

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: PF/16/1002

Flat 0/2, 154 Jamieson Street, Glasgow, G42 7HW
("the Property")

The Parties:-

Mr Robert Gilmour, 45 St Andrews Drive, Bearsden, Glasgow, G61 4NW
Represented by Mr Raymond Heath, Citizens Advice Bureau, 11 Alexandra
Street, Kirkintilloch, G66 1HB
("the Applicant")

Govanhill Housing Association Limited, Samaritan House, 79 Coplaw Street,
Govanhill, Glasgow, G42 7JG
Represented by its agent, T C Young Solicitors, 7 West George Street,
Glasgow, G2 1BA
("the Respondent")

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)
Kingsley Bruce (Ordinary Member)

DECISION

1. The tribunal, having taken account of representations made in terms of Section 19(2)(b) of the Property Factors (Scotland) Act 2011 ("the 2011 Act"), was satisfied that the Respondent had not failed to carry out the property factor's duties or comply with the Section 14 duty.
2. The tribunal did not make a Property Factor Enforcement Order ("PFEO").
3. The decision of the tribunal is unanimous

Reasons

Reasons

1. On 29 June 2017 the tribunal gave notification to parties of a proposed PFEO in terms of Section 19(2)(a) of the 2011 Act, together with a decision of the same date to be read in conjunction with it.
2. Within the proposed PFEO the Respondent was required to make payment to the Applicant the sum of £250.00 within 28 days of intimation of the PFEO to the Respondent and to confirm in writing to the tribunal that it had so complied. Said payment was considered by the tribunal to be a reasonable payment in terms of Section 20(1)(a) of the Act for the Respondent's failure to comply with subsection numbers 6.1, 6.3 and 6.6 of the Property Factor Code of Conduct 2011 ("the Code"). No action was considered necessary by the tribunal other than the said payment to the Applicant.
3. At the time of notification of the proposed PFEO, parties were invited by the tribunal to make representations in relation to the proposed PFEO in terms of Section 19(2) of the 2011 Act which provides that:

"In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so-
(a) give notice of the proposal to the property factor, and
(b) allow the parties an opportunity to make representations to it".

4. Parties were advised that any such written representations were to reach the tribunal in writing no later than 14 days after the date that the decision and proposed PFEO was sent to them by the tribunal; and that if no written representations were received within that timescale then the tribunal was likely to proceed to make a PFEO without seeking further representations from the parties.
5. The decision and proposed PFEO were sent to parties on 10 July 2017.
6. On 24 July 2017 the tribunal received written representations on the proposed PFEO from the Respondent's legal representative dated 21 July 2017. The solicitor advised that the Respondent had sent a cheque to the Applicant in the sum of £250.00 and enclosed a letter sent to the Applicant dated 21 July 2017, a remittance advice and a copy of the cheque made payable to the Applicant for the said sum.
7. No representations in terms of Section 19(2)(b) of the 2011 Act were submitted by the Applicant.
8. The tribunal, having taken account of the said representations from the Respondent as regards payment having been made by the Respondent to the Applicant, was satisfied that in terms of Section 19(3) that the Respondent had effectively complied with the terms of the proposed PFEO and that said reasonable payment having been made and no further action being necessary there was no longer a failure to comply with the said sections of the Code. The tribunal therefore determined that the Respondent had not failed to carry

out the property factor's duties or to comply with the Section 14 duty and that it was not required to make a PFEO in terms of Section 19(3).

Additional requests in Respondent's solicitor's letter of 21 July 2017

9. Within the Respondent's solicitor's said letter dated 21 July 2017 the solicitor was instructed by the Respondent to make two requests for revisals to be made to the tribunal's decision of 29 June 2017, namely the revisal of certain sentences in paragraph 43.1 of the decision and the redaction of a Respondent's employee's name from the decision.
10. Section 19(2) of the 2011 Act requires the tribunal to allow parties to make representations on the proposed PFEO. There is no provision within the said Section (or elsewhere in the 2011 Act) requiring the tribunal to allow parties to make representations in relation to the decision of the tribunal on the homeowner's application in terms of Section 19(1) of the 2011 Act; nor for a party to request revisals to, or redactions from, said decision.
11. The Respondent's representative's requests to the tribunal to revise certain sentences in paragraph 43.1 of its decision and to redact an employee's name from the decision are incompetent in that they are not representations on the terms of the proposed PFEO and the tribunal cannot consider them.
12. A procedure is provided for review of a decision in terms of Section 43(2)(b) of the Tribunals (Scotland) Act 2014 ("the 2014 Act") and Rule 7A of the 2016 Rules. Said provisions require a party seeking a review to make an application in writing within 14 days of the date on which the decision was sent to parties. No review request was submitted by the Respondent or its legal representative within the required timescale.
13. Additionally, there is a procedure for a party aggrieved by a decision of the tribunal to seek permission to appeal to the Upper Tribunal on a point of law only, within 30 days of the date that the decision was sent to them. No application for permission to appeal was made by the Respondent or its legal representative within the required timescale.

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.

Susanne L M Tanner

Susanne L M Tanner Q.C.

Legal Member and Chair

19 September 2017