

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision: Property Factors (Scotland) Act 2011 as amended by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Committees) Regulations 2016 (the 2011 Act): Section 19(1) (a)

Chamber Ref: HOHP/LM/16/0159

Flat 5/2, 79 Port Dundas Road, Glasgow, G4 0HF (“The House”)

The Parties:-

**Mr John Hood and Mrs Sally Hood,
Flat 11,
62 Saltoun Street,
Glasgow,
G12 9BE
Per their agents Contempo Property
9 Newton Place,
Glasgow
G3 7PR
 (“the homeowner”)**

**Newton Property Management,
87 Port Dundas Road, Glasgow, G40 0HF
 (“the property factor”)**

**Members of the tribunal:
Martin J. McAllister, legal member and Kingsley Bruce, ordinary member.**

Background:

The application is dated 22nd October 2016. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) assumed responsibility for it on 1st December 2016. The homeowner is alleging that the property factor did not comply with sections 2.1, 2.5, 5.4, 5.5, 5.6, 5.7, 6.1, 6.2, 6.3, 6.9 and 7.2 of the Code of Conduct for Property Factors (the Code) and that the property factor has not complied with the property factor’s duties.

On 23rd January 2017 a legal member of the tribunal, acting under delegated powers, referred the matter to the tribunal to determine.

The tribunal had before it the written representations made by both the homeowner and the property factor

A Hearing was held on 21st March 2017 at Wellington House, Glasgow. The homeowner was not present but was represented by Mr Alan Govan from Contempo Property. Mr Derek MacDonald and Mr Martin Henderson from the property factor were present.

The Hearing:

The tribunal had before it the application which included copies of the correspondence between the homeowner and the property factor.

It was noted that the matter arose from an issue with dampness in the kitchen floor of the House.

It is considered useful to set out certain matters in relation to the House which are not in dispute. The homeowner does not live in the House and it is tenanted.

The House was subject to an application to the private rented housing panel (prhp/rp/15/0337) made on 4th December 2015. A private rented housing committee determined that the House did not meet the repairing standard in terms of the Housing (Scotland) Act 2006. A repairing standard enforcement order (RSEO) was made on 29th February 2016 and inter alia required the landlord (homeowner) to "Carry out a detailed survey by a suitably qualified and RICS registered building surveyor of the floor within the kitchen area of the Property to identify the cause of the dampness therein and, thereafter, carry out such works as are recommended by the surveyor to remedy the dampness and renew the kitchen floor covering." The RSEO was varied on 25th July 2016 requiring the landlord to "Engage a suitably qualified building professional to identify the cause of the dampness and water ingress in the kitchen flooring area, thereafter, carry out such works as are required to remedy the dampness and water ingress and renew the kitchen floor covering."

Mr Govan indicated that he had not submitted the application and that it had been done by Mr Hood who was unable to attend the Hearing because he was abroad.

Mr Govan said his company are the letting agents for the homeowner and that he had received a complaint from the tenant about an issue with floor coverings in the kitchen floor and other issues. He said that at that point the tenant had been in the property for about seven years but, by that time, there was bad blood between Mr Hood and the Tenant and that the Landlord was engaged in a process of removing the Tenant from the property. He said that the Tenant was making all sorts of complaints and Mr Govan said that these were taken "with a pinch of salt." Mr Govan said that the Tenant had made an application to the Private Rented Housing Panel and that one of the issues was a leak under the kitchen floor. Mr Hood said that Mr Hood had asked Contempo to report the matter to the property factor and that this was in March 2016. He said that there had previously been an issue with a leaking common drainage stack. Mr Henderson said that he got a call from one of Mr Govan's colleagues advising of the kitchen floor issue and requesting that a surveyor be sent to the property. Mr Henderson said that the matter sounded as if it was not a common repair, that he could not incur the cost of a surveyor on behalf of the owners

but that he organised for a plumber to go the House as a courtesy. Mr Henderson said that he had done so to establish that it was not a common repair. He said that, to assist, the plumber lifted an area of floor. The outcome was that the plumber could not establish the cause of the leak and it was decided to leave matters and monitor the situation. Mr Henderson and Mr Govan said that it was then decided to have another plumber look at the matter. Mr Henderson said that both plumbers established that the leak was not a common repair issue and that this was communicated to the homeowner. Mr Henderson said that it was not the function of the property factor to establish the cause of a private leak within the House. He said that the property factor was happy to assist the homeowner with an insurance claim. Evidence was before the tribunal that the insurance claim was rejected. This evidence was not disputed. Mr Hood's written representation were that this was because the property factor had provided the loss adjustor with details of the Tenant and had therefore facilitated the loss adjustor and Tenant communicating with each other which, in Mr Hood's opinion, had caused the claim not to be admitted. Mr Govan confirmed that this was the homeowner's position. Mr Henderson said that the property factor had not provided contact details to the loss adjustor and that it would not be in their interest to do so. Mr Henderson produced a copy of an email from Mr Hailey (the loss adjustor) to Mr Govan dated 1st August 2016 which stated "The decision was made solely on the basis of the failure to comply with the notice to the landlord via the Private Rented Housing Committee and not on any comment made by the tenant.....I can only reiterate that the Private Rented Housing Committee stated that the landlord must, on or before 15th April 2016, carry out a detailed survey, by a suitable qualified and RICS registered building surveyor, of the floor within the kitchen areas to identify the cause of the dampness and thereafter, carry out repairs recommended by the surveyor to remedy the dampness and renew the kitchen floor covering. The foregoing does not appear to have been complied with as the incident was still on-going at the time of my visit in June 2016 and not appear to have been complied with as the incident was still on-going at the time of my visit in June 2016 and there was no evidence to suggest that any reasonable investigation had been carried out.....Due to the landlords failure to promptly carry out remedial repairs and mitigate the loss, insurers will be unable to provide any assistance on this occasion." Mr Govan said that the insurance claim had been reinstated and that it was hoped that it would be successful.

Both parties stated that the leak had been difficult to trace. There had been a crack in a condensing pipe from the boiler causing a misting under certain conditions.

The tribunal considered the various alleged breaches of the Code. Mr Govan said that he could only provide limited information on each matter because it had been Mr Hood who had made the application:

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

From Mr Hood's representations the issue is in relation to the allegation that certain information was given to the loss adjustor by the property factor.

The tribunal had before it no evidence to support this.

2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require

additional time to respond. Your response times should be confirmed in the written statement.

Mr Hood's position as set out in his written representations was that there was delay in the matter being dealt with and that, as a consequence, the insurance company withdrew its offer of settlement.

5.1 You must have, and maintain, adequate professional indemnity insurance, unless you are a social sector property factor who can demonstrate equivalent protections through another route.

5.4 If applicable, you must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. If homeowners are responsible for submitting claims on their own behalf (for example, for private or internal works), you must supply all information that they reasonably require in order to be able to do so.

5.5 You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves.

5.6 On request, you must be able to show how and why you appointed the insurance provider, including any cases where you decided not to obtain multiple quotes.

5.7 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) should be available for inspection, free of charge, by homeowners on request. If a paper or electronic copy is requested, you may make a reasonable charge for providing this, subject to notifying the homeowner of this charge in advance.

There was no evidence before the tribunal in relation to the property factor's indemnity insurance policy. It received confirmation from the property factor's representatives that indemnity cover is in place.

Mr Henderson confirmed that any documentation required by the loss adjuster was provided and that the homeowner was kept advised of progress of the claim. Mr Henderson advised that the homeowner made no request with regard to the appointment of the insurance provider and that all homeowners are given information in this regard at the appropriate times.

The homeowner's position in relation to the alleged breaches of section 5 of the Code is that the property factor mishandled the emergency situation and the insurance claim causing the insurers to withdraw an offer of settlement.

6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.

6.2. If emergency arrangements are part of the service provided to homeowners, you must have in place procedures for dealing with emergencies (including out-of-

hours procedures where that is part of the service) and for giving contractors access to properties in order to carry out emergency repairs, wherever possible.

6.3 On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.

6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

Mr Hood's written representations state that he considers that the property factor failed to take appropriate action to attend to an emergency at the property and failed to engage a contractor to identify the source of the problem. The representations make reference to the first contractor and the second contractor failing to find the reason for the leak and that the homeowner had to engage his own contractor. Mr Hood states that the delay of the property factor caused the insurers to withdraw their offer to settle the insurance claim. Mr Govan said in evidence that the source of the leak had been very difficult to trace and that he could understand why the contractors had been unable to find out the source of the problem. He again said that the leak was in a condensing pipe from the boiler and that the misting which came from the pipe only happened in certain conditions. In answers to questions from the tribunal Mr Govan said that the tenant had complained to his landlord about a leak in the kitchen floor before the application to the private rented housing panel and that this was against the background of bad blood between the parties. He said that no action had been taken by the landlord/homeowner at that time.

7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel.

Mr Hood's written representations stated that the property factor had not dealt properly with its complaints procedures and made reference to the contractors appointed by them not being properly qualified. The representations state that Mr Henderson had failed to respond to numerous requests for information. Mr Govan was unable to provide any evidence on this particular matter and the tribunal noted the terms of the copies of letters before it which were sent by the property factor to the homeowner in response to communications from the homeowner. In particular the tribunal noted the terms of the property factor's letter to Mr Hood dated 18th January 2017.

Discussion

The tribunal considered the oral and written evidence. The issue was about a leak and all the matters in the application stemmed from how that was dealt with. The tribunal noted that Mr Hood in his representations stated that the matter was an

emergency. The tribunal considered that this did not sit well with the evidence from Mr Govan that the tenant's complaints were effectively not taken seriously because of the bad blood between the tenant and the homeowner. The tribunal accepted Mr Govan's evidence on this point but even if it had not then what cannot be disputed is that the landlord/homeowner would have had intimation of an issue with the kitchen floor leak prior to the application being considered by the private rented housing committee. It is clear that he did nothing about it prior to a repairing standard enforcement order being made. It was not disputed by Mr Govan that the landlord/homeowner failed to comply with the repairing standard enforcement order. The landlord/homeowner did not employ a RICS registered building surveyor to ascertain the cause of the leak. The tribunal found it surprising that this was not done. Not only did the landlord/homeowner not engage a surveyor (although his agent, having telephoned the property factor to send a surveyor to the property appears to consider it to have been reasonable for the cost of such a surveyor to be shared by all owners) but the responsibility as also stated in terms of the RSEO was to undertake necessary investigation which ultimately would have benefited the homeowner.

The tribunal did not accept the homeowner's position that actions of the property factor had caused the insurance company to withdraw its offer of settlement of the claim. The tribunal preferred the evidence contained within the email of the loss adjuster to Mr Govan, the homeowner's agent, dated 1st August. This email clearly stated that the insurers were not prepared to provide assistance because of the homeowner's failure to comply with the repairing standard enforcement order.

The evidence of the property factor was that the repair was not common and was private to the proprietor of the House and this was not disputed by Mr Govan. At the time when the issue was reported to the property factor it was not made aware of the RSEO. If the tribunal had any criticism of the property factor it may be that the property factor had assisted the homeowner too much once it was ascertained that the repair was not common. Arguably the property factor should have let the homeowner deal with matters without its involvement but any failing of the property factor did not bring the property factor into the area of breach of the Code or failure to carry out the property factor's duties.

The tribunal did not accept that there was breach of the Code and found no evidence that the property factor had failed to carry out the property factor's duties. It therefore did not propose that a property factor enforcement order be made.

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.