



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 19(1)(a)**

Chamber Ref: FTS/HPC/PF/21/2198

**Re: Property at 2 Rowanhill Close, Port Seton, East Lothian, EH32 0SY ("the
Property")**

The Parties:

**Mr Andy Wood, 2 Rowanhill Close, Port Seton, East Lothian, EH32 0SY ("the
Homeowner")**

**Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD
("the Property Factor")**

Tribunal Members:

Neil Kinnear (Legal Member) and Elaine Munroe (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor has failed to comply with section 2.5 of the Code of Conduct for Property Factors as required by section 14(5) of the *Property Factors (Scotland) Act 2011*.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £300.00 in respect of the Property Factor's failure to comply with section 2.5 of the Code of Conduct for Property Factors.

[3] The Decision of the Tribunal was unanimous.

Introduction

[4] 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 as amended are referred to as “the Rules”.

[5] The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

[6] By application dated 8th September 2021 the Homeowner applied to the Tribunal for a determination on whether the Property 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 sections 1.1a D.m, 2.5, 6.9, 7.1 and 7.2 of the Code as required by section 14(5) of the 2011 Act.

[7] On 7th December 2021 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a hearing. By letters dated 15th December 2021 both parties were notified that a Case Management Discussion by conference call would take place at 10:00 8th February 2022. Prior to the Case Management Discussion, the Property Factor lodged further written copy e-mails and correspondence relating to potential resolution of the application by agreement.

[8] A Case Management Discussion was held at 10:00 on 8th February 2022 by conference call. The Homeowner participated, and was not represented. The Property Factor’s Miss Borthwick participated, and was not represented.

[9] The Tribunal discussed with the parties the progress of their discussions to resolve the issue in dispute. Miss Borthwick accepted that the Property Factor has been slow to respond to the issue raised by the Homeowner, and was accordingly in breach of the Code in that respect.

[10] However, the Property Factor has been in communication with the Homeowner, and agreed remedial work was scheduled to take place on 11th February 2022. The Homeowner confirmed that was the case, and his satisfaction that after initial delay, the Property Factor was now taking the necessary remedial action.

[11] The Tribunal and the parties agreed that in these circumstances it was in the interests of justice to continue the Case Management Discussion to allow the Property Factor to undertake the scheduled remedial works. A continued Case Management Discussion was set to allow parties to confirm that remedial work had been completed satisfactorily, and to consider the Property Factor’s admitted breach of the Code.

[12] A continued Case Management Discussion was held at 10:00 on 1st April 2022 by conference call. The Homeowner again participated, and was not represented. The Property Factor’s Miss Borthwick again participated, and was not represented.

[13] Parties informed the Tribunal that the remedial work had been completed satisfactorily. The Homeowner indicated that he had been very pleased with the Property Factor’s service since Miss Borthwick had become involved. However, he wished to proceed with his application solely in respect of the Property Factor’s failure

to comply with section 2.5 of the Code. That related to the prolonged period prior to Miss Borthwick taking over dealing with the matter during which the Property Factor did not respond to his enquiries and complaints within prompt timescales.

[14] Miss Borthwick confirmed that the Property Factor accepted that it had been in breach of section 2.5 of the Code prior to her own involvement, for which it offered its sincere apologies. She confirmed that procedures had been changed to seek to ensure that such a situation would not re-occur.

[15] The Homeowner confirmed that he would seek compensation, and he agreed with Miss Borthwick that the sum of £300.00 would be acceptable.

Statement of Reasons

[16] Section 17 of the 2011 Act provides:

“17 Application to the First-tier Tribunal

(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

(3) No such application may be made unless—

(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

(4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.

(5) In this Act, “*property factor's duties*” means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

- (i) adjoining or neighbouring residential property owned by the homeowner, and
- (ii) available for use by the homeowner.”

[17] Section 17(1) creates two separate grounds of complaint, being failure to carry out the property factor’s duties and failure to ensure compliance with the Code. The Homeowner proceeded solely in respect of the latter.

[18] The Tribunal was satisfied that the Property Factor failed to respond to verbal and written complaints and requests within prompt timescales. This was a breach of section 2.5 of the Code.

[19] The Tribunal considered that the sum of £300.00 was appropriate compensation having regard to both the anxiety and distress caused to the Homeowner by the Property Factor’s failure in respect of the Code and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings. In those circumstances, the Tribunal will issue a proposed Property Factor Enforcement Order for that amount.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

01/04/2022

Legal Member

Date