

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 (1) of the Property Factors (Scotland) Act 2011

Reference number: FTS/HPC/PF/23/4212

Re: Property at Flat 11, 4 West Kilnacre, Edinburgh, EH7 5BB (“the Property”)

The Parties:

Miss Laura Blanco Martinez, Flat 11, 4 West Kilnacre, Edinburgh, EH7 5BB (“the Applicant”)

RMG Living, Unit 6, 95 Morrison Street, Glasgow, G5 8BE (“the Respondent”)

Tribunal Members:

Mr A. McLaughlin (Legal Member) and Mrs F. Wood. (Ordinary Member)

Background

[1] The Applicant seeks a determination that the Respondent has breached their obligations under *The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors* (“The Code”).

[2] The paragraphs of the Code alleged to have been breached are:

Communications and Consultation: Sections 2.1 and 2.7

Carrying Out Repairs and Maintenance: Sections 6.4

Complaints Resolution: 7.2

Overview of Claim

[3] The substance of the allegations relates to the alleged mismanagement of the handling of repairs to a communal lift in the tenement building in which the Property is situated and a failure to return a payment due to the Applicant for a pest control expense and deal with associated complaints.

The Hearing

[4] The Application called for a Hearing at George House, George Street, Edinburgh at 10 am on 27 August 2024. The Applicant was personally present. The Respondents were represented by their own Ms Tracy Urquhart and Ms Imogen Harrison. Neither party had any preliminary matters to raise. The Tribunal began by enquiring whether parties wished an opportunity to discuss their differences and resolve their dispute amicably. Both parties expressed a desire to explore this, and the Tribunal adjourned to allow time for settlement discussions. It quickly became apparent however that no settlement would be reached and so the Tribunal re-convened and began hearing evidence,.

[5] The Tribunal began by hearing from Ms Blanco. Ms Blanco also indicated that she would wish the Tribunal to hear evidence from one further witness, her partner Mr Jason Williams. Then the Tribunal heard evidence from both Ms Urquhart and Ms Harrison. The Tribunal asked questions throughout to ensure that it understood the evidence. After each witness gave evidence, the other party had the right to cross-examine. During the evidence, the Tribunal referred to the documentation referred to throughout. After the conclusion of evidence, each party also had the opportunity to make closing submissions explicitly drawing the Tribunal's attention to the sections of the Code alleged to have been breached.

[6] The Tribunal comments on the evidence heard as follows.

Ms Laura Blanco Martinez

[7] Ms Blanco gave evidence regarding a refund that she said she was due by the Respondent to her for out of pocket expenses that she had incurred on a pest control issue. She paid a pest control invoice in February 2023 and at the time was informed that she would be remunerated by the Respondent. She explained that she was not in fact remunerated until November 2023. She explained that she had to spend a lot of time chasing for payment. She ultimately however also accepted that when she had been eventually reimbursed, the Respondent had waived certain management fees to the value of £72.28 as a good will gesture.

[8] Ms Blanco also explained that the building in which the Property is situated is on five floors and has one lift in addition to the stairs. The lift broke down in September 2023

after it was determined to have been unsafe to use after a routine inspection by an engineer. Ms Blanco gave evidence about what she considered to be a lack of communication from the Respondent in that it was only in October 2023, that some residents received a written update from the Respondent about the repair issues with the lift. She explained that this email had inadvertently not been sent to all residents. She explained that it was only in November 2023 that all residents then received a written notification from the Respondent about the status of the lift repairs. Ms Blanco also explained that she had received no warning that the lift was to be serviced. Ms Blanco gave evidence about the impact that the lack of a working lift had on the residents in the upper floors of the building.

[9] Ms Blanco also explained that she made an official complaint to the Respondent by email on 23 November 2023. She then submitted this Application to the Tribunal on 25 November 2024. The email of complaint identified the Property and also stated "*Legal action against RMG+Formal Complaint Case.*" The email referred to a lack of engagement from one of the Respondent's employees and frustrations about the delay in the process of the refund. The Tribunal asked why the Applicant didn't allow time for this complaint to be resolved before she submitted the Application. The Applicant explained that she sent the email as a "*tick box*" exercise.

Jason Williams

[10] The Tribunal then heard from Jason Williams. Mr Williams largely spoke in support of his partner rather than bring any of his own specific evidence to the Tribunal.

The Respondents

[11] The Tribunal then heard evidence from Ms Tracy Urquhart and Ms Imogen Harrison.

[12] Ms Harrison explained the Respondent's position in relation to the refund. She accepted that the Respondent had indeed agreed to reimburse the Applicant pest control expenses incurred by the Applicant in February 2023. She accepted that the Applicant had to spend some time chasing for this payment. Ms Harrison also explained that when the Applicant had been eventually reimbursed in November 2023, that the Respondent had then waived management fees to the value of £72.28 as a good will gesture.

[13] Ms Urquhart then explained that she took responsibility for the development in early August 2023. She explained that six weeks after she took over, she received a phone call from an engineer who had carried out a standard six-monthly service on the lift in the building. The engineer explained that there were major repairing issues with the lift and that it required immediately to be shut down. Ms Urquhart asked the

engineer to make sure that some sort of notification to the residents was placed on the lift. The engineer put an “out of service” sticker on every floor. Ms Urquhart then explained that she had to wait for a report coming in from the contractor. This came in four or five days later. She approached four contractors and tried to organise a quote for the works. Around 6 October, Ms Urquhart chased up these quotes and eventually heard back around 19 October 2023. Not all contractors wanted to quote. She prepared a letter to the residents around then informing them of the situation. She had not expected it to take so long.

[14] Due to an error in the Respondent’s communications system, the letter was inadvertently not sent to all the residents and instead only to around half of those who should have received it. On 21 November 2023 all residents ultimately did receive a further communication from the Respondent telling them about the current status of the issues with the lift. The Applicant had explained that many of those who had not received the initial letter had been informed by those who had received it by virtue of being members of a WhatsApp group. The Respondent then got a quote for the repairs. It was a significant expense. The Respondent requested that residents pay a sum in advance to allow the works to progress. This then became a bone of contention for certain residents.

[15] It seemed to the Tribunal very clear that the Respondent acted reasonably regarding the issues with the lift. There was evidence of the Respondent having answered calls throughout from residents who wanted to know what was going on. There also was a sticker placed on the lift at every floor by the engineer. The residents ought to be assumed to have known that they could phone the Respondent and ask them what was going on. Ms Urquhart also explained that the Respondent has since changed their processes now regarding repairing issues with the lift to try and make sure that recent feedback is taken account of.

[16] The Respondents also took the view that they had been afforded no time to respond to the formal written complaint submitted by the Appellant as she had applied to the Tribunal two days later. The Respondents took the view that when the money was reimbursed to the Applicant, the Respondents considered the matter to be concluded and that no further action was necessary following on from the waiving of the management fees.

[17] Having considered the Application and having heard evidence, the Tribunal made the following findings in fact,

- I. *The Applicant is the proprietor of Flat 11, 4 West Kilnacre, Edinburgh, EH7 5BB.*
- II. *The Property was factored by the Respondent within the meaning of the Property Factors (Scotland) Act 2011.*

- III. *The Applicant paid a pest control invoice in February 2023 and at the time was informed by the Respondent that she would be reimbursed by them. The Applicant was not in fact reimbursed until November 2023. The Applicant suffered some inconvenience in chasing for reimbursement. When the Applicant was reimbursed in November 2023, the Respondent agreed to waive management fees to the value of £72.28 as a good will gesture.*
- IV. *The Applicant submitted an email to the Respondent on 23 November 2023. This email was headed: "Legal action against RMG+Formal Complaint Case." The email referred to a lack of engagement from an employee of the Respondent and expressed frustrations regarding the Respondent's delay in processing the refund. The Applicant sent this email as a "tick box" exercise in pursuance of her general grievance against the Respondent. The Applicant didn't wait for a response and submitted this Application to the Tribunal on 25 November 2023 which included allegations of a breach of the complaints handling obligations under the Code.*
- V. *In September 2023, The Respondent's Ms Urquhart received a phone call from an engineer who had carried out a standard six -monthly service on the lift in the building in which the Property is situated. The engineer explained that there were major repairing issues with the lift and that it required immediately to be shut down.*
- VI. *Ms Urquhart asked the engineer to make sure that some sort of notification to the residents was placed on the lift. The engineer put an out of service sticker on every floor.*
- VII. *Ms Urquhart had to wait for a report coming in from the contractor. This was received around four or five days later. Ms Urquhart approached contractors and organised a quote for the works. Around 6 October, Ms Urquhart chased up these quotes and eventually heard back further around 19 October 2023. She prepared a letter to the residents advising them of the status of the repair issues around 19 October 2023.*
- VIII. *Due to an error in the Respondent's communications system, the letter was inadvertently not sent to all the residents and instead was only sent to around half of those who ought to have received it. On 21 November 2023, all residents ultimately did receive a further communication from the Respondent informing them about the status of the issues with the lift. Many of those who had not received the initial letter had been informed by those had received the letter by virtue of many residents being members of a WhatsApp messaging group.*
- IX. *The Respondent then received a quote for the repairs. It was a significant expense. The Respondent requested that residents pay a sum in advance to allow the works to progress. The Respondent acted reasonably in attempting to organise funding for the necessary lift repairs. The Respondent requested that a proportion of the expense was paid up front by the residents given the costs.*

X. *The Respondent answered calls throughout from residents who wanted to know what was going on.*

[18] Having made the above findings in fact, the Tribunal makes the following findings in respect of the paragraphs of the Code alleged to have been breached.

The Code

“2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners’ responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.”

[19] The Tribunal could find no basis for suggesting that the Respondent had acted improperly in their management of the funding of the lift repairs and in consulting with the residents about the costs of those repairs. The Respondent was perfectly entitled to request funding to be paid up front before such an expense was incurred.

Commented [FW1]: Wasn't this one about the voting on payment for lift repairs in advance and the consultation with residents being inadequate?

“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”

[20] This paragraph of the Code has been breached by the Respondent. The Respondent took too long to refund the sums due to the Applicant for pest control. The Tribunal does note that the Respondent has already atoned for this by waiving the Appellant’s managements fees. The Tribunal considers the breach to be minor and to have already been completely resolved.

“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.”

The Tribunal does not consider that the Respondent has breached this paragraph of the Code. The Tribunal accepts that it was highly inconvenient to all for the lift to be out of commission, but the Tribunal does not consider that the Respondent breached this standard. They were always available to answer the phone and were certainly taking all necessary action behind the scenes. Given that the lift broke down in September and the Respondent attempted to issued formal updates to the residents in October, the Tribunal does not conclude that what they did was unreasonable. It was unfortunate that the October communication was not sent to all the residents but there is little evidence of this actually causing inconvenience as the information was widely shared. The Respondent also only issued a formal letter when they had something substantial to report.

[21] The Tribunal does not consider that this paragraph of the Code has been breached.

"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."

[22] This paragraph of the Code has not been breached by the Respondent. The Applicant applied to the Tribunal without giving the Respondent any time to action the complaint. In any event, the Respondent was then entitled to consider the matter resolved by making the refund and also waiving their management fees.

Property Factor Enforcement Order

[23] Having made the above findings, and notwithstanding that there had been a minor breach of paragraph 2.7, the Tribunal found no basis for making a Property Factor Enforcement Order in terms of Section 19 (2) of the Act.

[24] The Tribunal therefore made no such order.

APPEAL PROVISIONS

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision

and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Andrew McLaughlin

Legal Member

15 October 2024

