

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/21/1576

Property : Flat 1/2, 85 Niddrie Road, Glasgow G42 8PR (“Property”)

Parties:

Margaret Lindsay, Flat 1/2, 85 Niddrie Road, Glasgow G42 8PR (“Homeowner”)

Speirs Gumley Property Management, Red Tree Magenta, 270 Glasgow Road,
Rutherglen, Glasgow G73 1UZ (“Factor”)

Tribunal Members:

Joan Devine – Legal Member

Mary Lyden – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) unanimously determined to dismiss the Application.

Introduction and Background

1. In this decision the Property Factors (Scotland) Act 2011 is referred to as the “2011 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 and Property Chamber (Procedure) Regulations 2017 are referred to as the “Rules”.
2. By application dated 18 June 2021 the Homeowner applied to the Tribunal for a determination on whether the Factor had failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act and had failed to comply with various sections of the Code as required by section 14(5) of the 2011 Act. The relevant Code is the 2012 Code as the application was made before implementation of the 2021 Code.
3. A Case Management Discussion took place on 2 December 2021. Reference is made to the Note thereof. At paragraph 6 it is noted that the Homeowner confirmed that she alleged breaches of sections 4.1, 4.5, 4.8 and 4.9 of the Code. At paragraph 14 it is noted that the Factor was required to lodge written representations within 28 days. At paragraph 15 it is noted that both Parties

were to lodge witness lists, if appropriate, and any productions no later than 14 days before the Hearing.

4. A Hearing was fixed for 1 February 2022 which the Homeowner did not attend and was adjourned. The Homeowner later maintained that she had not received notification of the 1 February 2022 hearing date. It was then agreed that notification of the next hearing date would be sent to her by recorded delivery. The Homeowner was made aware that her application may be dismissed if she does not attend the next hearing.
5. The Hearing scheduled for 24 March 2022 could not proceed and it was highlighted to the Homeowner that she could be accompanied at forthcoming hearings by a supporter of her choice, whose role would be to assist the Homeowner by providing moral support and help her to manage documents etc. This hearing was adjourned to a Hearing to take place in person on 5 September 2022. That Hearing was postponed to 3 November 2022.
6. The Hearing on 3 November 2021 was attended by Joanne Knox, Liz McCann and Kate Hendry of the Factor. The Homeowner did not attend. The Tribunal issued a direction asking the Homeowner to confirm whether she wished to proceed with the application. She responded saying that she did. A Hearing was fixed for 13 February 2023. The Homeowner was notified of the date of the Hearing by email on 8 November 2022. By email dated 2 December 2022 the Factor advised the Tribunal that they would not attend the Hearing and wished the Tribunal to consider their written representations submitted on 22 December 2021 and 16 May 2022. They also sought an award of expenses for the reasons set out in the email.
7. The Factor lodged an Inventory of Productions on 22 December 2021 and further productions on 16 May 2022. The Homeowner lodged productions on 23 March 2022.

Hearing on 13 February 2023

8. The Factor did not attend the Hearing as they had indicated in their email of 2 December 2022. The Homeowner did not attend the Hearing. Attempts were made to contact her by telephone without success.

Reasons for Decision

9. The Tribunal reviewed the procedural history of the application and determined to dismiss the application for want of insistence. The Tribunal considered the overriding objective. Whilst there is a need to seek informality

and flexibility in proceedings there is also a need to avoid delay so far as compatible with the proper consideration of the issues. The Homeowner had failed to attend Hearings fixed for 3 November 2021 and 13 February 2023. Proceedings at the instance of the Factor in the Sheriff Court had been paused to allow the Homeowner to proceed with this application. The lack of engagement in the Tribunal process by the Homeowner indicated that she did not wish to insist on the application.

10. The Tribunal considered the request by the Factor for an award of expenses to be made against the Homeowner. In terms of Rule 40 the Tribunal may award expenses against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. In the circumstances of this case the Tribunal determined not to make an award of expenses.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014 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

Date : 13 February 2023