



Decision on Homeowners' Application in terms of Section 19 (1) (a) of the Property Factors (Scotland) Act 2011 ("the 2011 Act") and The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations")

Chamber Reference: FTS/HPC/PF/21/1864

Re the Property at 0/1 1840 Great Western Road, Anniesland, Glasgow, G13 2TN ("the Property")

The Parties:

Craig McNicol, 61 Langdale Road, Sale, M33 4FL ("the Applicant") and

Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL ("the Respondent")

Tribunal Members:

**G. McWilliams, Legal Member
D Godfrey, Ordinary Member**

Decision

The Respondent has failed to comply with its duties under Section 14(5) of the Property Factors (Scotland) Act 2011 ("the Act") in that it did not comply with Sections 2.1 and 2.5 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code").

This decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") is unanimous.

The Tribunal considered matters and have determined that, in relation to the Application before it, the Respondent has not complied with the Code. The Tribunal propose to make a Property Factor Enforcement Order ("PFE0") in the following terms:

- i) The Respondent is to make a compensation payment to the Applicant, in the sum of £500.00, within 28 days of the date of issue of the PFE0; and**
- ii) The Respondent is to provide the Applicant with a written report from a suitable specialist, within 42 days of the date of issue of the PFE0, which confirms;**
 - a) full details of all works done at the Property in July 2021, in respect of the rot outbreak there; and**
 - b) whether or not all of the rot, which was discovered, has been eradicated.**

iii) The Respondent is to lodge a copy of the report, referred to above, with the Tribunal's office, also within 42 days of the date of issue of the PFE0.

Introduction

1. The Respondent is the registered property factor for the Property and they have a duty to comply with the Property Factors Code of Conduct ("the Code") under Section 14 (5) of the 2011 Act and to carry out their Property Factor's Duties in terms of Section 17 (5) of the 2011 Act.
2. The Applicant applied under Section 17(1) of the 2011 Act. In his Application the Applicant complained that the Respondent had acted in breach of Sections 2.1, 2.5, 6.1 and 7.1 of the Code.
3. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call on 28th October 2021. The Applicant attended. The Respondent did not attend and was not represented. Reference is made to the Notes on the CMD which were issued to the parties.
4. The Applicant lodged written representations and documentation in advance of both the CMD and the evidential Hearing. The Respondent did not lodge any representations or documentation with the Tribunal.

The Hearing

5. An evidential Hearing proceeded remotely by telephone conference call at 10.00am on 11th January 2022. The Applicant attended. The Respondent did not attend and was not represented. The Tribunal's office team attempted to contact the Respondent by email and telephone call, on 10th January 2022, to ascertain whether or not the Respondent intended to attend the Hearing, but were unsuccessful.

Evidence and Submissions

6. The Applicant gave oral evidence and made submissions. He referred to the representations and documentation which he had lodged.
7. In respect of Section 2.1 of the Code the Applicant stated that the Respondent did not inform him that the repair works were carried out in July 2021, until 23rd November 2021. He said that he was still contacting the Respondent in August, September and October regarding the works and they did not tell him that these had been completed. The Applicant stated that the Respondent sent an operative out to look at works that were required in August 2021, when, he now knows, the works had been done in July 2021. He stated that he still has not been given details of the works that have been carried out nor confirmation that the dry rot has been eradicated. He said that his own builder has reported that the works included new timber being bolted to existing timber which would mean that rot has not been cut away.
8. Regarding Section 2.5 of the Code, the Applicant stated that the Respondent generally did not respond to any of his enquiries. He said that he had not received

one return call from the Respondent despite promises since the rot issue had first arisen in March 2020. The Applicant stated that the Respondent did not reply to his further email following stage 2 of his complaint to them.

9. In relation to Section 6.1 of the Code, the Applicant stated that he accepted that the Respondent had procedures in place to allow homeowners to notify them of matters requiring repair. He said that the Respondent did not provide any timescales for repairs to be carried out and that, in this instance, it took the Respondent some one year and three months to carry out works, and that they did not notify him of progress with those works.
10. The Applicant accepted that the Respondent has a published written complaints resolution procedure, in compliance with the terms of Section 7.1 of the Code.

Findings in Fact and Law

11. The Applicant is the owner of the Property.
12. The Respondent performs the role of property factor of the block of flats within which the Property is situated.
13. The Respondent gave the Applicant misleading information, between March 2020 and November 2021, regarding dry rot eradication works required at the Property.
14. The Respondent did not respond to the Applicant's enquiries and complaints within prompt timescales.
15. The Respondent has procedures in place to allow homeowners to notify them of matters requiring repair.
16. The Respondent has a published written complaints resolution procedure.
17. The Respondent has acted in breach of Sections 2.1 and 2.5 of the Code.
18. The Respondent has not acted in breach of Sections 6.1 and 7.1 of the Code.

Reasons for Decision

19. The Tribunal considered and weighed all of the evidence and submissions, oral and written, of the Applicant. The Respondent did not engage in these proceedings. In particular they did not attend, or arrange to be represented at the CMD on 28th October 2021 and the evidential Hearing on 11th January 2022. The Applicant gave evidence in a credible, straightforward and consistent manner. There was no contradictor to his evidence. Accordingly, the Tribunal finds, on a balance of probabilities, that the above facts have been proved. Therefore, applying the law in the Code, the Tribunal make the above findings in law.
20. As the Tribunal determines that the Respondent has acted in breach of the Code, they will make a proposed Property Factor Enforcement Order ("PFEО").

21. Having considered and weighed all of the evidence and submissions, the Tribunal finds that a proposed PFEO, requiring production of a report and payment by the Respondent to the Applicant in an amount of £500.00 is appropriate. The Respondent's compliance with the proposed PFEO will ensure that the Applicant receives confirmation of the nature of the works carried out at the Property and whether or not the rot there has been eradicated. The payment ordered is proportionate to compensate the Applicant for the inconvenience, stress and frustration which he has suffered as a result of the Respondent's breaches of the Code. It takes account of the fact that the Applicant has continued to pay monthly management fees to the Respondent since the discovery of the rot at the Property, notwithstanding the Respondent's breaches of the Code.

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 within thirty day of the date the Decision was sent to them.

G. McWilliams, Legal Member

22nd February 2022