

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/20/1392

**Flat 1/1, 8 Muir Street, Renfrew, PA4 8PN
("the Property")**

The Parties:-

**Dr. Kevin McLafferty, 76 Banastre Drive, Newton-Le-Willows, Merseyside WA12
8BE
("the Homeowner")**

**Hacking and Paterson Management Services, 1 Newton Terrace, Charing
Cross, Glasgow G3 7PL
("the Factor")**

Tribunal Members:

Graham Harding (Legal Member)

Robert Buchan (Ordinary Member)

DECISION

The Tribunal dismissed the application.

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 dated 13 March 2020 the Homeowner complained to the Tribunal that the Factor was in breach of 1.1aC.h, 1.1aC.i, 3.1, 3.2, 3.3, 3.4, 3.5, 3.5b, 4.1, 4.2 and 7.2 of the Code. The Homeowner submitted written representations in support of his complaint.
2. By Notice of Acceptance dated 23 November 2020 a legal member of the Tribunal with delegated powers accepted the application and a hearing was assigned.

3. A Hearing assigned for 18 January 2021 was postponed at the request of the Factor and a further hearing assigned.
4. By correspondence dated 18 January the Factor submitted written representations to the Tribunal.
5. By emails dated 28 January and 4 February 2021 the Homeowner submitted further written submissions to the Tribunal.

Hearing

6. A hearing was held by teleconference on 9 February 2021. The Homeowner attended personally. The Factor was represented by Mr Colin Devon and Mr Alistair Leitch.
7. By way of a preliminary matter the Tribunal raised with the parties whether in light of the Factor having credited the Homeowner's account with the full amount of the charges it had previously been claiming from the Homeowner there was any substantive issue for the Tribunal to determine given that the Factor no longer managed the development. The Tribunal indicated that as the principal issue namely the sum claimed by the Factor was no longer at large it might not be a good use of judicial time to hear evidence on what would in effect be an academic exercise as even if the Homeowner was successful in his complaint the Tribunal would be unable to make any meaningful Property Factor Enforcement Order.
8. The Tribunal noted that the application had been accepted on 23 November 2020 and that the Factor had written off the sums claimed on 30 November 2020 but neither party had informed the Tribunal until the Factor so advised in its correspondence of 18 January 2021. The Tribunal indicated that it thought it was important that parties kept the Tribunal informed of any important developments in the case.
9. The Homeowner submitted that there was merit in proceeding to determine the application notwithstanding that the Factor had written off the charges. He suggested that the Tribunal ought to consider any transgression of the Code. He said it was important to understand what had gone on over the period from 2018 when the Factor ceased to manage the property.
10. For the Factor Mr Devon confirmed that in his opinion the Tribunal should not continue to determine the application as the sums claimed by the Factor had been written off despite there had been no evidence produced by the Homeowner to support a float ever having been paid. Mr Devon went on to say that the other owners had provided a float of £150.00 and this had been credited back to their accounts and they were all satisfied. He could therefore see no merit in proceeding.

11. The Homeowner explained that he had a figure of £200.00 in his head but that it had been 18 years since he had taken ownership. He said he had paid a sum of money as a float when he purchased the property and it was up to the Factor to keep records.
12. Following a short adjournment to consider matters the Tribunal decided that it would not be a good use of judicial time to consider the application further. The substantive issue was that the Factor was claiming that a debt was due by the Homeowner following the termination of its services. This had been disputed by the Homeowner on a number of grounds. Firstly, that the Factor had failed to keep a record of the float paid by the Homeowner at the time of purchase and secondly that the Homeowner was not bound by the terms of the Factor's Written Statement of Services in respect of penalty charges for non-payment. Although there were other grounds to the Homeowner's complaint, they all in one way or another related to the float and the penalty charges imposed. Given that the factor had for whatever reason written off the alleged debt the substantive issue was effectively removed from the dispute between the parties.
13. The Homeowner in his application had not sought any recompense for distress or inconvenience and it was therefore too late to raise such a claim at the hearing.
14. The requirement to be registered as a Factor and to keep records came into force in 2012 and the Tribunal had no jurisdiction to consider any failures on the part of the Factor prior to that date. Therefore, if the Factor had failed to keep a record of the Homeowner paying a float 18 years ago such a failure would be outwith the Tribunal's jurisdiction.
15. Finally, as the Factor was no longer managing the property even if the Tribunal found that there had been a breach of any of the sections of the Code as alleged by the Homeowner the Tribunal would be unlikely to make a Property Factor Enforcement Order as there was no ongoing relationship between the parties.
16. The overriding objective of the Tribunal is to deal with proceedings justly and it would not be just to allow the application to proceed when there was no substantive matter left to determine. The Tribunal therefore dismissed the application.

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

18 February 2021