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Housing and Property Chamber
First-tier Tribunal for Scotland

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

Decision on Review: Property Factors (Scotland) Act 2011 ("the Act")

Decision under Paragraph 39 of the First-Tier Tribunal for Scotland (Housing & Property Chamber) (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PF/23/1788

Flat 1 Broomvale Court, 267 Mearns Road, Newton Mearns, Glasgow, G77 5LU ("The Property")

The Parties:-

Mr Jonathan Sammeroff, residing at Flat 1 Broomvale Court, 267 Mearns Road, Newton Mearns, Glasgow, G77 5LU("the Applicant")

Hacking & Paterson Management Services Ltd, a Company incorporated under the Companies Acts (Company Number SC073599) and having their registered office at 1 Newton Terrace, Glasgow, G3 7PL ("the Respondent")

Tribunal Members:

Mr E K Miller (Legal Member)
Mrs E Dickson (Ordinary Member)

Decision

The Tribunal, having considered the Applicant's request for review of parts of the decision of the Tribunal dated 6 February 2025 under Paragraph 39 of the Schedule to the First-Tier Tribunal for Scotland (Housing & Property Chamber) (Procedure) Regulations 2017 ("the Regulations") determined to accept the request for a review but to exercise its ability under Paragraph 39(4)(b) to give its preliminary view, being primarily (a) to accept the correction in relation to the availability of the service sheet but not to make any amendment to the finding that the Respondent was not at fault in relation to the ADT refund dispute and (b) to amend the proposed PFEO to the sum of £1000

The decision was unanimous.

Background

1. In this Decision the Property Factors (Scotland) Act 2011 is referred to as "the Act"; The Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is

referred to as "the Code"; and the First-Tier Tribunal for Scotland (Housing & Property Chamber) (Procedure) Regulations 2017 as amended as "the Regulations".

2. The Tribunal had issued a decision on 6 February 2025 which found various failings on the part of the Respondent. The Tribunal had issued a proposed Property Factor Enforcement Order ("PFEO") ordering the Respondent to pay the Applicant the sum of £750.

3. On 25 February 2025 the Applicant made representations to the Tribunal. These were on a limited number of points but related to a request for clarification on one point, pointing out a misstatement of fact and also requesting the Tribunal to review matters (a) in relation to the decision in relation to the ADT refund (Paras 34-43 of the original decision) and (b) in relation to the amount proposed under the PFEO. In his submissions, the Applicant highlighted Para 36 of the Regulations (the ability for the Tribunal to reissue a decision to correct clerical errors, mistakes or omissions) and Para 39 of the Regulations (the ability for the Tribunal either on its own initiative or at the request of a party to review its decision)

4. Although the Applicant's submissions sought a clarification as well as a request for review in relation to the ADT refund, in the view of the Tribunal it is simplest to cover all matters in this review decision. After the initial decision had been issued, the Applicant had, in light of his disclosed disability, asked for an extra few days beyond the 14 days required response time in terms of Para 39(2)(b)e to marshall his thoughts. The Tribunal was happy to extend him this courtesy.

5. The Tribunal noted and accepted that the Applicant had pointed out an incorrect statement by the Tribunal in relation to the ADT refund. On that basis, the Tribunal was satisfied that it was appropriate to review its decision. In terms of Para 39(4)(a), the tribunal must give the Respondent an opportunity to respond. However, the Tribunal was mindful that the Respondent had not, to date, chosen to participate. Whilst the Tribunal would give the Respondent a chance to comment on this review within 14 days of receipt, the Tribunal though it helpful that it also give its preliminary view on the review, as it is entitled to do in terms of Para 39(4)(b).

6. The first point raised by the Applicant was an apparent discrepancy between the wording in Paragraph 5 of the decision and in a 2nd direction issued by the Tribunal after it came to light that the 1st direction had not been sent to the Respondent. The Applicant highlighted that in the 2nd direction the Tribunal had stated "*the original direction prepared by the Tribunal had not been issued to the Respondent. It appeared this was an oversight",* whereas under Para 5 the Tribunal had stated *"It transpired that the request for the direction to be issued had happened over the festive period and had gone astray"*. The Applicant sought clarification on what had occurred and whether the Tribunal members had any involvement in the oversight. The Applicant cited Article 6 of the Human Rights Act on the right to a fair trial and and the right to an explanation

7. To clarify the position, following the original CMD, the Tribunal required further information primarily from the Respondent. The Tribunal members prepared a direction to be issued to the parties. The direction was sent by the Tribunal members to the administration office of the Tribunal between Christmas and New Year. The Tribunal members do not have any involvement in issuing correspondence direct to the parties, that task is carried out by the administration office staff. For whatever reason, possibly due to the time of year, the administration office did not send the direction out to the parties. This only came to light when the Tribunal reconvened in April 2024. The Tribunal members had had dealings with the Respondent on other

cases and knew it would be very unusual for the Respondent not to have complied with a direction of the Tribunal. Upon asking the administration to check that the direction had indeed been sent, it came to light that it had not. Given the Tribunal required information from the Respondent to make a proper decision, and the Respondent, it transpired, had not received the original direction, the Tribunal members felt they had no option but to have the direction sent in order to obtain the information they needed.

8. In relation to the difference in wording between the 2nd direction and this Decision, the Tribunal did not view there was any material difference. In both documents, whilst the wording was different, in essence, the Tribunal was noting that the original direction that the Tribunal had asked to be sent out had not been. The use of the word "astray" in this Decision was not intending to refer to the physical document itself but rather that the instruction to send out the direction to the parties from the Tribunal had not been actioned, no doubt due to an inadvertent oversight by the administration office.

9. In relation to the decision insofar as it covered the ADT refund (Paras 34-43), the Applicant made four points. The first of these was that at Para 34, the Tribunal had stated that there was a service sheet left in the building that was visible to anyone who wished to view it. The Applicant wished to highlight that was not the case. Whilst the sheet was indeed near the door, it was kept in a box that was at ceiling height and not readily accessible (and indeed was locked and the residents did not have keys). The Applicant advised that it had not been submitted that it was accessible or visible in either his productions or at the original CMD. He provided pictorial evidence with his submission of 25 February showing the high location of the box next to the door. The Tribunal accepts that Para 34 in this regard was incorrect as well as a later reference in Para 41. The decision is corrected in this regard by this paragraph. The preliminary view of the Tribunal of this correction is covered below at Paras 13-16 of this review decision.

10. The second point related to the Para 35 of the decision where it was stated that *"The Applicant was dissatisfied with this position as he felt… (b) that the factors should not have accepted a partial refund from ADT"*

The Applicant wished to clarify as to the reasons for his dissatisfaction and his submission that he wished noted was "*the reason I had been dissatisfied with this position was that the factors had seemingly assumed to accept the partial refund, without providing clear explanation as to why they might be able to assume to do so, and without clearly explaining why the refund would be partial in nature. Furthermore, on the face of it, the communication implies that the problem had only been occurring for seven years, which was unclear or misleading".*

The Tribunal was happy to note the Applicant's submission and take it in to account in its preliminary view set out below. The Tribunal noted the terms of the letter from the Respondent to the Applicant of 11 February 2022 that the Applicant felt was unclear or misleading.

11. The third point raised by the Applicant was at Para 41 where reference again was made to the service sheet being visible. As above, the Tribunal accept this was not the case and has taken this in to account in its preliminary review. The Tribunal also stated that presumably the door entry system had been continuing to work. The Applicant advised that this was not the case in his submission of 25 February 2025 and that it still did not work properly now. The Tribunal noted that it was aware that the door had not been working in March 2021 as this had been evident from the

Applicant's original submission. However, the primary focus in the submission (as evidenced, for example, by Complaint Form 1 as submitted by the Applicant) related to the refund for the missed inspections. This was agreed as being the key aspect at the original CMD with the Respondent. No reference had been made to the door entry still not working currently until the Applicant's submission of February 2025.

12. Fourthly, the Applicant queried the statement at Para 42 of the Decision that in the view of the Tribunal "fault lay with ADT". The Applicant felt this was not clear and was not verified and requested the Tribunal to review and make any amendments to its decision it felt appropriate.

13. The Tribunal considered the various points as part of its preliminary review. The Tribunal was grateful to the Applicant for correcting the position regarding the location of the service sheet. Whilst this was relevant, the Tribunal did not view it as changing the outcome of its decision. The primary reason for the Tribunal deciding that there had been no breach by the Respondent was set out in Para 40 and the first half of Para 41. Simply put, the service that the Respondent had contracted to provide the homeowners in terms of Condition 3 of its Terms of Service specifically stated that it did not check the work of contractors or guarantee it. The Code did not impose such an obligation either. The Respondent was obliged to raise any issues that it became aware of with contractors and it had done so. As set out in Para 37, the Tribunal was satisfied that the Respondent had adequately investigated the issue and that remained the case. Whilst the Tribunal appreciated that it was not the case that the homeowners could readily see the service sheet if it was locked in the high box, the same could equally be said of the Respondents. So, whilst the correction was helpful to the Tribunal and is acknowledged, it does not fundamentally change the position that the Respondent was not obliged to check the work of ADT in terms of its Terms of Service or the Code.

14. In relation to the second point, the Tribunal noted the Applicant's submission about the letter of 11 February 2022 not setting out in fuller detail the reasons why they had accepted the partial refund. The Tribunal are not aware if the Respondent was aware that 5 years refund was the most they would get through court action. If they were, it would have been helpful for them to have said so as that may have helped the homeowners understand the position. However, fundamentally, the Respondent's had chased ADT hard and had obtained a beneficial outcome. The Tribunal did not accept that the letter was misleading or unclear in relation to it suggesting that the error had only been for 7 years. The parties were all aware that the lack of visits went back further. The Respondent was simply copying information from ADT to the homeowners. In any event, that excerpt from ADT referenced the payment being capped and not going back before 2014 so it was a not unreasonable assumption that ADT themselves recognised that the period they had not attended was greater.

15. The Applicant's third point is covered by Paragraph 13 above. The primary complaint was also restricted to the ADT refund rather than any ongoing issues with the door. On that basis, the Tribunal was content with its decision at preliminary review

16. The fourth point was the Applicant's contention that it was not clear that ADT was at fault and that this was unclear or unverified. The Tribunal do not view this as being unclear or unverified. There are 3 parties involved in this issue, being the Applicant, the Respondent and ADT. The Respondent is not at fault for the reason given at Para 13. The Applicant and the other homeowner were not at fault. They paid for the services but these were not delivered by ADT. It was unfortunate that it did not come

to light sooner but that was not the fault of the Applicant or the Respondent. That only then left ADT. ADT were charging for a service they were not providing. They had acknowledged this and had refunded 7 years of payment, a clear acceptance that they had not been carrying out the work. The Tribunal were of the view that it was very clear who was to blame for this situation arising. The Tribunal accepts that this would be very frustrating for the homeowners not to recover all of the funds paid to ADT, nonetheless this was not the fault of the Respondent. Accordingly, the Tribunal was satisfied at preliminary review that the decision that the Respondent was not in breach of the Code or its Terms of Service.

17. The last part of the Applicant's submission was in relation to the amount of the PFEO. The Tribunal had assessed a sum of £750 and the parties had been invited to comment on the PFEO. Outwith his formal submission, the Applicant had enquired whether the sum granted was for inconvenience and how sums were assessed. He also highlighted in his formal submission that there had been voluminous correspondence between the parties and it had taken up a significant amount of time and effort. He pointed out his long efforts to have the Respondent comply with their Tersm fo Service and the Code. He asked the Tribunal to review theterms of the RSEO in relation to the amount.

18. The Tribunal would confirm that the proposed £750 had been to recognize the time, expense and inconvenience "(inconvenience") the Applicant had been put to as per Para 68. The Applicant had made a point about the proposed PFEO itself not mentioning this as being basis of the payment and is a fair one. The Tribunal is happy to amend the PFEO to reflect this for the sake of clarity and so it ties back to the comments in Para 68.

19. The Tribunal was of the view that there was no evidence of direct financial loss for those 3 elements of the complaint that were successful ((a)reasonable adjustment (b) A Menzies & Son and (c) the general position in relation to obtaining consent to repairs by the factor). The basis of assessment was on the inconvenience the Applicant had been put to.

20. In relation to how sums are arrived at, there is no set arithmetical or scientific calculation that the Tribunal specifically follows in inconvenience situations. Tribunal members are generally aware of typical awards that the Tribunal will give in inconvenience situations such this. The Tribunal had looked at recent PFEO's issued by the Tribunal that were published back to the beginning of 2024. There were 45 cases of awards for inconvenience being given. The average award was £550. The Tribunal had therefore recognized that the inconvenience the Applicant had been put to was above the average.

21. The Tribunal reviewed the position on a provisional basis. The Tribunal, in granting an above average award, had recognized the level of inconvenience incurred by the Applicant. Nonetheless, on review, the Tribunal did appreciate again the length of time the Applicant had been pushing to have matters resolved. They also considered that the approach of the Respondent in relation to the questions of reasonable adjustment and the dispute with A Menzies had been a little dismissive. Whilst it is a different jurisdiction, the Tribunal did note that awards under the Equality Act for reasonable adjustment can be slightly higher than those given by the Tribunal. Taking these factors into account, the Tribunal was minded that they had erred slightly on the low side in relation to the sum awarded under the proposed PFEO and resolved to increase that to £1000.

22. **Amended Proposed Property Factors Enforcement Order ("PFEO")**

The Tribunal proposes to make the following PFEO:-

1. "Within 30 days of service of the PFEO on the Respondent, the Respondent shall pay the Applicant the sum of £1000 for the inconvenience cause to the Applicant"

23. The Tribunal will require to formalise its review of the decision of 6 February 2025. Prior to that this decision and preliminary review will be intimated to the Respondent and they are requested to make any representations that they wish within 14 days of the date of receipt.

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.

_____ Legal Member and Chair

21 May 2025

_____ Date