



Decision on Homeowners' Application in terms of Section 19 (1) (a) of the Property Factors (Scotland) Act 2011 ("the 2011 Act") and The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations")

Chamber Reference: FTS/HPC/PF/20/2224

Re the Property at 26 Strathwhillan Court, The Orchard, Harmyers, East Kilbride, G75 8FH ("the Property")

The Parties:

Mr Peter MacMillan and Mrs Elizabeth MacMillan, c/o Dalis 29 Westerton Avenue, Busby, Glasgow G76 8JS ("the Applicants") and

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

Members:

**G. McWilliams, Legal Member
C. Hepburn, Ordinary Member**

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determine that the Respondent has not failed to comply with the Property Factors Code of Conduct ("the Code") under Section 14 (5) of the 2011 Act and not failed to carry out their Property Factor's duties in terms of Section 17 (5) of the 2011 Act.

Introduction

2. The Respondent is the registered property factor for the development within which the Property is situated and they have a duty to comply with the Property Factors Code of Conduct ("the Code") under Section 14 (5) of the 2011 Act and to carry out their Property Factor's Duties in terms of Section 17 (5) of the 2011 Act.
3. The Applicants submitted an Application to the Tribunal by lodging documents with the Tribunal between 20th September 2020 and 12th January 2021. In their Application the Applicants complained that the Respondent had breached

Sections 1, 5 and 6 of the Code, and had failed to comply with their Property Factor's Duties.

4. The Respondent lodged written representations and documentation in an Inventory of Productions in advance of the evidential Hearing.

The Hearing

5. An evidential Hearing proceeded remotely by telephone conference call at 10.00am on 6th May 2021. The Applicants attended. The Respondent was represented by their Mr D. Doran, Managing Director and his assistant Ms E Allan also attended.

Evidence and Submissions

6. The Applicants and Mr Doran gave oral evidence, asked questions of each other and made submissions. The Tribunal also asked clarifying questions of the Applicants and Mr Doran whilst they were doing so. The parties referred to the representations and documentation which they had lodged.
7. The Applicants confirmed that they had recently sold the Property. They stated that their complaints arise from a water ingress issue at the Property. They stated that they first reported the issue to the Respondent on 19th July 2019.
8. The Applicants complaints under Section 1 of the Code, in respect of the Respondent's Written Statement of Services, related to the Respondent's duty to set out the core services to be provided by them, their timescales for responding to enquiries and complaints and their communication to homeowners of arrangements in relation to formal complaints. The Applicants stated that they had not received the Statement until after the water ingress issue arose. The Applicants referred to the various communications between the parties, and also involving third parties, from 19th July 2020. They said that the Respondent never answered their questions and delayed in attending to and remedying the water ingress problem.
9. Regarding Section 5 of the Code, in respect of Insurance, the Applicants stated that they had not received details of the common Buildings Insurance policy, relating to the Property and the other 10 flats in the block of flats within which the Property is situated, before the water ingress issue arose. They said that they saw reference to monies being due to Allianz Insurance in the Respondent's statements of account. They said that, in any event, the Buildings Insurance for the Property was not fit for purpose.
10. In respect of Section 6 of the Code, which concerns Carrying Out Repairs and Maintenance, the Applicants stated that the Respondent had not informed them of progress with the repair, took a long time to start it, did not notify them of when it was starting, and that the Property was in a terrible state after the water ingress repair was completed. Mrs McMillan stated that the Applicants had not claimed through their Buildings Insurance policy for the decorative works which then had to be carried out as the cost of the works was around £150.00 which was less than their policy excess amount.

11. The Applicants submitted that they considered that they were entitled to be paid by the Respondent for their expenses incurred due to the water ingress problem, being a tenant's rebate of £450.00, the cost of a report produced by Waterloss Solutions of £468.00 and the fees of their property agent, Scottish Property Centre ("SPC"), of £600.00, total £1518.00.
12. The Applicants also submitted that they should be reimbursed for medical costs incurred by Mrs MacMillan which they attributed to stress caused by the water ingress issue, in the sum of £118.75.
13. In relation to Section 1 of the Code, the Respondent's Mr Doran made detailed reference to the documentation, particularly the communications between the parties and relevant third parties, and the timeline of communications regarding the water ingress issue, which the Respondent had lodged. He stated that the Applicants were provided with a copy of the Respondent's Statement of Services shortly after they purchased the Property in December 2013. Mr Doran stated that a copy of the Statement had been available on the Applicants' "My H&P" Portal since 2019. He said that the Applicants had demonstrated that they were aware of the Respondent's services' obligations to them and their fellow proprietors, and had seen the Written Statement of Services, given the terms of their communications with the Respondent over a number of years. He referred to an email from the Applicants to the Respondents, dated 27th April 2015, confirming their complaint re a cleaning operative, and a call received from them on 12th April 2017, regarding the standards of cleaning at the block of flats, within which the Property is situated. Mr Doran stated that the Respondent's stipulated timescales for dealing with complaints and enquiries were included in the Statement. He said that the Respondent had confirmed to the Applicants the necessary arrangements for submitting a complaint to the Tribunal and that this was borne out in the parties' emails which had been lodged.
14. In respect of Section 5, Mr Doran said that the Applicants had renewed their common Buildings Insurance cover each year and were aware of its terms. He referred to parties communications, prior to the water ingress issue arising, concerning annual renewal of the policy. He referred to communications in relation to the Buildings Insurance cover concerning the issue wherein the Respondent referred the Applicants and SPC to Sedgewick, Claims Handlers in August 2019 and the Applicants confirmed to the Respondent that SPC would liaise with Sedgewick, in an email sent to the Respondent, on 12th September 2019
15. Regarding Section 6 of the Code Mr Doran referred to the various communications concerning the water ingress issue, and the timeline for same. He made specific reference to delays in the necessary remedial works being carried out due to the proprietor of the upstairs property, number 32 Strathwhillan Court, being on holiday for a month from around 15th August 2019, the Applicants and that proprietor's initial refusal to allow investigative, disruptive works to be carried out at their homes, the Applicants' rejection of the Respondent's proposal to have a plumber investigate the issue, on 26th August 2019 and the Applicants' decision to instruct their agent, SPC, to deal with the issue and make any insurance claim, and their intimation of that appointment to the Respondent, on 27th August 2019. He also referred to the delay in the Applicants' report from Waterloss Solutions being made available. Mr Doran

stated that Waterloss Solutions were instructed by SPC on 3rd October 2019, attended at the Property, and at the property at number 32 Strathwhillan Court, and investigated regarding the issue on 8th October 2019 and their report, dated 10th October 2019, was sent by SPC to the Respondent by email on 24th October 2019. Mr Doran said that the Respondent then had a contractor carry out the repair identified in that report, involving the re-gluing of a joint on an internal drainage pipe, and effectively remedy the issue, on 13th and 14th November 2019, after receiving the Applicants' consent to carry out necessary works at their home on 8th November 2019.

16. Mr Doran submitted that, in all the circumstances, he considered that the Respondent had not acted in breach of the Code. He further submitted that the Applicants had not specified any Property Factor's duties that had been breached by the Respondent and that, in any event, the Respondent had not failed to discharge their Property Factor's duties.
17. The Applicants lodged further documentation with the Tribunal, evidencing payments made by them to SPC and Waterloss Solutions, on 7th May 2021 and this was crossed over to the Respondent.

Findings in Fact and Law

18. The Applicants were the owners of the Property between 2013 and 2021.
19. The Respondent performs the role of property factor of the block of flats within which the Property is situated.
20. The Applicants were aware of the core services provided by the Respondent in performance of their role as property factor. The Applicants had communicated with the Respondent regarding other services over several years prior to their report to the Respondent of the water ingress problem in July 2019. The Respondent's Statement was available on homeowners' portals from 2019. The Applicants were made aware of arrangements for making a complaint to the Tribunal by the Respondent in email communications. The Respondent communicated with the Applicant timeously and regularly. The Respondent has complied with their duty under Section 1 of the Code.
21. The Applicants renewed their common Buildings Insurance policy through communications with the Respondent each year. The Applicants were aware of the terms of the policy. The parties communicated in relation to the Buildings Insurance cover concerning the water ingress issue. The Respondent referred the Applicants and SPC to Sedgewick, Claims Handlers in August 2019 and the Applicants confirmed to the Respondent that SPC would liaise with Sedgewick, in an email sent on 12th September 2019. The Applicants ultimately elected not to make any Insurance claim. The Respondent has complied with their duty under Section 5 of the Code.
22. The Property suffered water ingress from around July 2019. The Applicants contacted the Respondent to investigate the water ingress issue on 19th July 2019. The Respondent began investigating the issue on 22nd July 2019. The proprietor of the upstairs property, number 32 Strathwhillan Court, was on holiday for a month from around 15th August 2019. The Respondent informed the Applicants of this. The Applicants and the proprietor of number 32

Strathwhillan Court did not agree to the Respondent's proposal to carry out investigative, disruptive works at their homes at that time. The Applicants rejected the Respondent's proposal to have a plumber investigate the issue, on 26th August 2019. The Applicants instructed their agent, SPC, to deal with the issue, make any insurance claim and communicate with the Respondent on 27th August 2019. SPC instructed Waterloss Solutions to investigate the issue on 3rd October 2019. Waterloss Solutions attended at the Property, and at the property at number 32 Strathwhillan Court, and investigated regarding the issue on 8th October 2019. Waterloss Solutions' report, dated 10th October 2019, was sent by SPC to the Respondent by email on 24th October 2019. The Respondent received the Applicants' consent to carry out necessary repair works at their home on 8th November 2019. The Respondent's contractor carried out the repair identified in Waterloss Solutions' report, involving the re-gluing of a joint on an internal drainage pipe, and effectively remedied the issue, on 13th and 14th November 2019. The Respondent was in regular contact with the Applicants and relevant third parties regarding the water ingress issue, the investigation of same and the carrying out of the necessary repair. The Respondent has complied with their duty under Section 6 of the Code.

23. The Applicants have not specified any breaches of Property Factor's duties. The Respondent has not failed to carry out their Property Factor's duties.

Reasons for Decision

24. Section 1 and 1.B of the Code state that a property factor must provide each homeowner with a Written Statement of Services setting out the terms and service delivery standards of the arrangement in place between the parties, and specifying the core services provided. The Applicants were aware of the core services provided by the Respondent in performance of their role as property factor. The Applicants had communicated with the Respondent regarding other services over several years prior to their report to the Respondent of the water ingress problem in July 2019. The Respondent's Statement was available on homeowners' portals from 2019. Section 1D.I, 1D and 1DI and 1Dm of the Code state that a property factor must provide homeowners with details of complaints procedures and timescales for responses to enquiries and complaints received by letter, email and/or telephone. The Respondent communicated with the Applicant timeously and regularly. Applicants were made aware of arrangements for making a complaint to the Tribunal by the Respondent in email communications, and they did so. Having considered all of the oral and documentary evidence in this regard, the Tribunal finds, on a balance of probabilities, that the Respondent provided the Applicants with a Written Statement of Services in satisfactory terms, which was seen by and/or available to them in written form and online and, also, communicated with the Applicants timeously and regularly. The Tribunal accordingly determines that the Respondent has complied with their duty under Section 1 of the Code.
25. In their Application the Applicants specified a complaint under Section 1Dn of the Code, which states that a property factor must declare any financial or other interest in the land they are managing for homeowners. The Applicants did not give any evidence or make a submission in this regard and, accordingly, the Tribunal has not made a determination in respect of that particular Section of the Code.

26. Section 5.4 of the Code states that a property factor must have a procedure in place for submitting insurance claims on behalf of homeowners and must supply all information that homeowners reasonably require to submit such claims themselves. The Applicants renewed their common Buildings Insurance policy through communications with the Respondent each year. The Applicants were aware of the terms of the policy as they communicated in relation to the Buildings Insurance cover prior to the water ingress issue arising, and also concerning that issue. The Respondent referred the Applicants and SPC to Sedgewick, Claims Handlers in August 2019, regarding the Applicants proposed insurance claim and the Applicants confirmed to the Respondent that SPC would liaise with Sedgewick, in an email sent on 12th September 2019. Having considered all of the oral and documentary evidence in this regard, the Tribunal find, on a balance of probabilities, that the Respondent provided the Applicants with details of the Common Buildings Insurance cover and, in particular, supplied the Applicants with all information that they required in order that they or their agents SPC may make a claim, which, ultimately, they did not do. The Tribunal accordingly determine that the Respondent has complied with their duty under Section 5 of the Code.
27. Section 6.1 of the Code states that a property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention and must inform homeowners of the progress of work. The Tribunal placed particular reliance on the terms of the communications between all relevant parties which had been lodged by the Applicants and the Respondent. These confirmed that the Property suffered water ingress from around July 2019. The Applicants contacted the Respondent to investigate the water ingress issue on 19th July 2019. The Respondent began investigating the issue on 22nd July 2019. The proprietor of the upstairs property, number 32 Strathwhillan Court, was on holiday for a month from around 15th August 2019. The Respondent informed the Applicants of this. The Applicants and the proprietor of number 32 Strathwhillan Court did not agree to the Respondent's proposal that they allow investigative, disruptive works to be carried out at their homes, at that time. The Applicants rejected the Respondent's proposal to have a plumber investigate the issue, on 26th August 2019. The Applicants instructed their agent, SPC, to deal with the issue, make any insurance claim and communicate with the Respondent, on 27th August 2019. SPC instructed Waterloss Solutions to investigate the issue on 3rd October 2019. Waterloss Solutions attended at the Property, and at the property at number 32 Strathwhillan Court, and investigated the water ingress issue, on 8th October 2019. Waterloss Solutions' report, dated 10th October 2019, was sent by SPC to the Respondent by email on 24th October 2019. The Respondent received the Applicants' consent to carry out necessary repair works at their home on 8th November 2019. The Respondent's contractor carried out the repair identified in Waterloss Solutions' report, involving the re-gluing of a joint on an internal drainage pipe, and effectively remedied the issue, on 13th and 14th November 2019. Having considered all of the oral and documentary evidence in this regard, the Tribunal find, on a balance of probabilities, that the Respondent had in place procedures to enable homeowners such as the Applicants, to notify them of matters requiring attention, being the water ingress issue in this case. The Tribunal, in particular, find, that the communications lodged with them by the parties clearly show that the Respondent was in regular contact with the Applicants and relevant third parties regarding the water ingress issue, the

investigation of same and the carrying out of the necessary repair. The Tribunal, placing particular reliance on the said communications, find that any delays in investigations and in progressing the necessary repair work cannot be attributed to the Respondent. The Tribunal accordingly determine that the Respondent has complied with their duty under Section 6 of the Code.

28. As the Applicants did not specify, or provide evidence, in respect of any breach of Property Factor's duties by the Respondent, the Tribunal determine that the Respondent has not failed to comply with their Property Factor's duties.

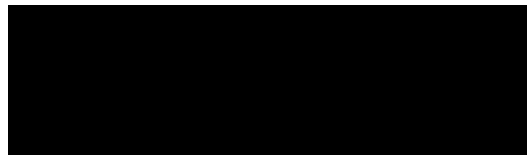
29. As the Tribunal determine that the Respondent has not acted in breach of the Code or failed to comply with their Property Factor's duties, the Tribunal cannot make a Property Factor Enforcement Order ("PFEO").

Observation

30. The Tribunal, having considered and heard all of the documentary and oral evidence, sympathise with the Applicants as they had to deal with the water ingress issue whilst they were resident overseas. The Tribunal appreciate that it would have been stressful for them trying to resolve matters when they were not on hand in Scotland. Nevertheless the Tribunal have to determine whether or not the Respondent complied with the Code and their Property Factor's duties and, for the reasons stated above, find that they did so.

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 within thirty day of the date the Decision was sent to them.



G. McWilliams, Legal Member

6th July 2021