

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision and Statement of Reasons in respect of an Application under Section 17 of the Property Factors (Scotland) Act 2011

Chamber Ref: HOHP/PF/16/0152

**Flat 2/9, Orchard Street, Paisley, PA1 1UZ
("The Property")**

The Parties:-

Miss Tamsin Rae, residing at 89 Netherhill Road, Paisley, PA3 4RN ("the Homeowner and Applicant")

Ross and Liddell, 60 St. Enoch Square, Glasgow, G1 4AW ("the Factor and Respondent")

Tribunal Members:-

Patricia Anne Pryce	- Chairperson and Legal Member
Andrew Taylor	- 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 determines unanimously that, in relation to the Homeowner's Application, the Factor has complied with the Code of Conduct for Property Factors.

The tribunal makes the following finding in fact:

- The Applicant is the owner of the property known as Flat 2/9, Orchard Street, Paisley.
- The Respondent is the factor of the common parts of the building within which the property is situated.
- 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 13 August 2013.

- The property has suffered problems with intermittent water ingress for a number of years.
- The Respondent has instructed various contractors over a number of years to carry out work to the common parts of the building where the property is located in an attempt to resolve the problems of water ingress.
- The Respondent instructed the company, Cammac Limited, to carry out works to the property.
- Cammac Limited carried out works to the property on or about April 2015.
- The extent of those works carried out by Cammac Limited is unknown.
- The Applicant's property suffered water ingress on or about November 2015.

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 20 October 2016 to 18 November 2016, the Convenor with delegated powers under Section 96 of the Housing (Scotland) Act 2014 referred the application to a committee on 23 November 2016.

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 submitted representations.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 2.1, 2.5 and 6.9 of the Code

The Code

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

Section 2.1

You must not provide information which is misleading or false.

Section 2.5

You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require

additional time to respond. Your response times should be confirmed in the written statement.

Section 6.9

You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

Hearing

A hearing took place in Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL on 17 March 2017.

The Applicant attended on her own behalf. Her partner, Mr. James Sheridan, also attended to both provide support to the Applicant and to give evidence on behalf of the Applicant.

The Respondent was represented by Mr. Brian Fulton, Director of the Respondent, and by Ms. Deborah McGregor, Property Manager, employed by the Respondent. The Respondent was represented by Mr. Michael Ritchie of Hardy Macphail, Solicitors.

Preliminary Issues:-

1. The Applicant confirmed, as per her letter received by the tribunal (then HOHP) on 18 November 2016, that she was not insisting on the failure of the Respondent to carry out the property factors' duties as she had first included in her application.
2. In her written submission to the tribunal received on 9 January 2017, the Applicant had also sought to include alleged breaches of Sections 2.4, 6.3, 6.4 and 7.2 of the Code. The Applicant accepted that she had not notified the Respondent of these alleged breaches in terms of Section 17 of the 2011 Act and confirmed that she was not insisting on these particular breaches of the Code.
3. Mr. Ritchie produced a Third Inventory of Productions at the start of the hearing and sought to have this lodged, albeit he accepted that the Inventory was being tendered very late. He advised that it mainly consisted of a survey report and photographs which his clients had only received on 13 March 2017. The survey had been instructed by another owner in the building wherein the property was located. The Applicant confirmed that she did not object to the late lodging of the Inventory and, in fact, welcomed it. The tribunal adjourned for a short time to consider the parties' oral submissions regarding the Inventory. After a short adjournment, the tribunal confirmed that it would allow the Inventory to be lodged, although extremely late, but noted its displeasure with the late lodging.

Breach of Section 2.1

The Applicant advised that, after the works had been carried out by Cammac Ltd in Spring of 2015 on the instruction of the Respondent who had received consent from the owners, she contacted the Respondent and spoke to the then property manager (who is no longer in the employ of the Respondent) who had responsibility for the building wherein the property is located. The Applicant submitted that she had asked for confirmation as to whether the works were now complete. She was told that the works were complete. The Applicant then asked if the building was watertight and she submitted that the then property manager confirmed that it was. The Applicant said that the property manager had stated that she had done a damp test and that everything was fine. The Applicant submitted that she had checked re the completion of the works as, given the history of water ingress within the property, she wanted to ensure that the works were complete before she considered redecorating her property once again.

In response, Mr. Fulton confirmed that property managers do not have the expertise to be able to inspect works. He advised that the Respondent relies on contractors to carry out the work according to the specification. When asked, Mr. Fulton confirmed that the Respondent had not sought a collateral warranty in relation to this work given the level of work undertaken, that is, that it was not a large project.

The Applicant submitted that she redecorated her property in October 2015 and in November 2015 her property suffered water ingress once again. She submitted that she felt that the former property manager had misled her by stating that the property was watertight.

Mr. Fulton confirmed that no property manager would refer to a property being watertight, especially with the history of water ingress in the property in question. He also submitted that no damp test could have been carried out unless the previous property manager had obtained access to the property.

The Applicant confirmed that the former property manager had not obtained such access.

The Applicant confirmed that she had nothing in writing to confirm that this is what the property manager at the time had said to her. She also advised that she had asked specifically if the property was watertight and that it was she who had used the word "watertight" rather than the then property manager.

The tribunal sought clarification from the Respondent about the specification of the two quotes which the Respondent had obtained and forwarded to the owners in relation to the works carried out by Cammac Ltd in April 2015. The tribunal noted that the quotes appeared very different and were for different amounts and different specifications. The tribunal further noted that one quote was from Cammac Ltd and the other was from Archibald Shaw and Sons. Despite the differing quotes, the tribunal noted that the Respondent had written to the owners recommending acceptance of the Cammac Ltd quote.

Mr. Fulton confirmed that the Respondent had not returned to the two contractors seeking clarification and further specification regarding what work the two quotes envisaged. Mr. Fulton was not clear as to why one quote was recommended above the other. Mr. Fulton confirmed that the Respondent did employ building surveyors in house but that these individuals are not used for the property management business. He further confirmed that the Respondent works from a list of approved contractors.

Mr. Fulton further submitted that the level of works involved was small at that point. Further, he submitted that this was an aging building and that regular maintenance issues were to be expected.

The Applicant confirmed that she had owned the property since 2008 and that water ingress had been an ongoing issue on and off since then. She submitted that her concern was that various works had been carried out over the years and that the owners were being asked to pay for repairs which did not appear to have any lasting effect.

Both the Applicant and the Respondent accepted that the water ingress could have been caused by more than one issue over the years as sometimes it seemed to occur due to slipped slates and at other times due to failing mortar pointing to the stonework.

The Applicant conceded that the Respondent did include details of access to its complaints procedure within its written statement of services ("WSS").

In light of the foregoing, the tribunal finds that the Respondent did not breach Section 2.1 of the Code.

Breach of Section 2.5

The Applicant helpfully conceded that she was no longer insisting on this part of her application as she confirmed that as a result of the tribunal process she now accepts that the Respondent had responded to her queries within reasonable timescales, albeit not always to her satisfaction.

Breach of Section 6.9

The Applicant submitted that she simply wanted clarification as to who was responsible for chasing contractors who carried out defective work. She was concerned that she and her fellow owners could keep spending money on works to the property but if the works were defective there did not seem to be a remedy, at least not through the Respondent.

The Applicant confirmed that when the water ingress took place again in November 2015, it appeared in the same location as it had been prior to the works being carried out by Cammac Ltd.

The tribunal sought clarification from the Respondent as to why it had chosen to send out another contractor in November 2015 to the new incidence of water ingress

rather than getting Cammac Ltd to go out and rectify any potential defective works it had carried out.

Ms. McGregor confirmed that she had only been in the employment of the Respondent for a few weeks at this point in November 2015. She confirmed that it was Mr. Fulton who had instructed her not to contact Cammac Ltd as this company was no longer on the list of approved contractors.

By way of explanation, Mr. Fulton confirmed that he felt it was more prudent to get another contractor to go out and provide an opinion and then, if it turned out to be defective works by Cammac Ltd ("Cammac"), the Respondent would have a stronger case to go back to Cammac and get it to rectify any defects. The Respondent therefore instructed James Wallace, contractor, to go out and carry out repairs.

The tribunal reminded the Respondent that, in terms of the Respondent's own productions, the letter from Cammac Ltd confirmed that Cammac would not attend at the property post November 2015 to review the previous repairs it had carried out as Cammac was aware that other contractors had been out at the property and carried out work and Cammac was of the view that any defects could have been caused by these other contractors. Given this, the tribunal questioned the decision to use other contractors and whether this had been counter-productive?

In response, Mr. Fulton submitted that the Respondent did not know if the water ingress was due to the same issue nor was there any evidence that the works carried out by Cammac were in any way defective. Mr. Fulton did not accept that the Respondent had effectively made it difficult to pursue Cammac by using other contractors before allowing Cammac an opportunity to rectify any problems.

Mr. Fulton also submitted that he has been advising the owners at the property to obtain a survey report outlining the works required to resolve the issue of water ingress at the property. He submitted that one of the owners had now, on his own cognisance, obtained a report and this report shows that there are fabric issues with the property which require to be addressed. He submitted that there was no evidence that the work carried out by Cammac was defective.

The Applicant confirmed, along with Mr. Sheridan, that James Wallace attended at the property on three occasions but that the water ingress continued. This contractor felt that the issue was due to slipped slates until Mr. Sheridan pointed out that there was a hole in the roof. The Applicant advised that the Respondent then contracted Hugh Scott, Builders, to attend. Hugh Scott was of the opinion that the issue was due to the pointing on the front elevation of the building.

Mr. Ritchie submitted that the Respondent had pursued the contractor, Cammac, as required by Section 6.9 of the Code and as evidenced by the various letters the Respondent had sent to Cammac, all of which the Respondent had lodged with the tribunal.

In light of the foregoing, the tribunal accepts that the Respondent did pursue the contractor, Cammac Ltd, in respect of the works. Given this, the tribunal finds that the Respondent did not breach Section 6.9 of the Code.

Observations

The tribunal notes that the Respondent did not breach the sections of the Code upon which the Applicant sought to rely. However, the tribunal recognises the frustration and concern that the Applicant has expressed in relation to the Respondent's handling of the ongoing issue of water ingress at the property. In particular, the tribunal is of the opinion that some of the difficulties in pursuing Cammac Ltd for potentially defective works were no doubt caused by the lack of specification contained in the original quote. This certainly did not assist the Respondent in pursuing Cammac Ltd.


Furthermore, the tribunal is concerned that the Respondent specifically recommended the Cammac Ltd quote to the owners despite the lack of clarity and specification contained within the quote, having provided the owners with two quotes on an apparent like for like basis without drawing attention to the owners the differences contained within these two documents. The tribunal is of the opinion that the Respondent should have gone back to both contractors and sought further clarification from them prior to making any recommendation to the owners.

In particular, the tribunal is concerned about how the Respondent handled the issue of the works carried out by Cammac Ltd. While the tribunal notes that there is no definitive proof that the works by Cammac Ltd were defective, the tribunal notes that the water ingress in the property occurred in exactly the same location which was, at least, coincidental. The Respondent instructed both James Wallace and Hugh Scott, contractors, to attend at the property not only to report on the works which had been carried out by Cammac Ltd but also to carry out repairs thus lessening the opportunity to get Cammac Ltd out to rectify any defects. If defects had been found at the point the Respondent finally approached Cammac Ltd, they could have been caused by any one of the four visits to the property by the subsequent contractors, a point which was made by Cammac Ltd in its response to the Respondent.

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 to appeal within 30 days of the date the decision was sent to them.

Patricia Pryce

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 Chairperson

21 March 2017

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Date