

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
Sections 17(1)(a) and 17(1)(b)**

Chamber Ref: FTS/HPC/PF/21/2587

Re: Property at Flat 3, 13 Lynedoch Crescent, Glasgow, G3 6EQ ("the Property")

Parties:

Mr David Walsh, Flat 3, 13 Lynedoch Crescent, Glasgow, G3 6EQ ("the Homeowner")

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

Tribunal Member:

Neil Kinnear (Legal Member) and Andrew Taylor (Ordinary Member)

DECISION

The Tribunal dismissed the Homeowner's application for want of insistence and in consequence of the Property Factor's compliance with the terms of the settlement agreed by the Property Factor with the Homeowner.

The Decision of the Tribunal 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* as amended are referred to as "the Rules".

The Property Factor was a Registered Property Factor and had a duty under section 14(5) of the 2011 Act to comply with the Code.

Background

By application dated 19th October 2021 the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to carry out its property factor duties in terms of section 17(1) of the 2011 Act and had failed to comply with Sections 1, 6 and 7 of the Code as required by Section 14(5) of the 2011 Act.

On 7th December 2021 a Convenor on behalf of the President accepted the application and referred it to a Tribunal for a Case Management Discussion. By letters dated 20th December 2021 both parties were notified that a hearing by conference call would take place at 10.00 am on 7th February 2022.

Prior to the Case Management Discussion both parties lodged further written copy e-mails and correspondence relating to potential resolution of the application by agreement.

A Case Management Discussion was held at 10.00 am on 7th February 2022 by conference call. The Homeowner participated, and was not represented. The Property Factor's Mr Stuart McMillan participated, and was not represented.

The Tribunal discussed with the parties the outcome of their settlement discussions, and noted from the e-mails and correspondence provided, that agreement had been reached. Mr McMillan advised the Tribunal that agreement had been reached, and that payments had been transferred to all the residents in the block of which the property forms part in implement of the agreement.

The Homeowner confirmed that if the Property Factor had implemented the agreement between the parties and paid all the money to all the residents in the block of which the property forms part, then he was content to withdraw this application. However, the Homeowner had not received confirmation that the proprietor of Flat 5 had received his payment in terms of the parties' agreement.

Mr McMillan confirmed that the payment to the proprietor of Flat 5, Mr Kearney, had been made, and that the Property Factor would be happy to obtain confirmation of that to satisfy the Homeowner that the money had been paid.

The Homeowner confirmed that if the Property Factor produced evidence that the proprietor of Flat 5 had received his payment in terms of the parties' agreement, then he would withdraw the application.

The Tribunal considered that in these circumstances it was in the interests of justice to continue the Case Management Discussion to allow the Property Factor to produce evidence that the proprietor of Flat 5 had received his payment in terms of the parties' agreement.

By e-mail of 8th February 2022, the Property Factor provided to the Tribunal and the Homeowner copies of an e-mail acknowledgement from Mr Kearney that he had received payment from the Property Factor together with a statement of account in respect of Flat 5 in the name of Mr Kearney showing the payment details.

A continued Case Management Discussion was originally set for 5th May 2022, which date was postponed to 21st June 2022 due to the unavailability of the Property Factor, and the date was intimated to the parties by the Tribunal on 5th April 2022.

The Continued Case Management Discussion

A continued Case Management Discussion was held at 10.00 am on 21st June 2022 by conference call. The Homeowner did not participate, and was not represented. The Property Factor's Mr Stuart McMillan participated, and was not represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr McMillan confirmed that the Property Factor had implemented the settlement agreement reached by it with the Homeowner as explained to the Tribunal by both parties on 7th February 2022, and had provided on 8th February 2022 the remaining information which the Homeowner had requested in terms of the agreement.

Mr McMillan confirmed that the Property Factor had not had any confirmation from the Homeowner of his position, but that the Property Factor's position was that the agreement had now been implemented in full.

Statement of Reasons

Section 17 of the 2011 Act provides:

“17 Application to the First-tier Tribunal

(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

(3) No such application may be made unless—

(a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

(b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

(4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.

(5) In this Act, "*property factor's duties*" means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner."

The Homeowner confirmed to the Tribunal on 7th February 2022 that he had reached a settlement agreement with the Property Factor, and that if the Property Factor produced evidence that the proprietor of Flat 5 had received his payment in terms of the parties' agreement, then he would withdraw the application.

The Property Factor provided that information to the Homeowner and the Tribunal on 8th February 2022, and has accordingly complied with and now fully implemented the agreement between the parties.

In those circumstances, and standing the absence of the Homeowner from the continued Case Management Discussion, this application must be dismissed.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Legal Member

21 June 2022
Date