

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)

Decision on Homeowners Application: Property Factors (Scotland) Act 2011 (“the Act”)

Decision under Section 19(1)(a) of the Act

Chamber Ref: FTS/HPC/PF/18/3989

23 Rose Street, Dunfermline, KY12 0QT (“The Property”)

The Parties:-

Mr James Donald, residing at 49 Rose Street, Dunfermline, KY12 0QT (“the Applicant”)

Abbeyforth Property Management Limited, a Company incorporated under the Companies Acts (Company Number SC349612) and having its Registered Office at Balcairn, Viewfield Terrace, Dunfermline, Fife, KY12 7HY (“the Respondent”)

Tribunal Members:

Mr E K Miller (Legal Member)

Mrs M Lyden (Ordinary Member)

Decision

The Tribunal determined that the Respondent had breached Sections 1, 4 and 7 of the Code in that they had failed to provide an adequate written statement of service, and to adhere to and provide copies of their debt recovery procedure and complaints procedure to the Applicant. However, subsequent to the hearing, the Respondent had provided evidence that adequate policies were now all in place. Accordingly whilst there had been a breach of the Code, no further action was required.

The decision of the Committee was unanimous.

Background

- 1. In this Decision the Property Factors (Scotland) Act 2011 is referred to as "the 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 & Property Chamber) (Procedure) Regulations 2016 as amended as "the Regulations".**
- 2. The Respondent is a registered property factor and as a result under Section 14(5) of the Act requires to comply with the Code.**

3. On 5 February 2020 a Convener of the Tribunal acting with delegated powers under Section 18(a) of the Act considered that there was no longer a reasonable prospect of the dispute between the Applicant and Respondent being resolved. Accordingly, the matter was referred to the Tribunal for determination. A Notice of Referral and Hearing was sent to all parties on 13 February 2020.

Hearing

4. A hearing was scheduled to be held at the Vine Conference Centre, Dunfermline on 6 April 2020. However, due to the impact of the Covid-19 restrictions this did not take place. A reconvened teleconference took place on []. The Applicant was present and represented himself along with his wife. Mr Stuart Dalziell represented the Respondent.

Summary of Dispute & Applicant's Submissions

5. The Applicant was the owner of the Property. In November 2017 he became aware that one of the other owners was looking to organise the appointment of a factor. No particular correspondence of note appears to have passed between the parties after that for a period. However, in February 2019 the Applicant began receiving correspondence and invoices from the Respondent. The Applicant was not against the appointment of a factor but wished to know the appropriate procedures had been gone through, the services that would be provided and the cost of these. Clarification of some of these points was received from the Respondent but the Applicant was unhappy in relation to this. The Applicant was unhappy that he continued to receive invoices from the Respondent when he was not convinced that they had been properly appointed. One invoice included an additional charge for a late payment and threatened to refer matters to a debt collection company. The Applicant was dissatisfied with the responses he received and submitted a complaint to the Tribunal. He was dissatisfied with the following points:-

- That no adequate statement of the basis of authority had been issued
- That there was no proper written statement of services issued
- There was no debt recovery procedure
- Appropriate communication and consultation had not taken place
- That he had been invoiced for late payments and threatened with debt recovery
- He had not received a complaints procedure
- His complaint had not been dealt with timeously

Respondent's Submissions

6. The Respondent advised that his firm was no longer factoring this Property. He had been approached by a homeowner in the block and had agreed to take the block of which the Property formed part on. He had met a number of the individual homeowners at a venue in Dunfermline and had understood that they represented the majority of homeowners necessary to appoint him. He had subsequently received email confirmation from the majority of homeowners that they wished him to act. It appeared that the Applicant had been overlooked in this process due to a misunderstanding regarding his address initially. However the Respondent was adamant that he had had a majority appointment from proprietors. He confirmed that he would send evidence of these to the Tribunal following the hearing.

7. The Respondent indicated that his experience with the larger block had been unsatisfactory and he had been unable to make progress in relation to works and ingathering funds. Accordingly the Respondent had ceased to be the factor. The Respondent acknowledged that he had not dealt properly with the Applicant's complaint. The Respondent apologised profusely to the Applicant for the manner in which matters had been dealt with. He accepted that the "terms of engagement" that he had sent out was fairly sparse and accepted that he needed to have a better written statement for services in place. He confirmed that he did have a debt recovery policy and a complaints policy in place as well. He undertook to put in place a proper written statement for services and to provide the Tribunal with the complaints and debt recovery policies.
8. He confirmed that he had no intention to pursue the Applicant for any of the sums that had been invoiced and that whilst one of the letters did say that matters were being referred to a debt collect company, this had not occurred and would not occur.
9. In response to this the Applicant confirmed that he had no desire to take the matter any further forward. On the basis the Respondent was not looking for any further sums from them, had not referred the matter to a debt recovery company and had apologised for the way the matter had been handled then they were satisfied as matters stood.

Reasons for Decision

10. The Tribunal considered the position. Subsequent to the hearing the Respondent had provided the Tribunal with sufficient evidence to show that a majority of proprietors had confirmed to him that they wished to appoint him. The Tribunal was therefore satisfied that he did indeed have sufficient authority to act.
11. The Tribunal noted that the Respondent had only issued a very rough terms of engagement that was not in line with the requirements of the Code. However, since the date of the hearing, the Respondent had provided the Tribunal with an updated written statement of services that would be used in developments going forward. The written statement for services provided was in a good format.
12. The Tribunal also noted that the Respondent had subsequent to the hearing provided the Tribunal with the appropriate debt recovery and complaints policies.
13. It was apparent from the papers before it and the evidence from both parties, that the Respondent had not complied with all of the Sections of the Code. Whilst they had had authority to act, the written statement for services was inadequate and he had not followed the appropriate procedures and exhibited the relevant policies in relation to debt recovery and complaints. However, the Applicants were satisfied by his apology and the confirmation that no sums were due. The Respondent had proven, albeit retrospectively, that the appropriate documentation and policies were now in place and to an acceptable standard. The Respondent had been contrite during the hearing and had indicated he would ensure matters were carried out properly in future. In the circumstances, whilst the decision would require to note that there had been failures in relation to the Code, there did not appear to have been any corrective actions remaining to be carried out and the Tribunal did not see any benefit or need for a Property Factor Enforcement Order to be issued. Accordingly the Tribunal considered matters to be at an end.

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.

Legal Member:

Date: 21 December 2020