

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/PF/21/2011

**Flat 2/2, 20 Boydstone Path, Cowglen, Cowglen, Glasgow G43 1AJ
("the Property")**

The Parties:-

**Mr George Greig, Flat 2/2, 20 Boydstone Path, Cowglen, Glasgow G43 1AJ
("the Homeowner")**

**RMG Scotland Ltd, RMG House, Essex Road, Hoddesdone EN11 0DR
("the Factor")**

Tribunal Members:

Graham Harding (Legal Member)

John Blackwood (Ordinary Member)

DECISION

The Factor has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with section 2.5 of the Code.

The decision is unanimous.

Introduction

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".

1. By application dated 5 August 2021 the Homeowner complained to the Tribunal that the Factor was in breach of Sections 2.1, 2.5, 3.3 and 7 of the Code. In subsequent correspondence the Homeowner withdrew his complaint with regards to the alleged breach of Section 7 of the Code. The Homeowner submitted a document detailing his complaint with his application together with copies of email correspondence with the Factor and invoices in support of his complaint.

2. By Notice of Acceptance dated 16 September 2021 a Legal Member of the Tribunal with delegated powers accepted the application and a hearing was assigned.
3. The Homeowner submitted further written representations by emails dated 7 October, 22 November and 7 December 2021.
4. The Factor submitted written representations by emails dated 19 October, 4, 18 and 24 November 2021 and 9 March 2022.
5. The hearing assigned for 12 November 2021 was postponed at the request of the Factor and the hearing assigned for 11 February 2022 was postponed at the request of the Homeowner.

Hearing

6. A hearing was held by teleconference on 18 March 2022. The Homeowner attended in person. The Factor was represented by Ms Lisa Pieper, Operations Manager and Mr Andrew Rose, Senior Property Services Analyst.

Summary of submissions

Section 2.1 of the Code

7. The Homeowner referred the Tribunal to his written submissions. He explained that in his view the Factor had ever since he purchased the property three years ago consistently produced erroneous invoices which were misleading. The Homeowner advised the Tribunal that he had first raised the issue with the Factor towards the end of 2019 and had written formally by email dated 13 February 2020. There had then followed lengthy correspondence back and forward between himself and the Factor all as detailed in the written submissions.
8. The Homeowner went on to explain that in 2020 there had been lockdown due to the Covid 19 pandemic and he had been at home most of the time. He suggested that if there had been gutter cleaning carried out at the property, he would have seen it but he had not yet he had still been charged for it. He had never been provided with a receipt to show the work had been done. He suggested that although it had been suggested by the Factor that the work had been done in a different time period from the period invoiced that was “smoke and mirrors”. What he wanted to know was whether the work had been done or not.
9. In response to a query from the Tribunal as to whether the Homeowner was suggesting that the information provided by the Factor was false or misleading the Homeowner submitted that given the number of errors and corrections that had been applied it was both. He again referred the Tribunal to other examples contained within the written submissions. He spoke of being charged for a repair to the service button without first being informed of a repair being necessary. He said he had not had any issue with the entry

system. He spoke of charges for the emergency lighting and smoke detection system and of being charged for cleaning when no cleaning was being carried out in lockdown.

10. For the Factor Ms Pieper explained that the gutter cleaning had been carried out in January 2020 but not invoiced until a later date. Ms Pieper confirmed that the gutters had been cleaned on 23 January 2020 which was prior to the lockdown. She was sure that had been explained to the Homeowner. Mr Rose referred the Tribunal to the Factor's productions at page 146. The Homeowner suggested that the country was in lockdown in January 2020 but the Tribunal indicated to him that this would not have been the case.
11. With regards to the service button issue Mr Rose advised the Tribunal that if a repair cost less than £350.00 the Factor did not need to obtain agreement from Homeowners before instructing contractors to go ahead. He referred the Tribunal to the Factor's Written Statement of Services. As the total cost of the repair was £34.20, he said the Factor would not consult with owners. The Tribunal was advised that there were nine properties in the Homeowner's block.
12. The Homeowner said that he was unaware of the £350 figure referred to by Mr Rose. Mr Rose referred the Tribunal to the Factor's productions page 103 Paragraph 2 which referred to the said figure.
13. Ms Pieper went on to say that she accepted that the current system of invoicing in use by the Factor could be confusing but it was not false or misleading. It involved the manual input of entries She explained that the Factor was in the process of installing a new system that would be in operation by the middle of this year. Mr Rose accepted that there had been errors with the current system and that was why the Factor was investing a large sum of money in the new system to correct that.
14. The Tribunal queried how errors would be identified if not picked up by the Homeowner. Mr Rose said that the finance department would eventually become aware of any errors and correct them. He said there had been no recent issues with any invoices.
15. The Homeowner advised the Tribunal that when he purchased the property in 2019, he had been advised by the builders that the annual factoring charges would be about £339 but he had paid £480 in the first year and costs continued to rise. He felt that was misleading. He also thought that each year the Factor did not obtain the best price from contractors for services.
16. For the Factor Ms Pieper explained that different factors would submit proposals to the developer for the service to be provided with an estimate of the cost but it would only be an approximation. The Factor was not responsible for any estimate of charges prepared by the developer. She went on to say that the Factor did tender for services and had this year changed its gardener to one who was more competitive particularly as ground maintenance costs increased.

Section 2.5 of the Code

17. The Homeowner referred the Tribunal to his written submissions which he said set out all he wished to say with regard to his complaint.
18. For the Factor Ms Pieper accepted that there had been a delay in responding to the Homeowner's Stage 1 and 2 complaints. Mr Rose advised the Tribunal that there had been a response in 9 working days rather than the 5 days provided in the Written Statement of Services. He also accepted there had been a slight delay at Stage 2. With regards to Stages 3 and 4 once the timeline had been revised it was submitted that the complaint had been dealt with within the permitted timescales. Mr Rose referred the Tribunal to the Factor's productions at page 179.
19. The Homeowner accepted that the Factor had responded to his Stage 3 and 4 complaints within the timescales.

Section 3.3 of the Code

20. The Homeowner explained that he would like to see a more detailed description for each entry on the Factor's invoice and not just a charge with no real meaning. He said the Factor might produce a quarterly statement but it was not an actual financial breakdown.
21. In response to a query from the Tribunal as to whether the Homeowner had ever requested any supporting documentation from the Factor or ask for clarification of what an entry meant the Homeowner explained that he had asked for clarification but had not asked for documentation. He went on to say that on one occasion there had been an entry for £101.78 (Homeowner's Production page 147) that only had a random code attached to it with no explanation. For the Factor Ms Pieper accepted that there should have been a better explanation for that item which was for the block insurance. The Homeowner went on to say that on the same invoice there was another entry for an insurance premium of £41.94. He said there was no explanation given. For the Factor Ms Pieper accepted that there had been a mistake made and that the Homeowner should have received a letter advising him of the renewal of the block building insurance. She went on to say that insurance documentation was usually uploaded to the RMG portal for owners to access.

Complaint Resolution

22. The Homeowner commented that during the handling of his complaint through the various stages the amount offered by way of compensation had been increased and then decreased. He acknowledged that an amount of compensation had finally been agreed and was to be accepted but his acceptance was then withdrawn following a further issue arising.
23. The Tribunal explained that as the Section 7 complaint had been withdrawn it could not make a determination with regard to this section of the Code but

noted that the amount of £125.00 had been offered together with the removal of all reminder fees

The Tribunal make the following findings in fact:

24. The Homeowner is the owner of Flat 2/2 20 Boydstone Path, Cowglen, Glasgow G43 1AJ ("the Property")
25. The Property is a flat within a block of 9 flats in a larger modern development known as The Boulevard (hereinafter "the Development").
26. The Factor performed the role of the property factor of the Development.
27. The Factor issues quarterly invoices to the Homeowner in arrears.
28. Errors have occurred in the Homeowners invoices resulting in the Homeowner being overcharged on a number of occasions.
29. The Factor has corrected these errors and credited the Homeowner's account accordingly.
30. The Factor is in the process of installing a new accounting system that should be operational by the middle of this year.
31. There are inconsistencies in the current description of entries on invoices.
32. Some entries are invoiced in a different period from when the work was carried out.
33. The invoices issued to the Homeowner could cause confusion.
34. The Homeowner was properly charged for gutter cleaning, repairs to the service button and quarterly emergency lighting and smoke detector charge.
35. The Factor has delegated authority to instruct repairs up to £350.00 without seeking approval from the owners in the Homeowner's block.
36. The estimate of Factoring charges provided to the Homeowner by the Developers Persimmon, is just an estimate. Actual charges will depend on the actual costs incurred by the Factor.
37. The Factor did not comply with its own timescales for dealing with the Homeowner's Stage 1 and Stage 2 complaints.
38. The Factor produces a detailed quarterly financial breakdown of all charges made.
39. The Homeowner did not request any supporting documents from the Factor.

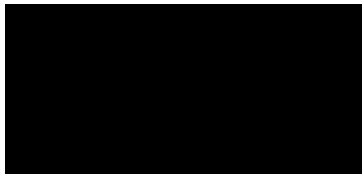
Reasons for Decision

40. Although there were undoubtedly some errors in the invoices issued to the Homeowner the Tribunal was satisfied that the Factor had done its best to correct these and to apologise for them. Although the Factor's current invoicing system left a lot to be desired and clearly needed to be replaced the Tribunal did not consider that the information provided by the Factor either on its invoices or in the subsequent email correspondence with the Homeowner was false or misleading. The fact that entries could be for a different time period and may well lack a clear description could certainly cause confusion but the Tribunal did not consider that the Factor set out to deliberately mislead the Homeowner.
41. The tribunal was satisfied that the Homeowner had been correctly charged for the gutter cleaning. It was satisfied that the work was carried out in January 2020 prior to the pandemic lockdown. The Tribunal was also satisfied that as the Factor had delegated authority for charges up to £350.00 it would not need to contact the Homeowner regarding the repair to the service button or in respect of the quarterly emergency lighting charge.
42. The Tribunal noted the Homeowner's concern that the figure he had been given by the developers, Persimmon, as the estimated factoring charge was substantially less than the actual figure charged. However, the Factor cannot be held responsible for a third party's actions. It would no doubt have been prudent for a cautious purchaser to have made enquiries of the Factor prior to purchasing the property as to the actual cost given that the developers estimate may well be out of date. The Tribunal does not consider that the Factor provided the Homeowner with false or misleading information in this regard. The Tribunal was therefore satisfied that the Factor was not in breach of Section 2.1 of the Code.
43. It was accepted by the Factor that there had been a failure on the part of the Factor to adhere to the timescales for dealing with the Homeowner's Stage 1 and Stage 2 complaints. The Tribunal therefore found that there had been a breach of Section 2.5 of the Code.
44. The Homeowner's argument with regards to the alleged breach of Section 3.3 of the Code was very much based on his arguments in respect of Section 2.1. The Tribunal did agree with the Homeowner that the description of some of the entries on the quarterly invoices could be clearer but nevertheless the invoices themselves were detailed and when pressed for an explanation the Factor provided a detailed response in an attempt to answer the Homeowner's concerns. It did not appear to the Tribunal that the Homeowner had ever specifically asked for any supporting documentation to be produced. Although it could not be said that the invoices were a model of clarity and could be confusing when some entries such as the building block insurance were not clearly identified and another insurance charge again not given more detail that in the Tribunal's view did not amount to a breach of Section 3.5 of the Code.

45. As indicated above the Tribunal did not have jurisdiction to consider any complaint under Section 7 of the Code and given that the breach of Section 2.5 was relatively minor and the Factor went on to timeously deal with stages 3 and 4 of the Homeowner's complaint the Tribunal does not consider it necessary to make a Property Factor Enforcement Order in this case. It would however hope that the Factor continues to acknowledge the impact that the issues raised have had on the Homeowner and that any previous ex gratia payment offered to him at very least remains in place.

Appeals

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.



Graham Harding Legal Member and Chair

22 March 2022 Date