

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision on homeowner's application: Property Factors (Scotland) Act 2011
("the 2011 Act"), Section 19(1)

Chamber Ref: FTS/HPC/LM/17/0427

11/5 Clovenstone Gardens, Edinburgh, EH14 3ET
("The Property")

The Parties:-

Mrs Margaret Ellen Higgins or Paul, 11/5 Clovenstone Gardens, Edinburgh,
EH14 3ET
("the Homeowner")

Prospect Community Housing Limited (Edinburgh), 6 Westburn Avenue,
Edinburgh, EH14 2TH]
("the Property Factor")

Tribunal Members:

Susanne L M Tanner QC (Legal Member)
John Blackwood (Ordinary Member)

DECISION

- 1. The Property Factor has not failed to carry out its property factor's duties.**
- 2. The decision of the tribunal is unanimous.**

STATEMENT OF REASONS

- 1. In this decision the tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act" and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as "the 2017 Rules".**

2. The parties and the Property

- a. The Homeowner is an owner occupier who resides in the Property. She became the registered owner when a feu disposition in her favour from the then City of Edinburgh District Council was registered in the General Register of Sasines for the County of Midlothian on 15 February 1982.
- b. The Property is situated in a tenement with a common passage and stair number 11 Clovenstone Gardens ("the Tenement") in a larger area of ground at Clovenstone Gardens as described in the said feu disposition ("the Development"). The Property is on the second floor in the Tenement. There are eight properties in the Tenement.
- c. For the purposes of this Application the following rights in common and burdens in the title deeds are relevant.
 - i. The Homeowner has a right in common with the other proprietors in the Tenement to areas including the common passage and stair (as shown delineated and coloured brown on the plan attached to the said disposition) and the paladin bin store and chute (as shown delineated and coloured brown on the said plan).
 - ii. The Homeowner has a right in common with the proprietor of Eleven/Six Clovenstone Gardens to the drying area situated on the second floor of the tenement (as shown hatched blue on the said plan).
 - iii. The Homeowner has a right in common with the proprietors from time to time of any other interested subjects to all other things mutual or common.
 - iv. The Homeowner has a burden of maintaining the said common passage and stair, with liability based on rateable value.
 - v. The Homeowner has a burden of maintaining the said paladin bin chute and store, with liability based on rateable value.
 - vi. The Homeowner has a burden of maintaining the drying area along with the proprietor of number Eleven/Six, with liability based on rateable value.

- vii. The Homeowner shares the burden of a proportional share of maintaining all other things common or mutual to the subjects
- d. The properties in the Tenement and the Development are a mix of housing association properties which are occupied by tenants and owner-occupied properties (or those with private tenancies).
- e. The Respondent became a Registered Property Factor on 7 December 2012. It is a social landlord. In respect of the Property, the Property Factor manages the common parts of land used to any extent for residential purposes and owned by the housing association and one or more other person, in terms of Section 2(1)(b)(ii) of the 2011 Act.

3. The Application

- a. The Homeowner lodged an application ("the Application") with tribunal on 16 November 2017.
- b. In Section 7 of the Application the Homeowner alleges that the Property Factor has failed to comply with its Property Factor's duties for the following reasons:
 - i. *"Failed to clean stair properly and deep clean once a year. Leaving pools of water and expect me to pay £48.00 every quarter for a service not done properly. They sent a Mr Joh Nairn out to speak to me. I said to him why has the bucket chute area on number 3-4 landing is so dirty [sic] inside and it is unlocked. He said it is not part of the factoring but said he would see it was done. Nothing has been done. Also fire safety number 3-4 has not been cleared out. I first wrote to them on 1 June 2017."*
 - ii. *"They have failed to provide a reasonable cleaning service. The Landscaping around the property. The tenants just dump rubbish at the recycling bins. I am getting charged in my factoring fees which you will see from the sales invoice how much they have sent up [sic] in price."*
- c. The Homeowner's reasons for considering that the Property Factor has failed to resolve the complaint are stated as *"They have failed in providing a proper stair cleaning service and their deep clean service once a year left all windows in drying area and bucket chute area all streaked which I had to pay"*.

- d. The Homeowner stated that this has affected her as follows: *"Very stressed as I feel I am getting nowhere. I am still working part time. I am 68 years old. When I do give up work I will only be on a pension and having to pay their factoring bills £77.46. I have enclosed all documents and photographs"*.
- e. The Homeowner stated that she would like her complaint to be resolved as follows: *"I would like to go back to cleaning my own part of the stair which I have done since day one when Prospect had taken over most of Clovenstone Gardens over 15 years ago. My flat was bought 1982 from the Council. Have enclosed Property Factors Scotland from Prospect and letter to them complaining about services."*
- f. Various documents were attached to the Application and form part of the Application.
- g. On 16 November 2017 the Written Statement of Services for the Tenement, (referred to as "the Scheme") was provided.
- h. On 27 December 2017 the Homeowner provided further information, namely 30 pages of letters and documents, some of which had no relation to matters in the Application.
- i. On 19 January 2018 the Homeowner advised the tribunal that she was being assisted by Citizens Advice Bureau, which required time to evaluate her case before she could proceed.
- j. On 19 January 2018 the Homeowner sent a letter and two documents – a letter from the Property Factor dated 5 January 2018 and a copy of a Repayment contract.
- k. On 22 January 2018 the Homeowner provided further information to the tribunal's administration.
- l. On 12 March 2018 the Homeowner provided further information to the tribunal's administration.
- m. On 3 April 2018 the Homeowner provided further information to the tribunal's administration:
 - i. A letter (handwritten) from the Homeowner dated 30 March 2018 about stair cleaning and other matters which are unrelated to the Application;

- ii. A letter of 14 February 2018 from the Property Factor to the Homeowner relating to bin chute areas, stating that from 1 March 2018 as part of their stair cleaning work the Property Factor will be ensuring that all the bin chute areas are clean and clear of items;
 - iii. A letter of 21 February 2018 from the Property Factor to the Homeowner stating that the Property Factor does not provide a service for the cleaning of drying areas; answering a query in relation to depositing of items in drying areas; and informing the Homeowner that the Property Factor is about to commence monthly cleaning of the bin chute cupboards;
 - iv. A letter of 9 March 2018 from the Property Factor to the Homeowner requesting a missing piece of correspondence;
 - v. A letter (handwritten) of 12 March 2018 from the Homeowner to the Property Factor;
 - vi. A letter dated 15 March 2018 from the Property Factor to the Homeowner requesting a missing piece of correspondence;
 - vii. A letter dated 27 March 2018 from the Property Factor to the Homeowner providing a response to matters raised in the Homeowner's previous correspondence; including the fact that following annual cleaning and inspection of the stair windows the Property Factor was of the view that no further work was required; referring to the specification to which staff work and the Tenant Scrutiny Group; and a matter unrelated to the Application; with attached Property Factor's Specification for Stair Cleaning;
 - viii. A letter (typed) of 30 March 2018 from the Homeowner to the Property Factor in response to the Property Factor's letter of 28 March 2018.
- n. On 15 May 2018 the Homeowner provided further information to the tribunal's administration:
- i. A cover letter (handwritten) from the Homeowner to the tribunal's administration dated 10 May 2018;

- ii. A letter (typed) from the Homeowner to the tribunal's administration dated 1 May 2018, providing further information requested by the tribunal on 12 April 2018, with enclosures:
 - 1. Revised sections 7-9 of Application Form dated 10 May 2018
 - 2. New (March 2018) stair cleaning specification.
- iii. A copy letter to Mr Cockburn of the Property Factor dated 1 May 2018, stating that the continuing disagreement with the tribunal is whether the stair cleaning at 11 Clovenstone Gardens has been carried out to a reasonable standard, as distinct from services in general, with proof of postage on 2 May 2018;
- iv. A copy letter from Lynne Bell of the Property Factor dated 3 May 2018, advising that she had taken over from Mr Cockburn following his retiral and had nothing to add to his letter of 27 March 2018.
- o. On 31 May 2018 the Application, comprising all documentation received until in the period 16 November 2017 to 15 May 2018, was referred to the tribunal in terms of Sections 18 and 18A of the 2011 Act.

4. Referral of Application

- a. On 2 July 2018 the tribunal's administration wrote to the parties to advise that the Application had been referred to the tribunal.
- b. A hearing was fixed for 17 August 2018 at 10.00am at George House, 126 George Street, Edinburgh.
- c. The hearing date was intimated to parties and parties were invited to lodge any written representations by 23 July 2018 and to lodge any documents in accordance with Practice Direction number 3.

5. Written Representations and documents lodged in advance of hearing

- a. On 18 July 2018 the Homeowner returned a form to the tribunal's administration confirming that she wished to attend the hearing but did not wish to submit any written representations. The Homeowner did not lodge any written representations in advance of the hearing.
- b. On 18 July 2018, Lynne Bell of the Property Factor indicated that its representatives wished to attend the hearing and she attached written representations and a bundle of annexed documents.

- i. The Property Factor's written representations included a response to the Homeowner's complaints of (a) leaving dust and pools of water on the stairs and landing floors and (b) leaving streaks on stair windows.
- c. The documents referred to in the Property Factor's written representations were attached in an Annex as follows:
 - i. Written Specification for Stair Cleaning (Appendix 1 to Written Statement of Services)
 - ii. Prospect Stair Standard
 - iii. Photographs from Monday 16 July following weekly clean
 - iv. Tenant Survey December 2017
 - v. Response from one tenant at 11 Clovenstone Gardens ("the Scheme")
 - vi. Prospect Scrutiny Group Report on Stair Cleaning Services – Clovenstone area
 - vii. Signed and authorised record of annual clean at 11 Clovenstone Gardens ("the Scheme") on 27 July 2017
 - viii. 3 photographs taken on Monday 16 July 2018 of stair windows at 11 Clovenstone Gardens ("the Scheme")
 - ix. 2 photographs taken on Monday 16 July 2018 of bin chute area at 11 Clovenstone Gardens ("the Scheme")

6. Hearing

- a. A hearing took place on 17 August 2018 at 10.00am at George House, 126 George Street, Edinburgh.
- b. The Homeowner attended the hearing. She was accompanied by her daughter, Miss Melanie Higgins, who acted as her supporter in terms of Rule 11 of the 2017 Rules.
- c. Mrs Lynne Bell, Finance Manager and Mr Ed McConville, Estate Services Officer, attended on behalf of the Property Factor.
- d. The Homeowner lodged late documents at the hearing, with the consent of the Property Factor and the tribunal: Photographs numbered 1-6, which are referred to further below.

7. Summary of submissions at hearing

- a. The tribunal heard submissions from both parties in relation to the alleged breach of property factor's duties. Their submissions are summarised as follows:
- b. **Homeowner's submissions**

- i. The Homeowner stated that she feels that she is paying for a service and that it is not getting done properly. Originally, after she bought the Property, she did not pay for cleaning and now the Property Factor is charging for cleaning. As she is paying for a cleaning service she expects it to be of a satisfactory standard.
- ii. The Homeowner purchased her ex-council property from the Council in 1982. The Property Factor bought the remaining Council properties in the Clovenstone Gardens development ("the Development") around 15 years ago.
- iii. There are two owners in the Tenement/Scheme, the Homeowner and another man named Mr Cant. The other six properties in the Tenement/Scheme are tenanted.
- iv. The Homeowner said that she could not remember signing any agreement to appoint the Property Factor.
- v. The Homeowner said she has complained to the Property Factor on a number of occasions about the cleaning service provided in the Tenement/Scheme.
- vi. The Homeowner said she has taken photographs inside the Tenement/Scheme after cleaning has been carried out. She produced six photographs taken on 30 July 2018, a few days after the annual deep cleaning was carried out. Photographs 1, 3, 4 and 5 were said to show streaks on various windows in the Scheme. Photograph 2 was said to show a cobweb in a corner of the wall/ceiling in the Tenement/Scheme.
- vii. The Homeowner said that when the deep clean was carried out in July 2018 she washed the stair 3 or 4 hours later and the water in the bucket was dirty. Photograph 6 taken on 30 July 2018 was said to show dirty water in a mop bucket which was inside her Property after she had carried out said cleaning.
- viii. The Homeowner and her daughter are both cleaners and they do not believe that the sweeping and mopping is being done properly.
- ix. The Homeowner said that she started complaining to the Property Factor about various matters, including the stair cleaning service, in 2016 *[the tribunal noted that this was prior to the Property Factor's appointment as property factor of the Scheme in October 2017]*.
- x. The Homeowner said that when she originally complained to the Property Factor she did not receive much by way of a response, but since she has made the Application to the tribunal, the

Property Factor has been sending letters explaining what has been done. However, the Homeowner still does not feel that the cleaning is up to standard and she maintains her complaint about paying £48 per quarter for a service that she is unhappy with when she would rather do her section of the stair herself.

- xi. The Homeowner said that she does not know if the Property Factor inspects the state of the cleaning as they have not reported back to her following any inspection.
- xii. The Homeowner said that she understands that the service is for cleaning stairwell windows is once a year on the outside. She stated that there were streaks on the windows after the deep clean and she thought these were on the outside of the windows and should therefore have been removed during the deep cleaning.
- xiii. The Homeowner said that after weekly cleans there are pools of water. It has improved slightly in the period since 17 October 2017.
- xiv. The Homeowner said that in the square outside the Scheme, next to the Development, there are recycling bins and the tenants dump black bags next to the bins, in the surrounding area. *[The tribunal noted that this complaint was in the Application form but it was unclear whether this was still live as her later correspondence with the tribunal following notification of the Property Factor indicated that the only outstanding issue was stair cleaning in the Scheme].*
- xv. The Homeowner stated that she used to clean the stair inside and outside from the time she bought the house up until last year. She wishes to return to doing the cleaning of her part of the stair herself and cease paying the Property Factor for cleaning services.

c. Property Factor's submissions

- i. Ms Bell adopted her written submissions and supporting documents.
- ii. By way of amplification, Ms Bell stated that the Property Factor became property factor of the Scheme in 2017. The factoring appointment meeting was held on 22 June 2017. On 17 October 2017 the Property Factor confirmed the formal appointment by letter. Prior to that date Prospect was doing the cleaning at the Development and was not charging tenants and owners for the service. The complaints from the Homeowner about the cleaning

service came after the Property Factor was appointed as the property factor.

- iii. There are four floors and eight properties in the stair in which the Property is situated (referred to in the Written Statement of Services as "the Scheme"). There are two properties per floor. There are six tenanted properties and two occupied by owners (one of whom is the Homeowner).
- iv. After taking legal advice, the Property Factor was told that it was entitled to charge for factoring services and should be charging. The Property Factor started charging in October 2017. Invoices are issued quarterly to Homeowners. The charge for cleaning of the common areas is £48 quarterly, per property. The tenants' rent includes an allowance for the cleaning service.
- v. All of the stairs in the Development, including the Scheme, are cleaned weekly. Reference was made to the specification for the weekly cleaning (Appendix 1 to the WSS, which was also Annex 1 to the Property Factor's written submissions).
- vi. The cleaning provision also includes one annual deep clean. (The specification is also in Appendix 1.)
- vii. The weekly clean takes approximately half an hour to forty minutes per stair. There is 'Veitchi' flooring in the stairwell and tiles on the bottom floor. The cleaners are employees of the Property Factor.
- viii. The stair is inspected by Mr McConville every week after the cleaners have been in. He has been at Prospect for twelve and a half years in different roles and his current role includes inspection of cleaning services.
- ix. In relation to the complaint about streaks on the windows, Mr McConville stated that the windows in question are in the drying areas on each floor which are behind closed locked doors and the cleaners cannot get in to do the inside of the windows. The cleaners have no right to enter those drying areas as they are owned or occupied by the owners/tenants of the two properties on the particular floor. Cleaning the inside is not part of the weekly or annual cleaning specification. The streaks that do exist are on the inside.
- x. Mr McConville stated that if a tenant or owner is not happy he arranges for the Property Factor's employees to go back and deal with the issue. If there is a complaint about a stair, Mr McConville generally investigates it the same day.

- xi. Ms Bell and Mr McConville both said that they are satisfied that the weekly and annual cleaning services are being carried out in accordance with the specification which forms part of the Written Statement of Services.
- xii. Regarding the bin area at the ground level, which was mentioned by the Homeowner, Mr McConville stated that it is actually the Council who are meant to clean that area. Each of the bin chutes in the stair leads to a large bin in the bin store. Some residents just through the bags into the store. The council will not lift those bags. The Council lifts the rubbish from the bin store.
- xiii. The Property Factor started cleaning the bin chutes about four months ago after getting keys cut for the bin chute areas. The first week in every month the cleaners go in and sweep out the areas and make sure that they are clean. The bin chutes and the bin store are not included in the Written Statement of Services. The Property Factor has assumed the role because it was becoming a Health and Safety and a fire risk. It is not part of the factoring agreement.
- xiv. It is part of the Property Factor's provision to clean the internal stair windows on the outside as part of the annual deep clean. Mr McConville stated that the streaks on the windows which were complained about by the Homeowner, with reference to the photographs, were on the inside of the glass in an area which is not part of the factoring service.
- xv. Every internal stair window got cleaned on the outside on 30 July 2018 in the deep clean. Mr McConville inspected the whole block on 31 July. He inspects 78 stairs a week. He carries out a visual inspection.
- xvi. Regarding the cobweb in the stair, Mr McConville said that he never saw it in his inspection on 31 July 2018 so he does not know when it was first there. He went on holiday following the deep clean and then the Homeowner sent in the photos. He came back on Thursday and was made aware of the cobweb. He went to the Scheme and saw the cobweb. Another two weekly cleans had taken place before his visit but they were only carried out as per the weekly stair cleaning specification which does not say that all cobwebs will be removed. When the cobweb was identified he got someone to go in on 14 August and remove the cobweb. They also cleaned the windows again. Following the cleaner's attendance Mr McConville attended and inspected. The only streaks on the windows were on the inside of the drying areas.

- xvii. There is a cleaning sheet that gets signed every week. When it is a deep clean, it is signed and initialled. These sheets are kept by the Property Factor. The Property Factor is intending to introduce a signing sheet on the wall in the property.
- xviii. Mr McConville said that he never saw pools of water in his inspections. Because of the kind of flooring it soaks the water up pretty quickly. Veitchi flooring is porous and takes in the water.
- xix. Regarding the recycling area complaint, Ms Bell said that she understood that this aspect of the complaint had been withdrawn, which is why the Property Factor did not refer to it in its written submissions.
- xx. Mr McConville indicated that the area in question is nothing to do with the Property Factor. The council put the bins on council land and the council are responsible for emptying the bins. It is outwith the factoring provision. It is not part of the land that the Property Factor carries out landscaping in. They are on public space, not common Development property.
- xxi. Regarding the Homeowner's suggestion that the Homeowner could be 'lifted out' of the cleaning provision of the factoring service and do her own cleaning of her part of the Scheme, the Property Factor said that it would be very difficult to do and it would not be a feasible option for the Property Factor and its staff or for the other residents. The cleaning is £48 per quarter per property. The landscaping is £14.83. It is not only the stair cleaning, it is the annual clean. There is someone else on the Homeowner's landing who is the Property Factor's tenant and cleaning half a landing is not feasible.
- xxii. The Property Factor referred to the Tenant Satisfaction Survey which had been lodged. It is part of a Clovenstone area survey. Only tenants have been asked to complete it. There was a stair cleaning survey done. A 20% sample was taken. One person in the Scheme has been surveyed and was satisfied with the cleaning.
- xxiii. The Property Factor referred to the Tenants' Scrutiny Group which looked at stair cleaning. The group thinks that the Property Factor is providing a good service. Mr McConville stated that the group recommended that bin store should be cleaned out as an additional service, which is why the Property Factor recently added it. People were storing wood and other things in the bin stores. The group was new and as it was their first project they felt they could add something to the provision already in place. It was left up to them what areas they looked at. In the wake of Grenfell, there was a concern that people were storing an enormous amount of wood. The group chose to

look at stair cleaning and as part of that they reported on the things stored in the bin stores. The bin chute area has been added to the service once a month, since March 2018 (after the complaint was made to the tribunal in November last year.)

- xxiv. Mr McConville reiterated that on an ongoing basis he checks this stair weekly.
- xxv. In relation to the Homeowner's photograph 6, which was said to show dirty water in a bucket after a stair clean had taken place, Mr McConville stated that it does not look that dirty to him and he could not comment further other than to say that the weekly stair cleaning is being carried out in accordance with the specification.
- xxvi. In relation to Mr McConville's visual inspections, he said that he used to be a cleaner. He cannot say for certain that the cleaners spend ½ hour or 40 minutes but he knows from experience that is the length of time it takes to clean the stair as per the specification for weekly cleans. When he inspects he looks at anything that was to be wiped down such as the banisters and the window sills. He scans the floor in front of him. He can smell it has been cleaned and the floor is wet sometimes. Each mat outside the house is lifted up.
- xxvii. As Property Factor it is important to them that the cleaning is done correctly. The Property Factor is satisfied that the cleaning is being carried out properly as per the specification and then inspected. Any issues which do arise are addressed. The Property Factor is not sure what more they could do.

d. Further discussion with parties about their ongoing relationship

- i. The tribunal had a short discussion with parties in which parties were advised by the tribunal members that the tribunal's role is to make a decision as to whether factoring duties have been breached or not if and if they find that the duties have been breached, to issue a proposed Property Factor Enforcement Order.
- ii. Parties were encouraged in the context of their ongoing relationship as Homeowner and Property Factor to consider whether there may be a way forward which would allow the Homeowner to raise any cleaning concerns with the Property Factor for its consideration and action, if deemed necessary. The Homeowner is paying for a service and the Property Factor, as service provider, wants to make sure that the Homeowner is satisfied, so far as possible. The Property Factor sees it as an

acceptable level of cleaning but the Homeowner still has concerns.

- iii. Mr McConville stated that he would be happy to meet the Homeowner every week. The Scheme is cleaned at 10.30 on a Monday. He offered to turn up at 3.45 and meet her during his inspection. The Homeowner would have to point out where she is dissatisfied and Mr McConville might have his own idea.
- iv. The matter was left for parties to make arrangements between themselves.

e. Further procedure

- i. The parties were advised of the procedure to follow the hearing and the hearing concluded.

8. The tribunal makes the following findings in fact:

- a. The Homeowner is the owner of the Property. She is a resident owner.
- b. The Property is a flat within the block of 8 properties at 11/1 to 11/8 Clovenstone Gardens, Edinburgh ("the Scheme").
- c. The Property Factor is a registered social landlord.
- d. The Property Factor became a Registered Property Factor on 1 December 2012 and renewed its registration on 18 March 2016.
- e. The Property Factor became the property factor for the Scheme by votes carried out on 22 June and 12 October 2017.
- f. The Property Factor is responsible for provision of services relating to common areas in the Scheme.
- g. The Property Factor has issued a Written Statement of Services to owners and tenants in the scheme, including the Homeowner.
- h. The Property Factor's services in the Development included stair cleaning of the common areas in the Scheme.
- i. The Homeowner is liable to pay a share of the costs of cleaning services in accordance with the rateable value of her Property and the other seven properties in the Scheme.
- j. The common areas in the internal stairs, landing and passageways in the Scheme are cleaned once per week; and there is an annual deep clean.

- k. The cleaners are employed by the Property Factor.
- l. Annex 1 to the Written Statement of Services provides the specification for the weekly cleaning services and annual deep clean.
- m. The weekly cleaning service includes:
 - i. Lift all door mats
 - ii. Brush stairs and landings
 - iii. Mop stairs and landings with clean hot water and detergent
 - iv. Dust windowsills and if required wipe with damp cloth
 - v. Remove cobwebs where possible
 - vi. Wipe hand rail with damp cloth
 - vii. Brush front and back door entrance mats where present
 - viii. Sweep front entrance to common stair
 - ix. Note any repairs required, hazards etc. and report to relevant staff for action with photos where possible.
- n. The common areas in the Scheme are inspected once per week by the Property Factor's Estates Services Manager.
- o. The common areas in the Scheme are deep cleaned once per year. The deep clean includes:
 - i. Lift all door mats
 - ii. Brush stairs and landings
 - iii. Dust windowsills and wipe with damp cloth
 - iv. Remove all cobwebs where possible
 - v. Wash internal and external stair windows
 - vi. Wash walls, stairs, floors and landings with clean hot water and detergent, then dry mop
 - vii. Wipe down hand rail with damp cloth
 - viii. Brush front and back entrance mats, where present.
 - ix. Sweep front entrance to common stair
 - x. Wash front and rear entrance doors
 - xi. Disinfect walls and floor of bin store.
- p. Homeowners in the Scheme, including the Homeowner, are billed by the Property Factor factoring and for services provided, including cleaning.
- q. The factoring charges for 2017/18 are fixed at £51.93 per quarterly invoice.
- r. The quarterly charge to the Homeowner in respect of cleaning of the common areas in the Scheme is £48.00 per quarter.
- s. There have been no complaints from the other owner or tenants within the Scheme about the standard of the weekly cleaning service or the annual deep clean.

- t. A Tenant Satisfaction Survey was carried out within the development in which the Scheme is situated, with a one tenant in the Scheme being surveyed. That tenant was happy with the cleaning service in the Scheme. Overall 93% of tenants in the Development were satisfied with the cleaning service.
- u. The common areas in the Scheme are being cleaned satisfactorily in accordance with the specifications in the Written Statement of Services.
- v. The recycling provision for the Scheme is situated outwith the common property for the Scheme. The recycling bins are not located in an area of land in which the Property Factor provides its services. The recycling bins are emptied by the City of Edinburgh Council.

9. Property Factor's Duties

- a. Having regard to the tribunal's findings in fact the tribunal is satisfied that the Respondent has not breached its property factor's duties in relation to the cleaning provision in the Scheme; or in relation to the area around the recycling bins which is outwith the Scheme and the Development common property.
- b. Some of the areas complained about by the Homeowner, for example the inside of drying area windows and the recycling area situated on public property next to the Development, were not within the factoring provision for the Scheme or the Development.
- c. In relation to the cleaning of the stair and landings, the tribunal had regard to the weekly cleaning regime, the cleaning specification and the weekly inspections by Mr McConville. The tribunal was satisfied that it is being carried out in accordance with the specification to a satisfactory standard. Cleaning will always be subjective to some extent and the Homeowner's standard may exceed those provided for in the Property Factor's weekly cleaning specification. The Homeowner's suggestion that the cleaning should be carried out in a way which exceeds that in the specification does not mean that the Property Factor has breached its duties.
- d. In relation to the annual clean, the tribunal formed the view that it had been carried out in accordance with the specification. The tribunal had regard to the picture showing a cobweb but there was no evidence about when it appeared and how long it had remained there. The Property Factor's duty is to remove cobwebs where possible. Once alerted to the presence of the cobweb, arrangements were made by the Property Factor for it to be removed.
- e. In relation to the state of cleanliness of the floor following the annual clean, the tribunal was not persuaded the Homeowner's photograph 6

could be relied upon to show that the stair was not being cleaned properly. The water did not look particularly dirty. Even if it was in fact slightly dirty, that could have been caused by a dirty mop or residual dirt on the floor and did not prove on a balance of probabilities that the cleaning was not being carried out in accordance with the cleaning specification to an acceptable standard. It is possible that the Homeowner could deep clean the stair to a higher standard than the Property Factor's cleaners but that is not the appropriate test for whether the Property Factor has breached its' duties.

- f. While the Homeowner's concerns appeared to be genuine concerns which were causing her stress, these appeared to stem from the fact that up until October 2017 she was not being charged for stair cleaning and since then she has been charged. She does not want the Property Factor to clean her section of the stair or pay for its services. She has repeated these facts in several pieces of correspondence to the Property Factor which have been submitted to the tribunal. She has stated that she will shortly retire and does not want to have to pay a charge of £48 per quarter for stair cleaning. She cannot accept that cleanliness is subjective and she focusses on her own standards rather than the Property Factor's cleaning specifications. She cannot accept that it is not practical for matters to return to the way they were before the Property Factor was appointed, at which time she was not charged for stair cleaning and she carried out her own cleaning in addition to that provided by Prospect (before their appointment).

10. Observations

- a. After the discussion at the conclusion of the hearing, Mr McConville, the Estates Services Manager of the Property Factor and the Homeowner reached an agreement between themselves that Mr McConville would attend at 3.45pm on a Monday to meet with the Homeowner after the weekly cleaning has been carried so that she can alert him to any issues she perceives with the cleaning; and that any such issues, if accepted by Mr McConville to form part of the factoring services, would be rectified by the cleaners being recalled to the Scheme to deal with them. This is an informal arrangement which the parties have entered into in the context of their ongoing relationship, without any particular time limit. The tribunal is not involved in the arrangement and it does not form part of any proposed order or order.
- b. Following the hearing, and after the tribunal had reached its decision on the Application, both parties submitted correspondence to the tribunal's administration relating to their informal arrangement to meet. The tribunal had already reached its decision and in any event did not take the parties' correspondence into account as it relates to an arrangement between the parties and not to a proposed order or an order of the tribunal.

11. Appeals

- a. **A homeowner or property factor 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.**

Susanne L M Tanner QC
Legal Member

10 September 2018