



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/20/2158

Re: Property at 189 Abbeyhill Street, Glasgow, G32 6LN ("the Property")

The Parties:

Ms Alice Mooney, 189 Abbeyhill Street, Glasgow, G32 6LN ("the Homeowner")

Your Place, 25 Cochrane Street, Glasgow, G1 1HL ("the Property Factor")

Tribunal Members:

Neil Kinnear (Legal Member) and Mary Lyden (Ordinary Member)

DECISION

[1] The Tribunal determined that the Property Factor has not failed to carry out its property factor duties in terms of section 17(1) of the *Property Factors (Scotland) Act 2011* ("the 2011 Act"), has failed to comply with Section 2.5 of the Code of Conduct for Property Factors, and has not failed to comply with Sections 2.1 and 7.1 of the Code of Conduct for Property Factors as required by Section 14(5) of the 2011 Act.

[2] The Tribunal awarded compensation payable by the Property Factor to the Homeowner in the sum of £250.00 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 13th October 2020 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 2.1, 2.5 and 7.1 of the Code as required by Section 14(5) of the 2011 Act.

[7] On 20th January 2021 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a hearing. By letters dated 9th February 2021 both parties were notified that a hearing by conference call would take place at 10.00 am on 22nd March 2021. That Hearing was postponed. A further hearing by conference call was then notified by letter to both parties on 18th March 2021, to take place at 10.00 am on 28th April 2021. That Hearing was also postponed, and a Hearing was ultimately held on 24th June 2021 by conference call. The Homeowner participated, and was represented by Miss Sloey, solicitor. The Property Factor’s Miss Rush and Mr Adams participated, and was not represented.

[8] The Tribunal heard evidence from the Homeowner, her son-in-law Mr Murphy, her daughter Mrs Murphy, her son Mr Wilson, and from the Property Factor’s Miss Rush. Ultimately, it became clear to the Tribunal that there was actually very little factual dispute between the parties. Both parties confirmed that the Property suffers from severe and historic long-term damp problems causing the formation of mould and damp patches within the Property which render it barely fit for habitation. The damp problem is the result of failure of the external render, which now ceases to keep the Property, which is one of four in a block, wind and watertight.

[9] Both parties confirmed that a meeting was held of all the homeowners in the development on 4th August 2017, where a grant-aided repairs project was discussed with Glasgow Housing Association. A vote was taken at that meeting which obtained majority consent to the repair proposal, and the owners were advised the works would proceed on that basis.

[10] The proposed works were sufficiently extensive and intrusive that they required each property in each block subject to them to be vacant for the duration of the works. Glasgow Housing Association proceeded on the basis that legal action could be taken to enforce provisions in the deeds of conditions of the properties to allow the works to proceed as it had been unable to obtain unanimous consent from all the proprietors in all the affected blocks subject to the repairs project.

[11] Subsequently, Glasgow Housing Association were unable to obtain vacant possession of all four properties in the block of which the Property forms part, and it was in consequence removed from the repairs project. The Homeowner was informed

of this situation by letter to her dated 11th September 2018, a copy of which was produced.

[12] The Homeowner and her family gave evidence of their disappointment with that decision. They also gave compelling evidence about the poor condition of the Property and the affect that has had on their health and well-being over a prolonged period. The Tribunal would note that it has enormous sympathy for the Homeowner's unfortunate situation.

[13] The Homeowner's representative submitted firstly, that the Property Factor was in breach of Section 2.1 of the Code. She submitted that the Property Factor had provided misleading or false information in advising the Homeowner that the work would proceed following the vote at the meeting of on 4th August 2017 which obtained majority consent to the repair proposal.

[14] The Homeowner's representative submitted secondly, that the Property Factor was in breach of Section 2.5 of the Code. She submitted that the Property Factor had not responded to enquiries and complaints within prompt timescales. The Homeowner's representative first wrote to the Property Factor on 19th December 2019, and made a formal complaint on 28th February 2020, but received no response until 16th September 2020.

[15] The Homeowner's representative submitted thirdly, that the Property Factor was in breach of Section 7.1 of the Code. She submitted that although the Property Factor had a clear written complaints resolution procedure which set out a series of steps with reasonable timescales linking to those set out in the written statement, it did not follow those in dealing with the Homeowner's complaint.

[16] Finally, the Homeowner's representative submitted that the Property Factor had breached its contractual duty under its statement of services to manage the common parts of the Property adequately, and to adhere to the timescale stated in that document for responding to complaints. The Property remained in very poor condition, and the Property Factor despite being aware of this had not taken sufficient action to remedy that.

[17] In response, the Property Factor's Miss Rush gave evidence of the Property Factor's considerable sympathy with the Homeowner's situation, which it was well aware of. However, it disputed that it was in breach of section 2.1 of the Code. Miss Rush explained that Glasgow Housing Association had anticipated that in the event of any proprietor of a property subject to the repair project refusing to vacate the Property, it would be able to enforce the applicable deeds of conditions for any such property by legal action. One of the other proprietors in the Homeowner's block refused to vacate to allow the work to proceed.

[18] Glasgow Housing Association approached Glasgow City Council, who held the appropriate enforcement powers, seeking their support to use those powers to compulsorily decant dissenting owners to accommodation which it would provide to them all for the duration of the repair works, but unexpectedly Glasgow City Council advised that they were not prepared to utilise these powers. As a result of that decision by Glasgow City Council, Glasgow Housing Association were unable to compulsorily

decant the dissenting owner in the Homeowner's block, and as a result the Homeowner's block could not be included within the repairs project scheme.

[19] The Homeowner was advised of that outcome in the Property Factor's letter to her of 11th September 2018. There had been a change in circumstances from when the original meeting took place of the homeowners in the development on 4th August 2017, which resulted in the scheme being unable to proceed. The Property Factor had not provided misleading or false information. The position had simply changed as a result of the unexpected decision by Glasgow City Council, and the Property Factor had advised the homeowner of the consequence of that.

[20] Prior to the Hearing, the Property Factor had confirmed in writing to the Tribunal and the Homeowner that it accepted that it had been in breach of section 2.5 of the Code, for which it apologised and offered to pay compensation to her of £200.00. Though ultimately a response dealing with all the issues raised in the complaint was given, this had not been done in accordance with the timescales set out in its written statement of services. The Homeowner declined this offer of compensation.

[21] With regard to section 7.1 of the Code, the Property Factor denied it was in breach of this. The Property Factor had a clear written complaints resolution procedure which set out a series of steps with reasonable timescales linking to those set out in the written statement. It should have followed these, but its failure to do so was a breach of section 2.5 of the Code and not a breach of section 7.1 of the Code.

[22] Finally, the Property Factor did not accept that it breached its contractual duty under its statement of services to manage the common parts of the property adequately. It had made every effort within its power to effect the repair project, but faced with a dissenting proprietor in the Homeowner's block, Glasgow Housing Association was unable to proceed in the absence of support from Glasgow City Council to use its enforcement powers. Its failure to adhere to complaint response timescales was already admitted in relation to section 2.5 of the Code.

[23] The Property Factor noted that it remained happy to discuss other potential legal options which the Homeowner might have with her, outwith the grant-aided repair project, in order to seek to have repairs effected on the block of which her Property forms part.

Statement of Reasons

[24] 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.”

[25] 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 proceeds in this application in respect of both.

[26] The Tribunal requires to decide whether the Property Factor is in breach of the Code or its property factor duties. The Property Factor has accepted its breach of section 2.5 of the Code, and the Tribunal did not therefore require to address this complaint.

[27] With regard to section 2.1 of the Code, the Tribunal concluded that the Property Factor had done all that could reasonably be expected of it. The information which it provided at the original meeting of the homeowners in the development on 4th August 2017 was understood to be correct at that time. The Tribunal accepted that the Property Factor had not provided misleading or false information. The Tribunal accepted that matters had moved on, and that the position had simply changed as a result of the unexpected decision by Glasgow City Council, which had not been foreseen in the earlier meeting. The Property Factor had advised the Homeowner of the consequence of that in its letter to her of 11th September 2018.

[28] With regard to section 7.1 of the Code, the Tribunal concluded that the Property Factor had not breached that section. It provides “You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.”

[29] The Homeowner accepted that the Property Factor had a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which included how you will handle complaints against contractors. The Homeowner, however, submitted that the Property Factor’s failure to follow that procedure was a breach of section 7.1 of the Code.

[30] The Tribunal did not agree with that submission. The Tribunal considered that the qualification “which you will follow” means that the written statement of services should indicate that the Property Factor will follow the procedure it has set out, which the written statement does. It does not mean that in the event (as occurred here) that the Property Factor fails to follow its procedure as set out in its written statement that it is in breach of section 7.1 of the Code. That situation is covered by section 2.5 of the Code.

[31] Finally, the Property Factor has accepted its breach of section 2.5 of the Code with respect to failure to comply with its written complaints procedure. That being so, the Tribunal does not find it necessary to find it has failed to carry out its duties in that respect. With regard to the complaint that it has failed in its property factor duties by not managing the common parts of the Property adequately, the Tribunal did not accept that it had so failed. In the absence of agreement, the Property Factor could not enforce major structural repairs against a dissenting proprietor. The Homeowner may well have other legal remedies she might investigate to seek to compel those repairs.

[32] The Tribunal considered that the sum of £250.00 was appropriate compensation having regard to the anxiety and distress caused to the Homeowner by the Property Factor’s failure in respect of Section 2.5 of the Code and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings.

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.

[Redacted Signature]

04 August 2021

Legal Member

Date