



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref: FTS/HPC/LM/22/4137

32 Ochiltree Avenue, Glasgow, G13 1LH ('the Property')

The Parties:

SGLS Development Limited of 31 Knightsbridge Street, Glasgow, G13 2YJ ('the Homeowners')

Hacking and Paterson, 1 Newton Terrace, Glasgow, G3 7PL ('the Property Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Ahsan Khan (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Property Factor has not failed to comply with the property factor's duties.

The decision is unanimous.

Background

1. The Homeowners were owners of the property 32 Ochiltree Avenue, Glasgow. They sold the Property on 12th August 2022.
2. Hacking and Paterson are factors of the Property.
3. Hacking and Paterson were first registered as a property factor on 1st November 2012.
4. The Homeowner applied to the Tribunal for a determination that the Property Factor had failed to comply with the Property Factor's duties. The application stated that the Homeowner is unhappy about the apportionment charge of £100 for providing a final invoice. Issuing of the final account should be part of the factoring

service. In this case there is no factoring involvement with the building itself only communal grounds. No justification had been offered for the high apportionment charge of £100.

5. By Notice of Acceptance by Jacqui Taylor, Convener of the Tribunal, dated 13th February 2023 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 16th November 2022 and 16th January 2023) to a Tribunal.

6. The Tribunal issued two Directions.

6.1 The First Direction was dated 30th March 2023 which directed the Homeowner to provide the Tribunal with a copy of the title deeds/ Land Certificate for the Property, 32 Ochiltree Avenue, Glasgow, G13 1LH and also directed the Property Factor to provide the Tribunal with a copy of their written statement of services.

6.2 The Second Direction was dated 14th April 2023 and directed the Property Factor to provide the Tribunal with a copy of the Schedule of Fees referred to at clause 7.1 of their Written Statement of Services and evidence that confirmation of the apportionment charges had been intimated to the Homeowner prior to the costs being incurred, as specified in clause 7.1 of their Written Statement of Services.

The parties provided the required documents:

6.3.1 A copy of title sheet GLA19604.

6.3.2 The Property Factor's written statement of services.

6.3.3 The Property Factor's schedule of fees.

6.3.4 A copy of the letter from the Property Factor to the Homeowners' solicitors dated 13th June 2022 in response to the letter from the Homeowners' solicitors dated 8th June 2022. Details of the factoring account were provided including details of the apportionment fee of £100 plus vat.

7. A Case Management Discussion (CMD) by conference call took place in respect of the application at 10am on 17th April 2023

The Homeowners did not attend the CMD. Sandy McDougall, the Homeowner's representative, confirmed to the Tribunal clerk by telephone on 17th April 2023 that he was happy for the Tribunal to determine the application of the basis of the application.

The Property Factor had sent the Tribunal an email dated 24th March 2023 which stated that they would not attend the CMD.

8. Decision.

8.1 The Tribunal determined the application without a hearing in terms of Tribunal Rule 18.

8.2 The Tribunal acknowledged that Homeowners' complaint is that the Property Factor breached their property factor duties due to the fact that an apportionment fee of £100 was charged by the Property Factor following sale of the Property on 12th August 2022. There were two apportionments carried out. Apportionment of the Property Factor's management fee and apportionment of the property owner's liability insurance premium. The Homeowner's position is that it would have been cheaper for him to pay these two charges to the end of the quarter than to incur the apportionment charge but he was not given this option.

8.2 The Tribunal considered the detail of the application and the documents provided by the parties.

8.3 The Tribunal made the following findings in fact:

8.3.1 Paragraph 7 of the Property Factor's written statement of services details the arrangements for ending the agreement.

8.3.2 Paragraph 7.1 of the Property Factor's written statement of services states that the Property Factor requires the Homeowners' solicitor to inform the Property Factor in writing of a change in ownership and if they have to liaise with the homeowners or their solicitors and apportion common charges a fee is applicable. The fee is contained in the Schedule of Fees. The fees are reviewed periodically and confirmation of any charges will be intimated to the homeowners prior to costs being incurred.

8.3.3 The Schedule of Fees includes a fee of £100 for change in property ownership.

8.3.4 The letter from Hacking and Paterson to the Homeowners' solicitors dated 13th June 2022 states that the letter is written in response to the letter from the Homeowners' solicitors dated 8th June 2022. The letter detailed the following:

8.3.4.1 The information requested by the Homeowners' solicitor.

8.3.4.2 The apportionment fee of £100 plus VAT.

8.3.4.3 The apportionment fee covered the work involved with liaising with the Homeowners' solicitor, providing the required information and dealing with the apportionment of the common charges that fall during the accounting period.

8.3.5 The invoice from the Property Factor to the Homeowners dated 8th August 2022 was for the period 29th May 2022 to 12th August 2022 and included:

8.3.5.1 The apportionment fee of £100 plus Vat

8.3.5.2 The apportionment of the Allianz property owners liability insurance premium.

8.3.5.3 The apportionment of the Property Factor's management fees.

8.4 The Tribunal find that the Property Factor has carried out work rendered necessary by the change of ownership of the Property. They have written to the Homeowners' solicitors providing details of the factoring account that had been requested and are necessary to enable the sale to go through. The Property Factor has apportioned the common charges account to the date of sale of the Property.

The Tribunal also find that the Property Factor had advised the Homeowners' solicitors of the apportionment fee of £100 plus vat in their letter dated 13th June 2022.

8.5 The Tribunal determine that the Property Factor charged the apportionment fee in line with their written statement of services and schedule of fees and the Property Factor has not failed to comply with the property factor's duties.

9. Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

SignedDate 17 April 2023

Chairperson