal. They said that they had fulfilled their obligations, even though the situation should not be regarded as an emergency, rather as an inconvenient situation, because the emergency lighting activated. Their engineer did all he could to assist the owners, given the festive time of the year. He took the correct steps in drying out the water ingress and informing Scottish Power Energy Network ("SPEN"). SPEN incorrectly claimed that an electrician was required to repair the fault, as is witnessed by the fact that the electrician who attended could not repair the fault and SPEN had to attend a second time. All of this could have been avoided had SPEN acted correctly in the first instance and the property factors had lodged a complaint with them regarding the incident.

Case Management Discussion

6. A Case Management Discussion was held on the morning of 19 September 2024. The homeowner was present. The property factors were represented by Mr Leigh Collins, their Managing Director.
7. The homeowner told the Tribunal that the emergency lighting only operates for 24 hours and that it had gone off on the morning of 24 December 2024.
8. Mr Collins told the Tribunal that, when they were first notified of the problem, they were on site within 45 minutes. The responsibility for reconnecting power lay with SPEN. It was their 3 fuses that had blown, and the property factors' engineer had traced the problem back to SPEN. The property factors had informed SPEN of this at 12.30pm on 23 December. The homeowner responded that the main breaker switch was stuck and, as a result, 3 fuses had blown. The electrician replaced the fuses and the switch. It then required Scottish Power to reinstate the power.
9. With regard to access, Mr Collins stated that the property factors had met with the owner who had contacted them. That owner had agreed to provide access to Scottish Power. The homeowner expressed her concern that the property factors had not even suggested they might attend. Their Written Statement of Services ("WSS") says that they will supervise any trades on site. The homeowner expected 24-hour cover. Mr Collins repeated what had been said in the property factors' written representations, namely that this was not an emergency and stated that it would be completely impracticable to expect them to supervise on-site every tradesman on every job. He advised that the property factors have a list of contractors to contact out of hours and in emergencies. They do not have contractors "on call".

Findings of Fact

- i. The homeowner is the proprietor of the property.
- ii. The property factors, in the course of their business, manage the common parts of the block of which the Property forms part. The property factors, therefore, fall within the definition of "property factor" set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors are registered on The Scottish Property Factor Register.
- v. The homeowner has notified the property factors in writing as to why she considers that the property factors have failed to carry out their duties arising under section 14 of the Act.
- vi. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 24 April 2024, under Section 17(1) of the Act.

Reasons for Decision

10. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing. The Parties had also stated that they were content that the application should be decided without a full Hearing.
11. Section 6.5 of the 2021 Code states "If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access in order to carry out emergency repairs, wherever possible."
12. The Tribunal considered carefully all the evidence and documentation before it.
13. The view of the Tribunal was that the property factors had responded very quickly to the report of the problem regarding the communal electricity supply. They arranged for someone to attend, He was able to identify that a number of fuses had blown and the property factors acted reasonably in then contacting SPEN. SPEN disconnected the power supply and indicated that an electrician was required. The Tribunal did not have before it evidence as to whether and when SPEN reported back to the property factors. On 24 December 2023, having been contacted by an owner to say the problem had not been resolved, the property factors tried to find an electrician prepared to attend the Property. 24 December 2023 was a Sunday and was also Christmas Eve, and the Tribunal accepted that it might have been very difficult to find an electrician prepared to call out on that day. The Tribunal accepted that the stairwell would have been in darkness if and when the emergency lighting power source ran out, but did not regard the problem as constituting an emergency at the stage at which the property factors became involved. The property factors told the owners at 12.53pm on 24 December that they had done everything they could but had been unable to find an electrician prepared to call out before 27 December. The Tribunal noted that the owners were themselves able to find an electrician and, given the day and date, the Tribunal was not surprised that they charged premium rates, but there was no evidence to suggest that an electrician instructed by the property factors would not have done the same. It was SPEN who disconnected the electrical supply, so only they could reconnect it. The Tribunal did not regard it as a failure on the part of the property factor that they did not have a representative attend to give access to SPEN. The owner who had contacted them had said that he would give access.
14. Having considered all the evidence before it, The Tribunal decided that the property factors had acted reasonably in all the circumstances and that they had not failed to comply with Section 6.5 of the 2021 Code. There does, however, appear to be a disconnect between the Parties as to what owners can expect of

the property factors and the Tribunal would encourage the property factors to consider whether their WSS should be reviewed in order to provide greater clarity, especially regarding the service they provide over holiday periods. They also state in their WSS that they operate their own emergency 24-hour call out service. Whilst the Tribunal accepted that the failure of the communal lighting on 23 December 2023 was not an emergency, it was unfortunate that when a resident tried to get in touch with the property factors to ask them to arrange for SPEN to reconnect the supply, they could not be contacted.

15. The Tribunal's Decision was unanimous.

Right of 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.

Legal Member

9 October 2024
Date