

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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/22/3665**

**84 Clarence Drive, Glasgow G12 9RN  
("the Property")**

**The Parties:-**

**Ms Catherine Linney, 84 Clarence Drive, Glasgow G12 9RN  
("the Homeowner")**

**Redpath Bruce Property Management Limited, Crown House, 152 West Regent  
Street, Glasgow G2 2RQ  
("the Factor")**

**Tribunal Members:  
Graham Harding (Legal Member)  
Andrew Taylor (Ordinary Member)**

### **DECISION:**

The Factor has not failed to carry out its property factor's duties.

The Factor has failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with sections OSP11 and 2.7 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 2021 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"

The Factor became a Registered Property Factor on 7 December 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

## **Background**

1. By application dated 5 October 2022 the Homeowner complained to the Tribunal that the Factor was in breach of Sections OSP2, 4 and 11, 2.7, 6.4, 6.7 and 7.1 of the code and had also failed to carry out its property factor's duties. The Homeowner complained that there was a discrepancy in information provided as regards planned repairs prior to the Homeowner's purchase of the property. She also complained of a lack of inspection of the back court area by the Factor and a delay in work being carried out. The Homeowner also complained about a failure on the part of the Factor to respond timeously to her formal complaint.
2. The Homeowner submitted a copy Schedule of Services, photographs and email exchanges with the Factor in support of her application.
3. By Notice of Acceptance dated 7 November 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.
4. By correspondence dated 29 November 2022 the Homeowner submitted further written representations to the Tribunal.
5. By email dated 5 December 2022 the Factor submitted written representations to the Tribunal.

### **The Case Management Discussion**

6. A CMD was held by teleconference on 15 February 2023. The Homeowner attended in person. The Factor was represented by Mr Stuart McMillan.
7. At the commencement of the CMD the Homeowner explained that when she first moved into the property she had been unclear as to what was expected of both herself as an occupier of a tenement property and the Factor. She said that she tried to obtain answers from the new property manager appointed by the Factor and had received a vague letter that had not focussed on the issues she had raised and that communication at that time had not been great. The Homeowner went on to say that since John Sweeney had taken over things had improved between March and October 2022.
8. The Homeowner went on to say that she had been advised by a neighbour that in September 2021 the Factor had obtained quotes for carrying out painting to the stairhead at the tenement and that the previous owners would have been aware of this. She then referred the Tribunal to the Factor's letter of 14 February 2022 sent to the seller of the property's solicitors. In it she said at point 7 the Factor had confirmed that there were no major common repairs proposed, outstanding or being considered. She said that at point 8 it said that they were ingathering quotations for internal redecoration of the common stairhead. The Homeowner submitted that if the letter had been worded differently she would have been made aware that there was a significant liability that she might become responsible for and could have taken this up

with the sellers and negotiated a lower price. She submitted that given the cost involved in carrying out the works at the stairhead which included re-plastering and not just painting and was in excess of £500.00 per flat these would constitute major common repairs. The Homeowner subsequently confirmed that her share of the cost of decoration was £459.90.

9. The Homeowner went on to explain that with regards to obtaining access to the back court not everybody including the Factor had keys for the gate. She said she had managed to obtain a key and had now provided the Factor with her key so that they could have a key cut to allow them also to have access. The Homeowner explained that it was possible to access the back court by an alternative longer route that was not convenient.
10. The Homeowner said that the letter from the Factor to the seller's solicitors had been sent on 14 February 2022 and although the sale had been due to settle at the end of February 2022, she had agreed to bring the settlement date forward to 17 February 2022 as the property needed some redecoration before she could move in.
11. For the Factor Mr McMillan said that during 2021 there had been water ingress at the tenement that had required repairs to be carried out. The cost of repairs to the roof had been about £4000.00 followed by a further £2000.00. These works had been completed in January 2022. He said that quotes for redecoration had been requested in 2021 but that had been just for the stairhead ceiling. He went on to say that some owners wanted more works done and the proposed works were more extensive but had not as yet proceeded due to insufficient funds being in place.
12. Mr McMillan said that he had not seen the seller's home report nor had he had any engagement with the Homeowner's solicitor prior to her purchasing the property.
13. The Homeowner submitted to the Tribunal that any expenditure in excess of £500.00 per property would be considered major.
14. The Tribunal queried with the Homeowner the reasons why she thought the Factor was in breach of Sections 6.4 and 6.7 of the Code. The Homeowner explained that on two occasions she had fallen in the back court area and that subsequently the Factor had arranged for the area to be jet washed. She submitted that it should not have been allowed to get into such a condition. She also explained that as the tunnel access to the back court was locked it was never cleaned and had not been looked at in years.
15. For the Factor Mr McMillan said that in terms of its Written Statement of Services the Factor did carry out periodic site visits and would look at the tenement to the best of its ability but would rely on owners to provide any keys that may be necessary. He said that issues regarding access to the back court or around the condition of it had never been raised before. He confirmed that the Factor now had a key to the gate to the back court. He confirmed the Factor would look into having the access area cleaned. He said that with

regards to periodic visits these would happen once a year and there was no planned maintenance programme as part of the agreement with Homeowners.

16. With regards to Sections 2.7 and 7.1 of the Code the Homeowner explained that she had sent a formal complaint to the Factor by letter dated 9 August 2022 and this was followed by an email dated 23 August 2022. She said that as she did not receive any reply, she made an application to the Tribunal. She went on to say she finally received a copy of a draft reply from the Factor on 8 November 2022.
17. For the Factor Mr McMillan said that the Factor was accountable for its failure to reply to the Homeowner's letter of complaint timeously. He said that normally any complaint would be followed up but that had not happened on this occasion. He said a draft had been prepared but for some reason had not been sent. He said that the Factor had recognised its failure and offered its sincere apologies to the Homeowner. He said that as a gesture of good will the Factor was prepared to waive six months management fees which would amount to about £100.00.
18. The Homeowner said that her reason for making the application had not been about being given money but because she had felt that she had been misled by not being told about the liability for the repairs when she purchased the property. She did agree that there had been an improvement in communication with the factor since its current property manager had been appointed.

**The Tribunal make the following findings in fact:**

19. The Homeowner is the owner of 84 Clarence Drive Glasgow G12 9RN ("the Property")
20. The Property is a flat within the tenement 84/88 Clarence Drive Glasgow G12 9RN (hereinafter "the Development").
21. The Factor performed the role of the property factor of the Development.
22. There was water ingress to the development during 2021 resulting in common repairs to the roof that were finally completed in January 2022.
23. Initial quotes for internal redecoration of the stairhead ceiling were obtained by the Factor in about September 2021.
24. Further more extensive quotes were obtained at the request of owners and one was outstanding in February 2022.
25. The Factor confirmed to the seller of the property's solicitors by letter dated 14 February 2022 that there were no major common repairs proposed, outstanding or being considered by the owners of the development at that

time but that the Factors were in the process of ingathering quotations for the internal redecoration of the common stairhead ceiling.

26. The Homeowner took entry to the property on or about 17 February 2022.
27. There is no planned maintenance agreement in place in terms of the Factor's agreement with the owners at the Development.
28. The Factor carries out a periodic site visit once a year.
29. Prior to the Homeowner raising matters with the Factor no other owners had complained about the condition of the back court area or the access to it.
30. Since the Homeowner brought the condition of the back court area to the Factor's attention the Factor has arranged for it to be jet washed.
31. Since the Homeowner has brought the access to the back court issue to the Factor's attention the Factor has obtained a key and undertaken to look into cleaning the access area if requested.
32. The Factor failed to respond to the Homeowners letter of complaint dated 9 August 2022 and subsequent email dated 23 August 2022.
33. The Factor has acknowledged its failure to reply to the Homeowner's complaint and offered an apology and as a goodwill gesture to waive six month's management fees.

### **Reasons for Decision**

34. The Homeowner's principal complaint was that she had been left with the liability for the cost of redecorating the stairhead amounting to £459.90 when she felt that this cost should have been met by the previous owner of the property or that she should have been given the opportunity to deduct the cost from the purchase price. She felt that by not making it clear in the letter to the seller's solicitors that there were significant costs involved and that estimates had been obtained as early as September 2021 the Factor was not acting in an honest, open transparent and fair way and was therefore in breach of OSP2. She was also of the view that the letter of 14 February 2022 was misleading and false and therefore in breach of OSP4. Having carefully considered both the written representations and documents and the oral submissions the Tribunal is not satisfied that the Homeowner's complaint is well founded. The Tribunal accepts that common repairs may well include works such as the internal redecoration of the stairhead but major common repairs would be much more likely to involve significantly greater works than this. Furthermore at point 8 of the letter of 14 February the Factor clearly sets out that internal redecoration works are likely to proceed once a final quote has been obtained and authorisation granted and funds were in place. From the oral evidence of Mr McMillan it appears that following initial repairs to the roof in 2021 quotes for internal redecoration were obtained in September 2021 but then further roof repairs required to be carried out and these were

not completed until January 2022. At that point some owners wanted more extensive redecoration and further quotes were requested. Therefore, the Tribunal is quite satisfied that the Factor clearly stated the position as it was known at that time. It would have been open to the Homeowner to have instructed her solicitor to make further enquiries with the Factor to obtain more details of the likely cost before concluding the purchase but instead it appears the Homeowner chose not to do so and instead brought forward the date of entry. To that extent therefore she is the author of her own misfortune. Accordingly, the Tribunal is satisfied that the Factor is not in breach of Sections OSP2 and OSP4 of the Code.

35. There is no planned programme of maintenance in terms of the agreement between the Factor and the development owners. Although the Factor carries out an annual site visit it appears that the Factor is largely reactive to owners' requests and complaints. From the information provided to the Tribunal it would appear particularly since the involvement of Mr Sweeney that the Factor has engaged with the Homeowner and attended timeously to matters raised by her. Therefore, the Tribunal does not consider that the Factor is in breach of Sections 6.4 or 6.7 of the Code.

36. The Factor fully acknowledged its failings in dealing timeously with the Homeowner's complaint. Although the Tribunal did not have sight of the Factor's Written Statement of Services or its Complaints Handling Procedure it accepted that it did have such a procedure. The problem was that due to an oversight on the part of the Factor a draft reply to the Homeowner's complaint was never sent to her. This was only eventually acknowledged by the Factor some three months later. Nevertheless, the Factor offered a full apology to the Homeowner for its failure and to waive six month's management fees as a goodwill gesture. Therefore, the Tribunal whilst determining that the Factor is in breach of Sections OSP11 and 2.7 of the Code and on the understanding that the Factor will waive 6 month's management fees does not consider it necessary to make a Property Factor Enforcement Order.

## **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

23 February 2023      Date

