

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Note of Hearing: First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017, rule 17

Chamber Ref: FTS/HPC/PF/22/0929

Property at Ferryhill Court, 85 Whinhill Gate, Aberdeen, AB11 7WF
(“The Property”)

The Parties: -

Mr James Murison, residing at the Property (“the Homeowner”)

FirstPort Property Services Scotland, Troon House, 199 St Vincent Street, Glasgow G2 5QD (“the Factor”)

Tribunal Members: -

Maurice O’Carroll (Legal Member)

John Blackwood (Ordinary Member)

Summary of Discussion

Background

1. A Case Management Discussion (CMD) was held at 10am on 12 August 2022 by means of a telephone conference. The Homeowner attended the call in person and spoke on his own behalf. The Factor was represented by Mrs Christie Nicol, Estate Co-ordinator Team Leader and Mr Andrew Grant, Head of Operations, Scotland. Mr Grant conducted the hearing on the Factor’s behalf.
2. The current case concerns an application dated 31 March 2022, updated on 14 April 2022 submitted on behalf of the Homeowner. A notification letter dated 7 April 2022 was sent to the Factor by the Homeowner detailing alleged breaches of the Code of Practice (2012 version). The sections referred to were 7.1 and 7.2. Following discussion, it was agreed by the Homeowner that the 2021 Code of Practice applied but that the terms of sections 7.1 and 7.2 were substantially the same and encompassed the substance of his complaint.

3. Section 7 of the Code deals with Complaints resolution. Section 7.1 states that “a property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably.” That section then set out certain minimum requirements of the complaints procedure and states that good practice is to have a 2 stage process. Paragraph 7.2 provides: “when a property factor’s in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.”
4. The Tribunal was provided with the Factor’s Written Statement of Service (WSS). Section 5 sets out a 2-stage procedure with the third stage being an application to this Tribunal. In relation to Stage 1, it is provided that the factor will acknowledge your complaint and aim to respond to the homeowner within 10 working days. Stage 2 provides that a final response will be provided within four weeks.
5. Rule 17(4) of the Tribunal Rules provides: “The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.”

The Case Management Hearing

6. The substance of the application was narrated at page 5 of 15 of the page apart to the Homeowner’s application and spoken to him in evidence. Put briefly, it concerned a proposal to install an upgraded fire alarm system at the Property further to new legislation prompted by the Grenfell disaster. The Factor had originally suggested a tendering process in 2019 involving three potential bidders. Of these, the Homeowner considered that the bid put forward by a company called Tunstall was technically the best and offered best value for money.
7. The follow up proposal put forward by the Factor on 10 November 2020 however recommended a company called OpenView at a proposed cost of £394 per flat. No reason was provided for not preferring the Tunstall bid in that letter.
8. The Homeowner raised a Stage 1 complaint on 9 December 2020 in which he detailed his concerns. He discussed his complaint with a property manager with the Factor by the name of Mr Bodden (now no longer employed by the Factor) via video link on 31 December 2020. This was already well past the ten working days stipulated in the WSS. During that meeting Mr Bodden undertook to carry out certain steps further to the Homeowner’s complaint. None of those agreed actions were in fact carried out by Mr Bodden or anyone else with the Factor’s organisation. The Homeowner’s complaint was therefore left unresolved.
9. The Homeowner therefore progressed his complaint to Stage 2 in May 2021. At a subsequent meeting with another property manager within the Factor’s organisation, the Homeowner was told “in no uncertain terms” that his opinion regarding the technical issues he outlined in his complaint were not agreed with by the Factor and that they would be proceeding as they saw fit unless he

produced evidence to support his complaint. His technical issues and concerns were therefore ignored by the Factor.

10. Accordingly, the Homeowner obtained and demonstrated the necessary technical advice from the local authority building standards department in relation to building standards and the relevant electrical installation regulations.
11. In the event, by letter dated 7 March 2022, the Factor wrote to the Homeowner to state that they would not be proceeding with the tender process or the works to the Property. Instead, individual homeowners would be required to take steps themselves in order to meet the new legislative requirements.
12. Mr Grant gave evidence to the Tribunal that the Factor did not have an obligation to finalised the tender process and see the works through as they were in respect of individual flats and not communal areas. The alarm upgrade proposal was initially undertaken by the Factor because it would have provided the opportunity to make provision across all the properties managed by it and achieved benefits of scale. In the end, it became too cumbersome and expensive and so was abandoned.
13. In relation to the treatment of the Homeowner, he fully accepted that “the complaints process was not managed particularly well.” He also accepted that the timescales set out in the WSS were not adhered to and that he could not seek to defend the Factor’s quality of communication.
14. Mr Grant also undertook to provide an apology for the treatment experienced by the Homeowner and to provide assurance for the future in relation to the Factor’s approach and procedures in relation to its tendering process.

Tribunal findings following CMD

15. In light of Mr Grant’s admissions at the CMD, the Tribunal found that the Factor had breached section 7.1 of the Code. The complaints procedure was not handled consistently or appropriately. Section 7.2 is not breached since the final decision was confirmed in writing. However, the main point of the complaint contained within the application is upheld in full.
16. The Tribunal also finds that the breach of section 7.1 was aggravated by the way in which the Homeowner was treated. His legitimate concerns were simply ignored despite having gone to the extra trouble of obtaining advice in building standards and electrical safety which was strictly speaking the Factor’s responsibility. The Tribunal agrees that an apology is appropriate and this will be reflected in the Property Factor Enforcement Order to follow.
17. Albeit the fire alarm system upgrade was eventually abandoned by the Factor, the way in which the tender process was dealt with raises systemic issues with regard to the Factor’s handling of tender processes in a wider sense. The Tribunal agrees that the Homeowner should be provided with assurance with regard to the implementation of that process for future reference. This will also form part of the Property Factor Enforcement Order to follow.

Conclusion

18. For the above reasons, the Tribunal upholds the Homeowner's application and finds that the Factor breached section 7.1 of the Code of Conduct for Property Factors. A proposed Property Factor Enforcement Notice will follow under separate cover.

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

Signed:

Date: 12 August 2022

Legal Member and Chair