

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons: Property Factors (Scotland) Act 2011
Section 17**

Chamber Ref: HOHP/PF/16/0113

**28 Brownside Drive, Glasgow G13 4BN
("The Property")**

The Parties:-

**Mr. John Rae, residing at The Manse, Dorrator Road, Camelon, Falkirk, FK1
4BN ("the Homeowner and Applicant")**

**GHA Limited t/a factoring agent YourPlace, 25 Cochrane Street, Glasgow, G1
1HL ("the Factor and Respondent")**

Tribunal Members:-

Patricia Anne Pryce	-	Chairperson and Legal Member
Kingsley Bruce	-	Ordinary Member (Surveyor)

Decision

The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Factor has complied with the Code of Conduct for Property Factors as required by Section 14 of the 2011 Act and complied with the Property Factor's duties, determines unanimously that, in relation to the Homeowner's Application, the Factor has not complied with the Code of Conduct for Property Factors and has failed to carry out the Property Factor's duties.

The tribunal makes the following finding in fact:

- The Applicant is the owner of the property known as 28 Brownside Drive, Glasgow, G13 4BN.
- The Respondent is the factor of the common parts of the building within which the property is situated.
- The property is situated on the first floor of a building known as a "four in a block".
- There is one other privately owned property within this building.
- The Respondent owns the two remaining properties located within this building.

- The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 from the date of its registration as a property factor on 1 November 2012.

Following on from the Applicant's application to the Homeowners Housing Panel ("HOHP", which body was succeeded by the First-tier Tribunal (Housing and Property Chamber) on 1 December 2016), which comprised documents received in the period of 17 August 2016 to 15 November 2016, the Convenor with delegated powers under Section 96 of the Housing (Scotland) Act 2014 referred the application to a committee on 17 November 2016.

Hearing

A hearing took place in Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL on 6 February 2017.

The Applicant attended on his own behalf.

The Respondent was represented by Mr. Tom Cuthill, YourPlace Repairs Manager, employed by the Respondent and by Mr. Scott Hardie, Complaints and Members Services Manager, also employed by the Respondent.

Introduction

In this decision, the tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure as "the 2016 Rules".

The tribunal had available to it and gave consideration to the Application by the Applicant as referred to above. The Respondent chose not to submit written representations to the tribunal but indicated that it would attend the hearing.

The Legal Basis of the Complaints

The Applicant complains under reference to Section 6.3 of the Code and to a failure to carry out the property factor's duties (as defined by Section 17 subsection 5 of the 2011 Act).

The Code

The element of the Code relied upon in the application is as follows:-

Section 6.3

On request, you must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.

Breach of Section 6.3

The Applicant referred to the application and supporting documentation contained therein. The Applicant advised that he received a request from the Respondent for the Applicant to consent to repairs to the roof of the property. The quote obtained by the Respondent and provided to the Applicant advised that the estimated cost of these repairs was £2806.58 and the Applicant's share would be £701.64.

The Applicant referred to his letter of 23 May 2016 wherein he advised the Respondent that he did not wish to consent to these works as the Applicant had obtained two other quotes for this work, one which was for a total amount of £340 and the other which was for a total amount of £230. The Applicant had enclosed copies of these quotes in his said letter to the Respondent and he asked the Respondent to explain why there was such a disparity in the quotes and to explain why the Respondent had accepted the quote the Respondent had obtained. In short, the Applicant wanted to know why the Respondent was using the contractors who had produced a quote which was more than 10 times more expensive than the cheaper of the quotes obtained by the Applicant. The Applicant also pointed out that he had instructed the works and that these had been completed using scaffolding sufficient to satisfy health and safety requirements.

The Applicant submitted that he had worked in the construction industry for some 50 years and was a qualified engineer and consultant to this industry.

The Respondent replied to the Applicant by letter dated 14 June 2016 but did not answer the Applicant's query. Instead, the response posited that "all contractors have different overheads...".

The Applicant then wrote again to the Respondent by letter of 17 June 2016 advising that he did not agree with the terms of the Respondent's letter of 14 June 2016 and he reiterated his request for the Respondent to provide clarity as to why the Respondent was willing to proceed with its contractor, even though their quote was 10 times higher than the lower quote obtained by the Applicant.

The Respondent replied by email of 6 July 2016 stating that it was treating the Applicant's letter of 17 June 2016 as a complaint and the Applicant's complaint would be dealt with as a Stage 2 Complaint. This reply failed to answer the Applicant's question.

The Respondent, by way of its Director, Maureen Dowden, replied substantively to the Applicant by letter dated 28 July 2016 and stated that the Applicant's complaint was not being upheld. Once again, this reply failed to answer the Applicant's question.

The Applicant attempted one last time to correspond with the Respondent by way of an email dated 5 August 2016, pointing out the costings involved in the actual job

which was carried out. The Applicant advised that he would allow 10 days for another reply but none was received and the Applicant made his present application.

The Applicant submitted that he simply wanted the Respondent to explain why it was using a contractor at ten times the cost of the actual repairs which he had instructed.

The Applicant confirmed that he had been on site when the repairs were carried out on or about May 2016. He confirmed that the repairs were the replacement of a single ridge tile which had slipped and knocked a couple of other tiles on one roof slope only. Given this, a simple scaffolding tower was used to access the building. He confirmed that scaffolding extending round three elevations of the building suggested by the contractor used by the Respondent was simply not required.

When questioned about this, Mr. Cuthill confirmed that using "wrap around scaffolding" was the normal practice for the Respondent.

However, when questioned further, Mr. Cuthill confirmed that in the present case, wrap around scaffolding would not have been required and that their practice was to accept the recommendations of their contractors, City Building. He confirmed that there was no inspection of properties by the Respondent until after works were carried out. In other words, the Respondent placed its trust in its contractors.

Mr. Cuthill confirmed that the foregoing process is under review and the Respondent is looking to carry out inspections in advance of works being carried out.

The Applicant submitted that he had found the present process difficult but felt that he had to persevere as he simply could not get the Respondent to listen or to answer his question about why the Respondent was happy to use City Building when their quote was 10 times higher than his own lower quote. Furthermore, he advised that the other private owner in the building was an elderly lady who was prepared to pay the Respondent her £701.64 without question. He felt that he had to be dogmatic and determined in pursuing an answer to his question.

Mr. Cuthill helpfully conceded that, after all he had heard from the Applicant at the hearing, the Respondent had breached Section 6.3 of the Code as the Respondent had failed repeatedly to answer the Applicant's question as to why City Building was being used.

Mr. Cuthill explained that City Building had been the contractors for the Respondent since 2009 and had been so appointed after a full tendering process in accordance with European Procurement Rules.

Mr. Cuthill also accepted that the works outlined by the quote from City Building were excessive and not required.

Mr. Cuthill confirmed that the whole process of how the Respondent does business in relation to these matters is undergoing a huge change due to the Respondent purchasing a 50% share in its contractors, City Building. He submitted that this would lead to repairs being conducted in a better and improved manner.

Furthermore, Mr. Cuthill advised that the Respondent's written Statement of Services ("WSS") was undergoing a total review due to business changes and a general acknowledgement that its present WSS was not as good as it could be, for example, he accepted that the WSS was not clear to homeowners about how they required to submit an insurance claim in relation to the common buildings insurance policy obtained by the Respondent on behalf of its homeowners.

Mr. Cuthill also took the opportunity at the hearing to apologise several times to the Applicant. He confirmed that the lack of response by his own team was a training issue which he would take back and ensure that his team members were aware of.

In light of the foregoing, the tribunal finds that the Respondent breached Section 6.3 of the Code.

Failure to carry out the property factor's duties

The Applicant advised that his complaint in relation to this was based on the same set of facts as he had relied upon to establish the breach of the Code. He submitted that the Respondent had failed to comply with its own WSS and on Page 7 of the WSS, that the Respondent owed a duty of care to its homeowners who paid the Respondent a management fee to ensure that the Respondent obtained the best market prices for repairs.

The tribunal questioned the Respondent about the "Our Repairs Service" Section of its WSS on pages 19 and 20 which refers to providing a customer-focussed service and value for money. Mr. Cuthill helpfully conceded that the Applicant had not received this from the Respondent on this occasion.

Moreover, Mr. Cuthill advised that someone from the Respondent should have at least telephoned the Applicant and offered to meet with him which could, he conceded, have resolved matters without the requirement for the present application.

In addition, Mr. Cuthill advised that the Respondent would pay to the Applicant the sum of £230 in payment of the repairs which the Applicant had instructed and paid for out of his own pocket.

In light of the foregoing, the tribunal finds that there was a failure by the Respondent to carry out the property factor's duties but the tribunal also notes that this failure was established by the same specific set of circumstances.

Observations

The tribunal notes that the Respondent is undertaking a review of its WSS. The tribunal would strongly urge the Respondent to amend its WSS to ensure that it clearly states to its customers the level of service they can expect from the Respondent and, in particular, should make clear to the homeowners the basis upon which it arranges insurance and that each owner requires to submit their own insurance claims in respect of the buildings insurance policies which the Respondent arranges for them. Furthermore, the tribunal notes that the relationship between the

Respondent and its contractor is due to change. The tribunal would strongly urge the Respondent to make clear in its WSS how it appoints contractors and the process of tendering.

Property Factor Enforcement Order

The tribunal proposes to make the following property factor enforcement order:-

Within 28 days of the date of communication to the Respondent of the property factor enforcement order, the Respondent must:-

1. Pay to the Applicant the sum of £230 in respect of the cost of the repairs which the Applicant had instructed and paid for in May 2016.
2. Pay to the Applicant the further sum of £250 in recognition of the inconvenience caused to the Applicant as a result of the Respondent's repeated failures.
3. Provide documentary evidence to the tribunal of the Respondent's compliance with the above Property Factor Enforcement Order by sending such evidence to the office of the First-tier Tribunal (Housing and Property Chamber) by recorded delivery post.

Section 19 of the 2011 Act provides as follows:

"(2) In any case where the tribunal proposes to make a property factor enforcement order, they must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to them.

(3) If the tribunal is satisfied, after taking account of any representations made under subsection (2)(b), 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, the tribunal must make a property factor enforcement order."

The intimation of this decision to the parties should be taken as notice for the purposes of section 19(2) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal's office by no later than 14 days after the date that this decision is intimated to them,. If no representations are received within that timescale, then the tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

A party aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

P Pryce

Chairperson

6/2/17

Date

