

Housing and Property Chamber

First-tier Tribunal for Scotland



FIRST-TIER TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY CHAMBER)

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PF/21/1062

Re: Flat 16, 5 Elfin Square, Edinburgh, EH11 3AW (“The Property”)

The Parties:-

Mr George Burton residing at Flat 16, 5 Elfin Square, Edinburgh, EH11 3AW (“the Homeowner”) and

LAR Operations C.I.C., having a place of business at F3, Buchan House, Enterprise Way, Dunfermline, KY11 8PL (“the Factor”). (The company changed it’s name 20/11/2020)

Tribunal Members

Karen Moore (Legal Member) and David Godfrey (Ordinary Member)

Decision

The Tribunal determined that the Factor had not failed to comply with Section 14 of the Act in respect of compliance with Sections 2.4, 6.1 and 7.2 of the Property Factor Code of Conduct (“the Code”).

Background

1. By application received between 4 and 24 May 2021 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with Sections 2.4, 6.1 and 7.2 of the Code. The Application comprised the following documents: - application form dated 3 May 2021; copy email correspondence between the Homeowner and the Factor; prints of photographs of the Property and a copy of the Factor’s Written Statement of Service (“the WSoS”).
2. In response to the Application, the Factor lodged written representations and productions comprising copy email correspondence between the Homeowner and the Factor.

3. The Tribunal, on its own initiative, obtained a copy of the Title Sheet for the Property which was copied to both Parties.

Hearing

4. A Hearing took place at 10.00 on 29 July 2021 by telephone conference. The Homeowner and Mr. Mikko Ramstedt, Managing Director of the Factor, took part.

5. From the Application, the Homeowner's complaints arise from an issue with pigeons roosting at the Property and the mess caused by the pigeons. A canopy and spikes were affixed to the block of which the Property forms part in an attempt to alleviate matters. The canopy appears to have blocked CCTV cameras at the Property and Mr. Burton complained of not having keys for the fire door.

Homeowner's complaint under Section 2.4 of the Code.

6. Section 2.4 of the Code states: *You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies).*

7. Mr. Burton advised the Tribunal that the Factor had not consulted with the homeowners of the development before erecting the canopy. He explained that he had moved into the Property a year before the canopy had been erected and that as it had been placed in a communal area, the Factor ought to have consulted the homeowners before the canopy was put in place but failed to do so.

8. Mr. Ramstedt for the Factor advised the Tribunal that he agreed with the account of the events as set out in the Application. However, he explained that the Factor had no role in the erection of the canopy as this had been carried out by the company which built the development, MCR. He explained that, as far as he knew, MCR had unilaterally erected the canopy in response to complaints about the pigeons made by MCR's tenants. Mr. Ramstedt explained further that MCR retained ownership of 85 units in the development which were tenanted. Although, the Factor managed the development, MCR had not involved the Factor before erecting the canopy and as the Factor did not instruct nor install the canopy, the Factor had no reason to consult. It was Mr. Ramstedt's understanding that MCR erected the canopy as part of their onsite snagging.

9. Mr. Burton accepted that the Factor may not have been aware of the developer's unilaterally decision to erect the canopy but considered it reasonable that the Factor should have assumed control of the snagging works and, in particular, the canopy as the Factor was aware of the issues with the pigeons.

10. Mr. Ramstedt explained that the Factor had no control over the snagging as this was a matter between the builder and the owners. He understood that the defect period is one year but that works are ongoing as MCR are still on site. With regard to

the pigeons, Mr. Ramstedt advised the Tribunal that the Factor is aware of the complaints, had carried out cleaning and is aware that MCR, who had a pigeon management plan in place from the outset, are looking at measures to adjust the plan but the Factor is not party to this process as MCR does not consult with the Factor. Nonetheless, the Factor had arranged a homeowner's' meeting by video conference on 24 May 2021 to discuss the canopy as a measure. Only Mr Burton of the homeowners of his block attended. MCR did not attend. The outcome of the meeting was to remove the canopy and install spikes at windows where pigeons were roosting. Mr Ramstedt explained that there had been no initial cost to the homeowners to install the canopy as MCR had met this cost, but the cost to remove it was the responsibility of the homeowners. The cost was within the Factor's delegated authority limit.

11. The parties confirmed that the canopy had been removed and so the issue of the blocked CCTV camera was resolved, as was the issue of the fire door keys.

Homeowner's complaint under Section 6.1 of the Code.

12. 6.1 of the Code states: *"You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required."*

13. Mr. Burton's complaint with regard to this part of the Code is that he was not told when the canopy would be removed and was not given timescales for the works. He explained that the canopy was erected on 5 March 2021 on which date he emailed the Factor. He received a reply on 8 March 2021 and a follow-up email on 11 March 2021 but had not been given a date for the canopy's removal. Further emails on 14 and 15 April 2021 provided no clear date for its removal. The first indication of a time frame was received on 3 May 2021, some 58 days after his initial request, and this was not precise.

14. Mr. Ramstedt disagreed with Mr. Burton's assessment of the process and explained that the issue was complex as the Factor had to address both the removal of the presence of the pigeons and the cleaning of the guano and that solutions such as the placing of the spikes needed to be put in place and monitored. Mr. Ramstedt stated that he understood Mr. Burton's frustration but that the Factor had been carrying out visits and monitoring the situation from the time Mr. Burton raised the matter on 5 March 2021 and since.

Homeowner's complaint under Section 7.2 of the Code.

15. Section 7.2 of the Code states: *"When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel"*. The homeowner housing panel is now the Housing and Property Chamber.

16. Mr. Burton's complaint in respect of this part of the Code is the process followed in dealing with his complaint was not as set out in the Factor's WSoS. Mr. Burton, in his email of 9 March 2021, asked that his correspondence regarding the canopy be dealt with as a formal complaint and stated that it was not clear to him if this had been acknowledged. On 13 March 2021, Mr. Burton had asked by email for his complaint to be escalated and, in line with the WSoS had expected it to be dealt with by the Operations Director but it was answered by the Maintenance Co-ordinator. Mr. Burton's position is that the Factor did not communicate with him on the progress of the complaint, that he had never received a final decision and the complaint had not been dealt with by appropriate individuals.

17. Mr. Ramstedt advised the Tribunal that Mr. Burton's complaint, being the issue of the erection of the canopy, was received, handled and logged in line with the WSoS and that the Factor had tried to resolve it. Caroline Getley, the Maintenance Coordinator, dealt with the complaint at first but, as it was a complex complaint given that the canopy had been erected by MCR without consultation, the complaint was immediately escalated as a stage 2 complaint to Mr. Ramstedt as Managing Director. Thereafter, Mr. Ramstedt as Managing Director has continued to deal with the complaint. He explained that the complaint remained open until after the canopy was removed. Mr. Ramstedt agreed that a final response had not been issued and explained that this was because Mr. Burton had lodged the Application with the Tribunal whilst it was a live complaint and that the Tribunal process had overtaken the Factor's complaints process. Mr. Ramstedt explained that there is no Operations Director in post and so this step in the process was omitted.

18. Mr. Burton advised the Tribunal that he was not satisfied with the handling of his complaint which now fell into two categories, the complaint about the canopy itself and the complaint about the handling of the canopy complaint. Mr. Burton maintained that, had an Operations Director reviewed his complaint at Stage 1, the fact that there were two aspects to the complaint would have been picked up and progress of the complaint would have been communicated to him. Mr. Ramstedt reiterated that the Factor had been dealing with the complaint at managing director Stage 2 level.

19. Mr. Godfrey of the Tribunal noted that the WSoS mentioned a Complaints Policy but that this had not been lodged. The Tribunal adjourned briefly to consider if it required to have sight of the Complaints Policy, but having taken the view that the policy would not assist, advised the Parties that it would not require to have sight of it.

Summing Up

20. In summing –up, neither Party had anything further to add. Mr. Ramstedt clarified the cost to remove the canopy was £8.72 per homeowner. With regard to the resolution sought by Mr. Burton in the Application, as the canopy had been removed and the CCTV and keys issues had been resolved, Mr. Burton sought an apology for the way in which his complaints.

Tribunal's assessment of evidence

21. The Tribunal had regard to the Application, the Factor's written representations and the oral evidence at the Hearing. The Tribunal considered that Mr. Burton and Mr. Ramstedt both gave evidence at the Hearing truthfully and any differences in their evidence were differences in viewpoint and perception and were not deception or attempts to deceive.

22. With regard to the erection of the canopy, the burden of proof being the balance of probabilities, the Tribunal accepted that this had been erected by the builder, MCR, without the knowledge of the Factor.

Tribunal's Findings in Fact

23. From the Application, the Factor's written representations and the Hearing, the Tribunal held the following findings in fact either proved or evidenced by the Parties, whether set out in full in this Decision or not: -

- i) Mr. Burton is the owner of the Property and the Factor is the property manager;
- ii) The Property is a flat within a block of flats ("the Block"), which Block forms part of a larger development ("the Development");
- iii) The developer and builder of the Development is MCR who remain on site and who retain an ownership interest in the Development;
- iv) There has been an issue with pigeons roosting and fouling the exterior of the Block which has prompted complaints from the residents of the Development;
- v) In an attempt to address this issue, MCR erected a canopy at the Block adjacent to the Property;
- vi) The effect of the erection of the canopy adjacent to the Property was to exacerbate matters for Mr. Burton who complained to the Factor;
- vii) The Factor had no prior knowledge of MCR's intention to erect the canopy;
- viii) The Factor did not instruct or install the canopy;
- ix) MCR did not notify Mr. Burton or the Factor of their intention to erect the canopy;
- x) Mr. Burton raised a complaint with the Factor regarding the erection of the canopy on 5 March 2021;
- xi) In response to Mr. Burton's complaint, the Factor took action including escalating his complaint to Managing Director Stage 2 level;
- xii) The Factor held an owner's meeting by Video Conference on 24 March 2021, the outcome of which was to remove the canopy;
- xiii) The Factor has a WSoS which sets out, among other things, its procedures for consultation on repairs and works; notifying repairs and works, its delegated authority and its complaints procedure;

- xiv) The Factor's delegated authority for works is £50.00 per property in the Development and
- xv) The Factor arranged for the canopy to be removed at a cost of £8.72 per property in the Development.

Decision of the Tribunal and reasons for the Decision

24. Having made the Findings in Fact as set out above, the Tribunal had regard to the breaches of the Code complained of by the Homeowner.

25. Section 2.4 of the Code is set out in full in paragraph 6 above. Section 2.4 of the Code states that the Factor must have a procedure to consult with owners on works not within the core services unless a cost threshold or delegated authority cost level has been agreed. Mr. Burton's complaint is that the Factor did not consult in respect of the erection of the canopy. The Tribunal is satisfied that, as set out in its WSoS, the Factor has a consultation procedure. The Tribunal is also satisfied that there is a delegated authority or cost threshold level of £50.00 per property. The Factor did not consult on the erection of the canopy. However, the Factor did not install or instruct the canopy to be installed and so there were no works on which to consult. In respect of the removal of the canopy as the cost of the works was within the Factor's delegated authority or cost threshold, there was also no need to consult. Therefore, the Tribunal had no difficulty in determining that the Factor had not failed to comply with Section 2.4 of the Code.

26. Section 6.1 of the Code is set out in full in paragraph 12 above. Section 6.1 of the Code is in two parts: the Factor must have a process for notifying works and must provide information on the progress of works and timescales. The latter part is exempted if the works fall within the Factor's delegated authority or cost threshold level. Mr. Burton's complaint is that the Factor did not provide progress reports and timescales for completion of works in respect of the removal of the canopy. The Tribunal is satisfied that, as set out in its WSoS, the Factor has in place procedures for notifying works and has a cost threshold of £50.00. As the cost of the removal works was well within the cost threshold, there was no requirement on the Factor to inform Mr. Burton of the progress of the work or of timescales for completion. In any event, the Factor provided Mr. Burton with as much information as it had in its possession. The Factor did not have precise dates for the removal of the canopy and so could not provide information which it did not have. The Tribunal had no difficulty in determining that the Factor had not failed to comply with Section 6.1 of the Code.

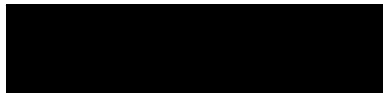
27. Section 7.2 of the Code is set out in full in paragraph 12 above. Section 7.2 of the Code is in two parts: the Factor must provide a letter giving the final outcome of the complaint and must notify of the right to apply to the tribunal. Mr. Burton's complaint is that the Factor did not process his two- part complaint in line with its WSoS as the appropriate personnel did not deal with the complaints and so he did not receive a final response. The Tribunal accepts without reservation Mr. Ramstedt's position that Mr. Burton's complaint was escalated to the highest Stage 2 level complaint early in the process and has been dealt with by Mr. Ramstedt as Managing Director since. The Tribunal accepts Mr. Ramstedt's position that no final letter was issued as the Factor's view was that the complaint had not been fully

concluded when the Application was lodged and this was the reason that a final letter was not issued. However, for the purposes of these proceedings, the Tribunal takes the view that, as far as Mr. Burton was concerned, the complaints process had been exhausted. The Tribunal's view is that the Factor has dealt with matters both promptly and properly throughout. The Tribunal had no difficulty in determining that the Factor had not failed to comply with Section 7.2 of the Code.

28. The decision is unanimous.

Appeal

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.



Karen Moore

Chairperson

10 August 2021