

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision in terms of Section 23 of the Property Factors (Scotland) Act 2011
("the 2011 Act")**

Chamber Reference: FTS/HPC/PF/21/1864

**Re the Property at 0/1 1840 Great Western Road, Anniesland, Glasgow, G13
2TN ("the Property")**

The Parties:

Craig McNicol, 61 Langdale Road, Sale, M33 4FL ("the Applicant") and

**Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL
("the Respondent")**

Tribunal Members:

G. McWilliams, Legal Member

D Godfrey, Ordinary Member

Decision

The Tribunal determines that the Respondent has failed to comply with the Property Factor Enforcement Order (*PFEO") imposed by it in respect of the Property and dated 8th April 2022 and, further, determines to serve notice of that failure on the Scottish Ministers in terms of Section 23(2) of the 2011 Act.

Background and Reasons for Decision

1. The Tribunal determined, by Decision dated 22nd February 2022, that the Respondent had failed to comply with its duties under Section 14(5) of the 2011 Act in that it did not comply with Sections 2.1 and 2.5 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors ("the Code"). The Tribunal further determined to issue a PFEO. The Tribunal gave

notice to the parties, on 28th February 2022, that they proposed to issue a PFEO, in the following terms, and invited the parties to make representations within 14 days, in accordance with Section 19(2)(a) of the 2011 Act:

- i) The Respondent is to make a compensation payment to the Applicant, in the sum of £500.00, within 28 days of the date of issue of the PFEO; and
- ii) The Respondent is to provide the Applicant with a written report from a suitable specialist, within 42 days of the date of issue of the PFEO, which confirms;
 - a) full details of all works done at the Property in July 2021, in respect of the rot outbreak there; and
 - b) whether or not all of the rot, which was discovered, has been eradicated.
- iii) The Respondent is to lodge a copy of the report, referred to above, with the Tribunal's office, also within 42 days of the date of issue of the PFEO.

2. The Respondent did not submit any representations to the Tribunal. On 28th March 2022 the Applicant informed the Tribunal's office that he had not had any contact from the Respondent. In the circumstances the Tribunal made the following PFEO:

- i) The Respondent is to make a compensation payment to the Applicant, in the sum of £500.00, within 28 days of the date of issue of the PFEO; and
- ii) The Respondent is to provide the Applicant with a written report from a suitable specialist, within 42 days of the date of issue of the PFEO, which confirms;
 - a) full details of all works done at the Property in July 2021, in respect of the rot outbreak there; and
 - b) whether or not all of the rot, which was discovered, has been eradicated.
 - c) The Respondent is to lodge a copy of the report, referred to above, with the Tribunal's office, also within 42 days of the date of issue of the PFEO.

3. The PFEO was intimated to the Respondent by recorded delivery post on 11th April 2022. The Tribunal, in particular, Intimated to the Respondent that a person/ body who, without reasonable excuse, fails to comply with a PFEO, commits an offence, in terms of Section 24 (1) of the 2011 Act.

4. Following a compliance check by the Tribunal's office, on 7th June 2022, the Applicant stated, by email dated 8th June 2022, that he had not received any communications, or payment, from the Respondent and that the Respondent had not complied with the PFEO. The Tribunal's office has not received any information or representations about compliance, or intimation of any excuse or reason for their failure to comply with the PFEO, from the Respondent or any representative acting on their behalf.

5. Section 23(1) of the 2011 Act states:

“It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a Property Factor Enforcement Order made by the First-tier Tribunal”.

6. The Tribunal, in the circumstances, determines that the Factor has failed to comply with the PFEO and that there is no reasonable excuse for the failure.

7. Section 23(2) of the 2011 Act states:

“Where the First-tier Tribunal decides that a Property Factor has failed to comply with the Property Factor Enforcement Order, the First-tier Tribunal must serve notice of the failure on the Scottish Ministers.”

8. Given the circumstances, the Tribunal determines to serve notice on the Scottish Ministers.

Appeal

In terms of Section 46 of the Tribunals (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 within thirty day of the date the Decision was sent to them.

G McWilliams

7th July 2022

Legal Member