

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/19/1977

15 Florida Street, Glasgow, G42 9DW ("The Property")

The Parties: -

**Dr Andrew Henderson and Mrs Doreen Henderson, Birkmoss, North Connel,
Argyll, PA37 1RE ("the Homeowner")**

**W.M. Cumming Turner and Watt, 40 Carlton Place, Glasgow, G5 9TS ("the
Property Factor")**

Tribunal Members:

Josephine Bonnar (Legal Member)

Mary Lyden (Ordinary Member)

DECISION

The Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Section 2.5 of the Code of Conduct for Property Factors. It has also failed to carry out its property factors duties in terms of Section 17(5) of the Act in that it failed to obtain estimates and communicate with owners about maintenance of the common close.

The decision is unanimous

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as "The Regulations"

The Property 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 25 June 2019 the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the Code of Conduct for Property Factors. The Homeowner stated that the Property Factor had failed to comply with sections 2.5 of the Code. The Homeowner also stated that the Property Factor had failed to carry out its property factor duties in terms of section 17(5) of the Act. The Homeowner lodged documentation in support of the application including letters to the property factor dated 30 November 2018, 18 May 2019, 7 June 2019 and 25 June 2019. A page from the Property Factor's written statement of services ("WSS") was also lodged.
2. On 18 July 2019, a Convener on behalf of the President, referred the matter to a Tribunal for a determination. A hearing was assigned to take place at Glasgow Tribunals Centre, Room 107, 20 York Street, Glasgow on 16 September 2019.
3. On 6 August 2019 the Homeowners advised the Tribunal that they wished to attend the hearing. They also lodged a copy of a letter addressed to the Property Factor dated 7 September 2017. On 4 September the Homeowners lodged two letters from the Property Factor, both dated 26 August 2019, and a copy of their response dated 30 August 2019.
4. On 16 August 2019 the Property Factor notified the Tribunal that they did not wish to attend the hearing. They lodged a copy letter of apology to the Homeowner dated 14 August 2019, a copy invoice for a roof repair and copy invoices in relation to a problem with squirrels accessing the loft at the property. On 11 September 2019 the Property Factor lodged three estimates for close cleaning and re-decoration of the close which they advised had been sent to all the homeowners in the block.

The Hearing

5. The hearing took place before the Tribunal on 16 September 2018. Both Homeowners attended. The Property Factor did not attend and was not represented.
6. Dr and Mrs Henderson advised the Tribunal that they purchased the property in 2009. The property is a tenement flat in a block of 8 similar properties and is located on the first floor. It is currently occupied by tenants. They confirmed that the Property Factor was the factor for the block at the date of purchase. The Tribunal noted that the Homeowner's complaint concerns an alleged failure by the Property Factor to respond to several requests by the Homeowner to communicate with other homeowners in the block regarding re-decoration of the common stair and regular stair cleaning. They consider this to be a failure by the Property factor to carry out its property factor duties. In addition, the Homeowners state that the Property Factor is in breach of section 2.5 of the Code which requires property factors to respond to

enquiries and complaints within reasonable timescales.

7. By way of background information, Mrs Henderson advised the Tribunal that she has had previous problems with the Property Factor. She is concerned that they are not proactive and don't carry out regular inspections to identify repair issues. When a previous repair issue arose involving a potentially dangerous window defect, the Property Factor only issued one quote for the repair. She made her own enquiries and eventually the repair was carried out much more cheaply.
8. Mrs Henderson referred the Tribunal to a copy letter lodged with the application dated 30 November 2018. The letter enclosed a cheque in settlement of an invoice but also asked the Property Factor to contact the other homeowners about re-decoration of the common stair. She had made a phone call before this letter, but no action had been taken. She advised that she also received no response to the letter. She sent a further letter on 18 May 2019. This followed a telephone call the Property Factor in March 2019 when she again asked them to contact owners about the re-decoration and also about setting up regular stair cleaning. Again, no action was taken. Mrs Henderson advised the Tribunal that she phoned the Property Factor on 23 May 2019 and insisted upon speaking to Mr Watt. He assured her that her requests would be addressed but nothing happened. She sent a letter of complaint on 7 June 2019 and followed this up with formal notification of her complaints by letter dated 25 June 2019. All letters referred to had been lodged with the Tribunal with the application.
9. Mrs Henderson advised the Tribunal that since lodging the application she has received a letter of apology from the Property Factor dated 14 August 2019 and a letter dated 8 September 2019 which enclosed three quotes for close cleaning and three for redecoration. These are the first letters she has received. The Tribunal noted that a letter was also sent to the Tribunal from the Property Factor dated 10 August 2019, enclosing a copy of the letter to Mrs Henderson. The letter to the Tribunal states, "Please accept our apologies on this matter not being resolved before the Tribunal required to be involved. We can confirm that we have carried out an internal enquiry into this matter and can confirm that we have now rectified the situation and that any future correspondence from any of the owners will be dealt with timeously". The letter also refers to quotes now having been obtained and advises that the Property Factor will waive the management fee due on the Homeowner's next invoice as a goodwill gesture. Mrs Henderson advised the Tribunal that this would be £31.00. The Property Factor also sent a letter to the Tribunal on 8 September enclosing a copy of the three quotes and confirming that these have been sent to all the homeowners in the block.

The Tribunal make the following findings in fact:

10. The Homeowner is the heritable proprietor of the property, a flat in a block of eight properties.

11. The Property Factor is the property factor for the block of flats in which the property is located.
12. On 30 November 2018 the Homeowner wrote to the Property Factor to request that they contact the other homeowners in the block about redecoration of the common stair. The Property Factor did not respond to the letter and did not contact the other homeowners.
13. On 18 May 2019 the Homeowner wrote to the Property Factor to request that they contact the other homeowners in the block about redecoration of the common stair and regular stair cleaning. The Property Factor did not respond to the letter and did not contact the other homeowners.
14. On 14 August 2019 the Property Factor sent a letter of apology to the Homeowner and stated that they had requested estimates for redecoration and close cleaning.
15. On 8 September 2019 the Property Factor sent the Homeowner three estimates for redecoration and close cleaning.

Reasons for Decision

16. **Section 2.5 of the Code – “You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as dully as possible and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (section1 refers).”** The Tribunal notes that the section of the WSS lodged by the Homeowner does specify a response time for complaints, namely 7 days. No evidence was provided as to whether the document also provides a response time for enquiries. In any event, it was clear from the evidence that the Property Factor has failed to respond to the Homeowners enquires (the letters of 30 November 2018 and 18 May 2019 and the telephone calls in March and May 2018) within prompt timescales. It is also clear from the evidence that the Property Factor has failed to respond to complaints (the letters of 6 and 25 June 2019) within prompt timescales, and certainly not within those stipulated in the WSS. The first response issued by the Property Factor is their letter of apology dated 10 August 2019, after notification of the application to the Tribunal had been issued to them. In their letter to the Tribunal dated 14 August 2019 they do not dispute that they have failed to comply with the Code. No explanation is given, just an apology and an indication that the Homeowners requests are now being actioned. The Tribunal is therefore satisfied that the Property Factor has breached section 2.5 of the Code.
17. **Failure to carry out property factor duties.** The Tribunal is satisfied from the evidence that the Property Factor failed to respond to a request from the

Homeowner to contact the other homeowners about redecoration of the common close and close cleaning. Decoration and cleaning of the common close are duties usually carried out by Property Factors and (as evidenced by recent communications) the Property Factor does not dispute this. The Property Factor has now obtained estimates for both. However, these have been issued some ten months after the decoration issue was raised and six months after the Homeowner phoned to ask about close cleaning. The Property Factor offers no explanation, only an apology. The Tribunal is satisfied that the Property Factor has failed to carry out its property factor duties.

18. The Tribunal determined that a proposed property factor enforcement order ("PFEO") should be issued. The Tribunal notes that the Property Factor has already issued an apology and recently taken steps to rectify the failures by obtaining and issuing estimates for the required work. The Tribunal also notes that a management fee of £31 is to be waived. However, the Tribunal also notes that no action was taken by the Property Factor until the Tribunal application was intimated to them and that the Homeowner has been put to considerable inconvenience as a result of the Property Factor's failures and breach of the Code. In the circumstances, the Tribunal determines that an order for compensation in the sum of £300 should be made.

Proposed Property Factor Enforcement Order

The Tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

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

Josephine Bonnar
21 September 2019