

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/21/1362

Flat 1/1 76 Albert Avenue, Glasgow, G42 8RD (“the Property”)

Parties:

Mr Mohammed Alam, Flat 1/1 76 Albert Avenue, Glasgow, G42 8RD (“the Homeowner”)

Miller Property Management Limited, Suite 2.2 Waverley House, Caird Park, Hamilton, ML3 0QA (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)
Mike Links (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 12 August 2023.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 12 August 2023, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor pay the sum of £250 to the Homeowner for their failure to comply with Sections 4.1, 4.5, 5.2 and 5.3 of the 2012 Code of Conduct for Property Factors, within 28 days of intimation of the PFEO.

The Tribunal indicated that prior to making a PFEO, it would provide the parties with the opportunity to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 16 August 2023 and again on 12 October 2023, following a request for permission to appeal the decision by the Property Factor which was refused by the Tribunal.

The Property Factor did not lodge written representations. On 26 October 2023, the Homeowner's representative lodged written representations and made a request for expenses. The submissions state that the Homeowner is pleased that the Tribunal upheld his complaints but that the proposed compensation of £250 is "substantially low" as he "incurred a great amount of distress in trying to establish," "the breaches which have now been confirmed". He also incurred expense when he had to instruct his own reports to establish the source of the leak and replacing his bathroom, unnecessarily. In relation to the issue of expenses, the Homeowner states that the "Factor acted negligently throughout the claim process" and "chose to hide behind the debt recovery action and refused to acknowledge or address the concerns that the homeowner raised with him repeatedly. The Factor gave evidence contradicting his own processes" and "failed to carry out due diligence prior to the hearing in order to ensure his own evidence was cohesive with the evidence that was presented in the bundle".

The proposed PFEO

The Tribunal notes that only four of the Homeowner's numerous complaints were upheld and one of these, the breach of Section 4.1 of the Code, was a very minor breach. Two of the complaints which were upheld related to a failure to consistently apply the debt recovery process. The other two involved a failure to provide some information specified in the Code about the common buildings insurance policy. Most of the complaints outlined in the application were rejected by the Tribunal. These included the complaints which related to the bathroom and the leak. The Tribunal is therefore not persuaded that a higher level of compensation is appropriate and is satisfied that the sum specified in the proposed order properly reflects the inconvenience experienced by the Homeowner in relation to the breaches of Sections 4.1, 4.5, 5.2 and 5.3 of the Code.

Expenses

Rule 40 of the Tribunal's Procedure Regulations 2017 makes the following provision:-

- (1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other to unnecessary or unreasonable expense"

The Homeowner's request for expenses is based on the following claims:-

1. The Property Factor "acted negligently" during the process.
2. The Property Factor hid behind the debt recovery action.
3. The Property Factor refused to acknowledge or address the concerns raised by the Homeowner.
4. The Property Factor's evidence was contradictory.

The Tribunal is not clear what is meant by point 1. There is no specification of the allegation. Points 2 and 3 relate to complaints which were considered by the Tribunal in connection with the application. Only point 4 appears to relate to the Property Factor's conduct of their defence to the application. However, there is no information about any "unnecessary or unreasonable expense" experienced by the Homeowner which is attributable to the Property Factor.

In the written decision with statement of reasons, the Tribunal concluded that Mr Miller was credible although not always reliable when he gave his evidence. On the other hand, the Tribunal did not find the Homeowner's witness, his son, to be either credible or reliable. The Tribunal also notes that although the Property Factor did contribute to a delay in the case reaching a conclusion by failing to attend one of the hearings, most of the delays were directly attributable to "unreasonable behaviour" by the Homeowner. These included the late lodging of a substantial bundle of documents, resulting in a hearing being postponed, the failure to attend a hearing and instructing a solicitor immediately before a hearing with the result that the hearing had to be adjourned to give the solicitor time to prepare. The Tribunal also notes that the Property Factor did not oppose that request although he had no prior notice of it and had attended at the Tribunal Centre, ready to proceed with the hearing. The Tribunal is therefore satisfied that the Homeowner is not entitled to an award of expenses in terms of Rule 40. As there are not other circumstances which would allow the Tribunal to make an award, the request is refused.

The Tribunal is satisfied that 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 Sections 4.1, 4.5, 5.2 and 5.3. of the Code of Conduct for Property Factors.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor pay the sum of £250 to the Homeowner for their failure to comply with Sections 4.1, 4.5, 5.2 and 5.3 of the 2012 Code of Conduct for Property Factors, within 28 days of intimation of the PFEO.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A homeowner or property factor aggrieved by a 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.

Josephine Bonnar, Legal Member

11 November 2023