

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on Homeowners Application – Property Factors (Scotland) Act 2011
section 19 (1) (a)**

Chamber Ref: FTS/HPC/PF/17/0255

**43 North Anderson Drive, Aberdeen, AB16 6HP
("the property")**

The Parties:-

**MRS ANGELA COOPER, 86 Summerhill Crescent, Aberdeen, AB15 6ED
("the Applicant")**

**ABERDEEN CITY COUNCIL, Communities, Housing & Infrastructure, Marischal
College Business Hub, 11 Bridge Street, Aberdeen, AB10 1AB
("the Respondent")**

Tribunal Members:

Graham Harding (Legal Member)
Mike Scott (Ordinary Member)

DECISION

The First Tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") having made such enquiries as it saw fit for determining whether the Respondent has complied with the Code of Conduct for Property Factors as required by Section 14 of the 2011 Act determines unanimously that in relation to the Homeowners Application the Factor has not complied with Sections 1, 2, 3 and 6 of the Code.

INTRODUCTION

In this Decision we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) (Regulations) 2017 as "the Regulations".

The Respondent became a registered Property Factor on 1 November 2012 and its duty under Section 14 (5) of the 2011 Act to comply with the Code arises from that date.

1. By Application dated 050717, the Applicant complained to the tribunal that the Respondent was in breach of the Code and that the Respondent had failed to carry out its Property Factors duties.

2. By Minute of Decision dated 10 October 2017, a convenor with delegated powers under Section 18 (a) of the 2011 Act referred the Application to a tribunal.
3. Both parties made written representations to the tribunal in advance of a Preliminary Hearing which took place at 48 Huntly Street, Aberdeen, on 12 December 2017. Following that Hearing the tribunal in its decision dated 9 January 2018 determined that the Respondent was acting as Property Factor in respect of the block in which the Applicant's property is located.
4. A further Hearing to determine the Applicant's substantive complaints was held at Ferryhill Community Centre, Aberdeen, on 20 February 2018.

HEARING

5. The Applicant attended the Hearing on 20 February 2018 supported by her husband, Mr McGregor. The Respondent was represented by Mr Craig Donald, Solicitor, Aberdeen City Council and Mr Andrew Pitblado of Aberdeen City Council.
6. The Applicant submitted that as it had been determined by the Tribunal that the Respondent was acting as Property Factor it was not clear what services were provided and what repairs and subsequent costs were to be shared between the owners. The Respondent, Mr Pitblado, accepted that this has been the case as up until the tribunal's decision the Respondent had not considered it was a Property Factor.
7. The Applicant explained that she had been an owner of the property since 1996 and that over her period of ownership there had been no clear direction as to what were and were not common repairs. For the Respondent, Mr Pitblado acknowledged that this was fair comment. He suggested that if a repair was required to the common entry system the costs would be shared equally between the six owners in the block. If the repair related only to the handset then that was the responsibility of the owners. The Applicant explained that this had not been the case in the past and that when she had complained about the intercom being broken, no-one from Aberdeen City Council had come to look at it.
8. The Applicant indicated that she was not expecting the Respondent to carry out routine inspections but did expect it to respond appropriately to issues when raised.
9. Mr Pitblado for the Respondent explained that it would be necessary for the Respondent to draft a bespoke Written Statement of Services dealing with all the requirements of the Code including charges, intimating repairs, debt recovery procedures and complaints procedures. Mr Donald advised the tribunal that the Applicant's complaints were being listened to and would be considered when drafting the Statement of Services.
10. Mr Pitblado explained that the draft Statement of Services would be sent to all the owners in the block for approval and would be subject to a majority decision. The timescale for completion would be 10-12 weeks.

11. In respect of the Applicant's complaints in relation to Section 2 of the Code, the Applicant said that up until the present time, there had been no consultation by Aberdeen City Council with herself and the other owner in the block when determining what repairs were to be carried out. In particular, the applicant advised the tribunal that no-one had spoken to her about repairs to the communal door entry system. For the Respondent, Mr Pitblado, advised that going forward all repairs would be subject to a scheme decision made in terms of the Tenement (Scotland) Act 2004 with all owners in the block being given a say and a vote. Mr Pitblado emphasised that the Respondent as Property Factors did not vote, it would be another Department of Aberdeen City Council, probably Building Services, as owners of 4 of the flats plus the owners of the remaining two flats to vote on what was being proposed by way of repairs.
12. With regards to the Applicant's complaint in terms of Section 3 of the Code, Mr Pitblado confirmed that going forward a detailed financial breakdown will be provided for all charges made and any supporting documentation and invoices would be provided.
13. With regards to the Applicant's complaints in terms of Section 6 of the Code, the Applicant said that in the past despite requests she had not been provided with any explanation as to how and why particular contractors had been appointed or why in-house staff had been used. For the Respondent, Mr Pitblado confirmed that in the future the Respondent would write out to the owners and provide quotes for the works proposed.
14. With regards to the Applicant's further complaint in terms of Section 6 of the Code, the Applicant explained that the work carried out to the communal door entry system and repairs to the concrete step and common path had been inadequate and there had been a failure for anyone to take responsibility for ensuring that the contractors carried out the work to a reasonable standard. For the Respondent, Mr Pitblado stated that in future the decision as to who to appoint to do any work would be as a result of a Scheme decision being made. The Applicant queried who would deal with the workmanship and Mr Pitblado said that not every job was checked but there would be options included in the statement of services that would deal with this matter.
15. The Applicant explained that she had previously requested from Aberdeen City Council a key for the padlock to the loft area but had not been provided with this. For the Respondent, Mr Pitblado advised that as far as he was aware, the padlock had been removed. The Applicant expressed her concerns that one of Aberdeen City Council's tenants had taken access to the loft area. This raised issues of both safety and security that required to be addressed. Mr Pitblado said that he could not be certain that access had been taken by one of Aberdeen City Council's tenants and queried whether the Applicant had reported the matter to the Police. The Applicant advised that the Police had been involved in 2017.
16. The Applicant advised the Tribunal that she felt that the front gardens of the Aberdeen City Council tenanted properties needed to be tidied up and a boundary hedge cut back. Mr Pitblado said that he was aware the hedge would be trimmed in the course of the following 2 weeks but he could not comment on the tidying up of

tenants' gardens. For the Respondent, Mr Donald advised the Tribunal that the Respondent could make recommendations to Aberdeen City Council for them to take action with regards to their tenants' gardens.

17. The Applicant reiterated her concern about tenants not having keys to the common doors and as a result were breaking the locks. Mr Pitblado advised that all tenants of Aberdeen City Council were given keys to the common doors. The Applicant felt that the invoices for previous repairs to the locks should be cancelled as the locks were clearly not fit for purpose and it was quite unfair to be continually billed for the cost of inadequate repairs. Mr Pitblado advised that he would have discussions with the Housing Department but as Property Factor could not make any promises.
18. The Applicant told the tribunal that she thought it was a shame that it had taken making an application to the tribunal with the time, effort and expense created for all concerned for the matter to be addressed. For the Respondent, Mr Donald explained that it had been a genuine belief on the part of the Respondent that it was not acting as Property Factor but that going forward the Respondent was trying to sort matters out.

FINDINGS IN FACT

19. As previously determined in the tribunal's Decision of 9 January, the Applicant is the owner of the property.
20. The property is a flat within a block of 6 flats, 4 of which are owned by the Respondent.
21. The Respondent performed the role of Property Factor of the block.
22. The Respondent as a majority owner of the flats in the block determined what repairs were carried out to the block and how these repairs were carried out.
23. The Respondent was responsible for repairs to the common entrance door, common lighting and other common repairs.
24. The Respondent had in the past been in control of access to the loft space.
25. There was no service agreement between the Respondent and the other owners of the block.
26. The Respondent did not charge the other owners for its services in carrying out repairs to the block but sought a share of the cost of the repairs from the other owners.
27. The Respondent intends to prepare a bespoke Statement of Services and have this approved by the majority of the owners in the block. It is likely that it will take 10-12 weeks for this process to be completed.
28. In future, any proposed repairs to common property in the block in which the Applicant's property is located, will be put to all the owners for approval by the

Respondent and a Scheme decision made in terms of the Tenement (Scotland) Act 2004.

29. The Applicant has previously not been supplied with a detailed financial breakdown of charges made, nor supplied with copy Invoices.
30. The Applicant has not in the past been provided with an explanation as to how and why contractors have been appointed or why in-house staff had been used.
31. The past repairs to the common door entry system were inadequate in that locks have frequently been broken following repairs being carried out.
32. The access to the loft space about the Applicant's property is insecure and poses a risk to those entering the loft space and those occupying the property.
33. There has been past repairs to the steps at the common entrance and common path that have not been carried out to a reasonable standard.
34. The Respondent had prior to the Tribunal's decision of 9 January 2018 not believed it was acting as Property Factor.
35. The Applicant has been put to a considerable amount of time and inconvenience to try to resolve her issues with the Respondent.

REASONS FOR DECISION

36. The tribunal accepted that prior to its decision of 9 January 2018, the Respondent had not considered it was acting as Property Factor. However, given the tribunal's decision it was incumbent on the Respondent to provide a Written Statement of Service within a reasonable period of time. In the circumstances, the tribunal accepted that this may take about 3 months to finalise.
37. It was clear to the tribunal that the applicant had concerns over the workmanship in respect of past repairs to the common door entry system, the common steps and common path. The Applicant had raised these concerns with Aberdeen City Council but had not received a satisfactory response. The Applicant had been put to a significant amount of inconvenience in pursuing her legitimate complaints. It was therefore appropriate for the Respondent to be ordered to pay compensation to the Applicant. The sum of £150.00 appeared to the tribunal to be appropriate.
38. Whilst acknowledging that Aberdeen City Council would have a majority vote in connection with any matters affecting the block in which the property was located, the Tribunal hoped that going forward the Respondent would ensure that it would give the Applicant's concerns due consideration and make appropriate recommendations to the owners of the properties in the block.

PROPOSAL PROPERTY FACTOR ENFORCEMENT ORDER

The tribunal proposes to make a Property Factor Enforcement Order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

APPEALS

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.

Graham Hardiŋg

Legal Member

8th March 2018

Date