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

Decision: Section 43 Tribunals (Scotland) Act 2014 and Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Ref: FTS/HPC/PF/20/0851

163/161 Allison Street, Glasgow, G42 8RY ("the Property")

The Parties:-

Mr Mohammed Yasin, 163 Allison Street, Glasgow, G42 8RY ("the Homeowner")

Hacking and Paterson Management Services, 1 Newton Terrace, Glasgow, G3 7PL ("the Property Factor")

Tribunal Members

Ms H Forbes (Legal Member)

Mr D Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") hereby determines that the applications for review made by both parties are wholly without merit and refuses the applications.

The Decision under Review

1. Following a Hearing on 17th February 2021, the Housing and Property Chamber issued a decision of the Tribunal on 1st March 2021 determining that the Property Factor had failed to comply with the Section 14 duty in terms of the Property Factors (Scotland) Act 2011 ("the Act") in respect of compliance with paragraphs 6.1, 6.4 and 6.9 of the Property Factor Code of Conduct ("the Code") as required by section 14(5) of the Act, and that the Property Factor had also failed in carrying out its property factor duties in terms of section 17 of the Act.

2. The Tribunal made a Property Factor Enforcement Order on 7th April 2021. Thereafter, it came to the attention of the Tribunal that both parties had made

timeous representations and applications for review of the decision of the Tribunal.

3. By email dated 4th March 2021, the Homeowner submitted an application for review of the Tribunal's decision.

4. By email dated 11th March 2021, the Property Factor submitted an application for review, also mentioning that this was an application for appeal.

5. Both applications for review fall within the time limits for review under section 43 of the Tribunals (Scotland) Act 2014 and Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Rules").

6. The application by the Property Factor does not contain the requisite information for the Tribunal to consider an application for permission to appeal the decision to the Upper Tribunal, as it does not set out alleged points of law on which the Property Factor wishes to appeal, as required by Rule 37. The Tribunal, therefore, has not accepted the Property Factor's request as a valid application for permission to appeal its decision.

Application for Review by the Homeowner

7. The Homeowner's application for review was made in the following terms:

> *I am writing this letter to formally review the proposed PFEO as the conditions stated are not nearly ideal nor are they sufficient. The proposed conditions are that I (the property owner) should be paid £500. However, this is not nearly enough to compensate. The factor has taken a total of £1422.52 in repairs and management fees since February 2019. It has been established that the factor has failed to complete his duties and has been incompetent. So under what grounds and what basis should I have paid this amount to the factor as he has not been able to provide me the service that I paid for? The repairs have been inadequate; the factor has not managed my property and has let it degrade like it is of no value to me or anyone. This amount has been unjustly taken and should be reimbursed to me. I have attached the invoices as proof with this letter.*
>
> *The other issue that is of great concern is the damage to my property due to the factors negligence which resulted in major damage to my property. It is estimated at around £9000 in repairs at least and possibly more. This cost has to be paid by the factor out of his own pocket so that I can restore my shop properly. He must also repair the damaged pipe that is still leaking to this day properly so no more damage occurs to my property.*
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> *The last issue is the stress, time and inconvenience caused to me as I have had to spend numerous hours on creating representations and*

chasing up this issue. The reason I pay the factor a management fee is so that I do not have to do this myself and I can ensure the safety of my property. Once again the factor has let me down and not fulfilled his duties. Over the two years I have had to phone, complain write letters, emails and have meetings with my solicitor to look into this matter. That is time that I shouldn't have had to spend and I could have used this more productively. Quite frankly the sum off £500 does not reflect the struggle I have had to go through, not to mention the fact that the issue is still not yet resolved.

To summarise the factor must reimburse me the amount of £1422.52 that he has taken is repairs and management fees, pay for the damages caused to my shop, repair the leaking pipe and compensate for my time spent dealing with this. He must also be fined for his negligence as what has happened here is unacceptable and no property owner should have to go through an ordeal such as this.

Decision

8. The Tribunal considered the Homeowner's application for review. The Tribunal considered that the application was wholly without merit. While the Tribunal found that the Property Factor had failed in relation to the matter before the Tribunal, the Tribunal did not find that the Property Factor had failed to carry out all its duties. The Tribunal did not feel on the information before it that partial or full repayment of management fees should be ordered, and that it was more appropriate to order payment for distress, frustration and inconvenience.

9. There was no evidence before the Tribunal that damage in the sum of £9000 had occurred to the building as a result of the Property Factor's failures. No representations were made and there was no expert or other evidence in this regard. The Tribunal cannot accept new evidence that was not before it at the time of the hearing.

Application for Review by the Property Factor

10. The Property Factor's application for review was made in the following terms:

We would ask the Tribunal to review the following parts of its Decision:

34.

HPMS had provided factoring services to the Applicants property for in excess of 20 years, during which the Applicant, and his fellow homeowners, had delegated full authority to HPMS to administer the maintenance and insurance of the common property, with no cost threshold in place and where job specific progress reports were not required. This practise was evidenced through the common charges invoices which detail various common works, with various

costs, undertaken without the collective homeowners requiring progress reports. This was the accepted practise of the group of homeowners.

In this respect, the agreement with the collective homeowners is clear, that HPMS had their delegated authority to undertake works, with unlimited value, without the requirement for job specific progress reports.

Expanding on the tribunals Decision, this would require HPMS as property factor, to provide job specific progress reports, irrespective of the size/cost of the works. This approach to factoring would be considerably more labour intensive, ultimately costing the Applicant and his neighbours more in factoring fees.

The Applicant and his neighbours had agreed a cost threshold below which job specific progress reports were not required. This threshold was a 'no limit' threshold.

In addition, the Code of Conduct does not, as stated by the Tribunal, require a factor to provide 'proactive updates' 'following work carried out'.

We believe the Tribunal's understanding here is incorrect and would ask them to review the same.

48.

Section 6.4 of the Code of Conduct is very clear. It confirms that "if the core services agreed with homeowners includes periodic property inspections" then the factor must prepare a programme of works."

The core services provided to the Applicant and his neighbours <u>do not</u> include inspections. This section of the Code of Conduct can therefore not be applied to this Application.

*The Terms of the agreement between HPMS and the homeowners, which the Tribunal were provided, are clear. These terms identify, by omission, that inspections are not included within these terms. Furthermore, 3.5 of HPMS's Terms of Service, identify services available to the Applicant, **beyond** the Core Factoring Services, and at an additional cost. The 3rd bullet point confirming that 'Implementing planned maintenance schemes for common property' are a service, beyond that of the Core Services offered, and paid for by the Applicant.*

HPMS are not, and were not, obligated to provide a programme of works because inspections are not included in the agreement with

the homeowners, nor has the Applicant, or his neighbours agreed for services, beyond our Core Factoring services, to be undertaken.

We believe the Tribunal's understanding of the relationship between the Applicant and HPMS here is incorrect and would ask them to review the same.

52.

Section 6.9 of the Code of Conduct is very clear. It confirms that "You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided".

The Tribunals reasoning for its decision is that HPMS failed to action the Applicants request to do so on the 19th March 2019, until their further communication, through the Applicants solicitor on the 3rd April 2019.

What is clear here is that HPMS did pursue the contractor, the Tribunals decision reasons confirming this.

Whilst HPMS accept and apologise for any delays in pursuing the contractor, the facts of the situation are, as confirmed by the Tribunal, is that HPMS did pursue the contractor to remedy the defects in inadequate works/service provided and therefore cannot have breached this section.

We believe the Tribunal's understanding here is incorrect and would ask them to review the same.

56.

In response to the various failings found by the Tribunal, we would note the following:

I. We do not believe this matter can be deemed to have been an emergency, defined as 'an unexpected and difficult or dangerous situation, especially an accident, which happens suddenly and which requires quick action to deal with it.' The Applicant clearly did not believe this matter to be an emergency, the contractors in attendance did not identify the defect as an emergency and the Applicants actions, not communicating over a period of 8 months identifies this was not an 'emergency repair'. We would ask the Tribunal to also identify where HPMS obligation to deal with matters as 'an emergency' arises from.

III. HPMS have no obligation or duty to attend the Applicants property to ascertain where repairs are required. This does not from part of the agreement between the homeowners and the

Applicant and is not a Core service paid for by the Applicant. The tribunal are incorrect in their reasoning.

We believe the Tribunal's understanding of the relationship between the Applicant and HPMS here is incorrect and would ask them to review the same.

57.

The Tribunals statement that HPMS have a duty to attend the property relative to specific matter of repair is incorrect. The agreement between HPMS and the Applicant do not include for such a service. HPMS are not qualified to attend and identify repairs, this is why the agreement between HPMS and the Applicant identifies that the Core Service provided includes for HPMS appointing contractors qualified and suitable to carry out common works. This is clear.

We believe the Tribunal's understanding of the relationship between the Applicant and HPMS here is incorrect and would ask them to review the same.

Decision

11. The Tribunal was justified in finding that paragraph 6.1 of the Code had not been complied with. The evidence before the Tribunal was that there was no agreed cost threshold below which job-specific progress reports were not required. The Property Factor's representative confirmed this and said the Property Factor was required to consult with homeowners before any work was carried out. Although the Code does not explicitly state that proactive updates are required, it does not state that updates are only required upon request of a homeowner. In any event, the Homeowner asked repeatedly for updates which were not provided by the Property Factor.

12. The Tribunal was justified in finding that paragraph 6.4 of the Code had not been complied with. In response to the Homeowner's assertion that there were no periodic inspections, the Property Factor's representative said that periodic visits to the Property took place, and that the Property Factor noticed issues and rectified them. The Tribunal took the view that the activity described, and set out in the Written Statement of Services, constituted periodic inspections, as provided for by this paragraph of the Code. Furthermore, the evidence presented in relation to cyclical works and programmes of works on behalf of the Property Factor was contradictory. He initially said there was no programme of works, other than in relation to gutter cleaning, and that instruction would be taken from the homeowners on a programme of works, which suggested there was no programme of works. The Tribunal was entitled to take from this evidence that periodic inspections took place, that there was a planned programme of cyclical maintenance at least in respect of the gutters and that a programme of works was required.

13. The Tribunal was justified in finding that paragraph 6.9 of the Code had not been complied with. The Property Factor did not pursue the contractor to remedy the defects in the inadequate work provided, as the problem with the pipe continued until the relationship between the parties ended.

14. The Tribunal was justified in finding there had been a breach of the property factors duties as set out in paragraph 56(i). The Written Statement of Services provides that the Property Factor will deal with emergency matters within a particular timescale. That did not happen in this case. The Homeowner clearly notified the Property Factor that this was an urgent situation. The photographs provided to the Tribunal showed ingress of a significant amount of water. The Tribunal took the view this was an emergency. No evidence was put forward at the hearing regarding the definition of an emergency.

15. The Tribunal was justified in finding there had been a breach of the property factors duties as set out in paragraph 56(iii). The Written Statement of Services provides for periodic visits to the Property, stating that these can be arranged to suit homeowners. The Property Factor's representative stated that such visits took place, and that issues were noticed and rectified. The Tribunal took the view that such a visit should have taken place, given the seriousness and duration of the issue with the defective pipe, and the obvious confusion over the location of the pipe.

16. In all the circumstances, the Tribunal can identify no basis to change the Decision.

17. The Tribunal considers the applications for review to be wholly without merit in terms of Rule 39(3) of the Tribunal Procedure Rules. The applications are refused.

18. This Decision is not subject to appeal.

Legal Member/Chair

Date: 10th May 2021