

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on Homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref: FTS/HPC/PF/20/0402

**Flat 2/2 235 Berkeley Street, Glasgow G3 7HH
("the Property")**

The Parties:-

**Mr Tahir Mahmood, residing at Flat 2/2 235 Berkeley Street, Glasgow G3 7HH
("the Homeowner")**

**Glasgow West Enterprises Limited, 5 Royal Crescent, Glasgow G3 7SL
(represented by their agent T C young, Solicitors, 7 West George Street,
Glasgow G2 1BA)
("the Factor")**

**Tribunal Members:
Graham Harding (Legal Member)
Kingsley Bruce (Ordinary Member)**

DECISION

The Factor has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with section 6.1 of the Code.

The decision is unanimous.

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules"

Background

1. By application date 3 February 2020 the Homeowner complained to the Tribunal that the Factor was in breach of Section 6 of the Code and had failed to carry out its property factors' duties.
2. The Homeowner's complaint centred around an alleged failure on the part of the Factor to deal with the repair of a fuse box and the back door to the

property not being locked. The Homeowner provided the Tribunal with copies of correspondence between himself and the Factor, other documents in respect of proceedings brought against him by the Factor together with photographs and diary entries.

3. By Notice of Acceptance dated 6 March 2020 a legal member of the Tribunal with delegated powers accepted the application and a hearing was assigned.
4. The Factor's representatives submitted written representations by email dated 7 September 2020 and submitted an inventory of Productions by email dated 11 September 2020

Hearing

5. A hearing took place by tele-conference on 18 September 2020. The Homeowner attended personally. Mr Bruce Gilmartin attended on behalf of the Factor and was represented by Ms Mullen of T C Young, Solicitors.
6. As a preliminary matter the Tribunal queried with the Homeowner if he had received a copy of the Factors Inventory of Productions as due to an oversight by the Tribunal administration this had not been sent to him until the previous day. The Homeowner advised he had not received it. After some discussion and with reference to the Homeowner's own productions the Homeowner confirmed he wished to proceed with the hearing and was not seeking an adjournment.

Summary of submissions

7. The Homeowner referred the Tribunal to his written representations and explained that he had concerns about what he called a fuse box on the ground floor landing of his property. He said that despite his requests to the Factor to have it covered it had remained uncovered with exposed wires sticking out from the time he had reported the problem in January 2017 until it was eventually repaired in January 2020.
8. The Homeowner said that he had been concerned that leaving the exposed wires open could have caused a fire at the property. He said he had gone to the Factors office on numerous occasions to complain and they had only fixed the box after he had responded to the Simple Procedure application raised against him in Glasgow Sheriff Court. He said he had also consulted his MSP and shown her a photograph of the fuse box. He said that he had always paid his factoring fees but had stopped paying them because the Factor had not dealt with his complaints.
9. Following some discussion and consideration of the various photographs submitted by the parties it became apparent that the box in question was not in fact a fuse box but a telecommunications box.
10. Mr Gilmartin explained that following a complaint by the Homeowner in August 2018 there had been a repair carried out not to the

telecommunications box that the Homeowner had complained about but to another electricity supply box the door of which had been open This explained the Factor's reply to the Homeowner's MSP in October 2019 which had included a photograph of the box that had been repaired but which was not the box that had been the subject of the Homeowner's complaint.

11. The Homeowner suggested that the problem was that no-one from the Factors had ever met him at the property to look at the box in question and also that it was the duty of the Factor to check everything when carrying out inspections. He said they should have noticed the broken telecommunications box during their inspections. He said the Factors had not listened to his complaints.
12. In response to a question from Ms Mullen as to when he reported the lock to the back door being broken the Homeowner said that he had complained about the door being left unlocked on many occasions and that he had reported the lock being broken before but agreed that the broken lock had been reported in December 2019 in response to the Simple Procedure claim..
13. Mr Gilmartin went on to explain that although the Factor had arranged for a contractor to cover the broken box it ought to have been repaired by Virgin Media as it was their box but that company would not accept instructions from the Factor as they were not the customer.
14. Ms Mullen advised the Tribunal that the Factor conceded there had been a breach of Section 6.1 of the Code. The Factor did have procedures in place for reporting matters requiring repair either by telephone or online but it was accepted that on this occasion they had not provided the Homeowner with progress reports. Ms Mullen went on to say it was apparent there had been a complete misunderstanding as the parties had been at cross purposes. The Homeowner had raised a number of issues with the Factor and the issue as regards the fuse box had been lost. The issue had been compounded by the Factor not having had sight of the box in question until the Homeowner had submitted the response form to the court proceedings that had been raised for unpaid factoring fees as that might have clarified matters sooner. Ms Mullen said that once the Factor was aware of the box in question they had taken steps to have it repaired even although it was not their responsibility.
15. With regards to the lock at the back-door Ms Mullen submitted that there had always been an issue around security as a result of occupiers failing to lock the back door. Although the Factor was not responsible for anything other than repairs and maintenance, they nevertheless sent letters in March 2017 and October 2019 reminding owners to keep the door locked and had on being advised of the broken lock in December 2019 instructed a repair. Ms Mullen said the Factor did not intend to charge a fee for repairing the telecommunications box but would be charging for the repair to the lock and they did wish to offer an apology to the Homeowner for their failure in respect of the breach of Section 6.1 of the Code. Ms Mullen submitted that the Homeowner should not be awarded any compensation as the application had

in her submission been brought as a response to the claim in respect of non-payment of factoring charges.

16. The Tribunal queried with Mr Gilmartin how frequently the property manager inspected the development and was advised that this was done quarterly. The Tribunal queried if it a broken telecommunications box would be noted at a quarterly inspection and Mr Gilmartin thought it would but pointed out that it would not be the responsibility of the Factor to repair it would be the owner's responsibility. But he said he would encourage the factoring team to raise it as good practice.
17. The Tribunal queried with the Homeowner if he had ever asked to meet someone from the Factors at the property and he confirmed that he had not nor had they ever offered.
18. The Homeowner although he had asked for compensation in his application said he was not looking for compensation but for justice. He said the Factor should have come and told him what the box was and how to deal with it. It was located in the common area so it was their job to deal with it or they should have told him as he was concerned that many people could have been killed if there had been a fire. He said he wanted an apology and for the Tribunal to impose a fine upon the Factor. He said he was not willing to pay the Factor's management fee because of their failure to deal with his complaint. He said the Factor ought to check and log every complaint and they had not followed all of their procedures He said in the past he had paid his fees right away but he was now making a protest by not paying.

The Tribunal make the following findings in fact:

19. The Homeowner is the owner of Flat 2/2 235 Berkeley Street, Glasgow ("the Property")
20. The Property is a flat within 235 Berkeley Street, Glasgow (hereinafter "the Development").
21. The Factor performed the role of the property factor of the Development.
22. The Homeowner visited the Factor's office on 30 January 2017 and complained *inter alia* that there was a broken fuse box on the ground floor landing of the property.
23. The Homeowner made several similar complaints in 2017 and 2018.
24. The box in question was in fact a telecommunications box.
25. The box was eventually repaired in January 2020.
26. The Factor effected repairs to an electricity box in September 2018 and July 2019.

27. The Factor failed to keep the Homeowner informed as to the progress being made with regards to the repair to the box that was the subject of the Homeowner's complaint.
28. The Factor's quarterly inspections did not, following the Homeowner's complaints, include meeting with the Homeowner or making a record of the broken telecommunications box.
29. The Factor dealt appropriately with the Homeowner's complaint regarding the back-door being unlocked by sending letters to the proprietors of the development in March 2017 and October 2019.
30. The Factor responded appropriately on being notified by the Homeowner of a broken door lock at the back-door of the Development by instructing a contractor to carry out a repair.

Reasons for Decision

31. The Applicant's representatives submitted in advance of the hearing that the application in so far as it related to the failure on the part of the Factor to carry out its property factor's duties should be dismissed on the ground that the Homeowner had failed to notify the Factor as to why he considered that the Factor had failed in these duties.
32. The Tribunal considered the Property Factor Code of Conduct letter dated 03/02/20 sent by the Homeowner to the Factor. No other intimation had been given to the Factor. The notification letter made no mention of any breach of property factor's duties only a breach of Section 6 of the Code. Section 17(3)(a) of the 2011 Act provides that no application may be made to the Tribunal unless a homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out its property factor's duties. Therefore, as a matter of law the Tribunal was obliged to dismiss this part of the Homeowner's application.
33. Ms Mullen on behalf of the Factor accepted that the Factor had been in breach of Section 6.1 of the Code. It was quite apparent that the Homeowner had on a number of occasions complained about what he thought was a broken fuse box. He was worried that this was a fire hazard. He went to the lengths of contacting his MSP as a result of what he thought was a failure on the part of the Factor to take his complaint seriously. He may have refused to pay his factoring fees and been sued in Glasgow Sheriff Court because of his concerns.
34. The Tribunal concluded that there was poor communication between the Factor and the Homeowner. The issues that arose could have been avoided if for example the property manager had met with the Homeowner following one or other of the complaints to look at the box in question. The Tribunal acknowledged that some confusion had arisen as a result of the Homeowner referring to the telecommunications box as a fuse box but it did seem to the Tribunal that this error ought to have been picked up during a routine

inspection. Further, the Factor should not assume that a Homeowner or lay person will have knowledge of specific terminology in describing defects but should make efforts to ensure that defects are correctly identified. The Tribunal also acknowledged that matters had been further complicated by the electricity supply box on the same landing as the telecommunications box being, on at least one occasion, open following a complaint by the Homeowner but there was still a lack of communication there that could have avoided the genuine concerns experienced by the Homeowner.

35. The Tribunal was satisfied that the Factor had taken appropriate steps in relation to the Homeowner's complaints as regards initially the back door being left open and subsequently the lock being broken. The Factor had written to proprietors following the Homeowner's initial complaint in January 2017 and again in October 2019. It did not appear to the Tribunal that the Homeowner had complained of the lock being broken prior to December 2019 and the Factor arranged for its repair shortly thereafter.

36. The Homeowner was seeking an apology from the Factor and wished the Tribunal to impose a fine. As was explained to the Homeowner the Tribunal does not have the power to impose a fine upon the Factor for any breach of the Code but it can order a property factor to make such payment to a homeowner as it considers reasonable. The Tribunal was aware of the Homeowner suggesting that he was not paying his factoring bill because of the Factor's failure to take his complaints seriously. The Tribunal did not consider this to be a factor it should take into consideration to any extent. However the Tribunal in considering what might be an appropriate award given the breach of Section 6.1 of the Code took account of the length of time during which the box in question remained broken, the genuine if misplaced concern that this could be putting the Homeowner and others' lives in danger clearly causing him anxiety and concern and the overall lack of communication over a prolonged period. The Tribunal considered that an award of £450.00 would in all the circumstances be appropriate together with a suitable written apology from the Factor to the Homeowner and therefore determined to issue a proposed PFEO.

Proposed Property Factor Enforcement Order

37. 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) (a) 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 Harding

Legal Member and Chair

12 October 2020

Date