

Housing and Property Chamber First-tier Tribunal for Scotland



CERTIFICATE OF COMPLIANCE WITH PROPERTY FACTOR ENFORCEMENT ORDER (“PFEO”)

Reference number: FTS/HPC/PF/19/0660

Re: 4, Fairyknowe Court, Bothwell, G71 8SZ (“the Property”)

The Parties: Miss Karen Steel residing at 4, Fairyknowe Court, Bothwell, G71 8SZ (“the Applicant”)

and

James Gibb Property Management Limited having a place of business at 65, Greendyke Street, Glasgow, G1 5PX (“the Respondents”)

Tribunal Members

Karen Moore (Legal Member)

Ahsan Khan (Ordinary Member)

Decision of the Tribunal

The Tribunal having determined that the Property Factor Enforcement Order (PFEO) dated 12 August 2019 relating to the Property had been complied with certifies that the Respondents have complied with the PFEO.

Background

1. By application received by the First-tier Tribunal for Scotland (Housing and Property Chamber) between 4 March 2019 and 3 May 2019 (“the Application”) the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondents had failed to comply with the Code at Sections 2, 4, 5 and 6 and the property factors’ duties.
2. Following a Hearing, the Tribunal found the Respondents had not failed to comply with Section 14 of the Act in respect of compliance with the Property Factor Code of Conduct (“the Code”) but had failed to comply with the property factors’ duties. The Tribunal imposed the following PFEO dated 12 August 2019:-

- (i) Within four weeks of the date of this PFEO, the Respondents must at their own cost and expense instruct an independent Royal Institute of Chartered Surveyors registered building surveyor (i) to carry out a full inspection the Property and the block of flatted dwelling houses of which it forms part (“the Block”) , including suitable water testing before and after any remedial works are completed, to provide a fully documented report on the water ingress to the Property which should include a report on the whole roof including its tiles, flashing and roof spaces, the external brickwork, the balconies and the guttering and downpipes (“the Survey Report”), the purpose of which Survey Report is to determine the cause of the water ingress to the Property and to recommend works to ensure that the Property is made wind and watertight and is in a reasonable state of repair and
- (ii) Within 7 days of their receipt of the said Survey Report, the Respondents must submit the Survey Report to the Tribunal, provide a copy to the Applicant and her co-owners in the Block and call a meeting of the owners of the Block to put in place a plan to carry out the works recommended by the Survey Report.

3. Both Parties emailed the Tribunal in respect of the said PFEO. The Respondents advised that they had complied with the PFEO and submitted a copy of a Survey Report by Allied Surveyors Scotland (“the Survey Report”) and a technical report by Water Loss Solutions (“the Water Loss Report”) and advised the Tribunal that a meeting of the owners of the Block had been arranged for 14 January 2020. The Applicant advised the Tribunal that the Respondents had not acted promptly and that she remained dissatisfied. Accordingly, the Tribunal fixed a site inspection and Hearing to determine if the PFEO had been complied with by the Respondents.

Site Inspection and Hearing

4. The Site Inspection took place at the Property at 10.00 a.m. on 8 January 2020 at the Property. Neither Party was present and so the Tribunal made a visual inspection of the external parts of the Property from which the Tribunal noted that the brickwork and water staining appeared to be consistent with the Survey Report. At the Site Inspection, as a matter of courtesy, the Tribunal introduced and identified themselves to two of the Applicant’s neighbours who were exiting the Block.
5. The Hearing took place at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT at 11.30. The Applicant was present. The Respondents were represented by Mr. Nic Mayall, their managing director.
6. The Tribunal advised the Parties of the Site Inspection and that the Tribunal had introduced themselves to two of the Applicant’s neighbours who were exiting the Block.
7. The Tribunal heard from the Parties. The Applicant accepted that the Respondents had instructed the Survey Report and the Water Loss Report at their own cost and

that she had been given copies of both reports. She accepted that an owners' meeting had been arranged.

8. Mr. Mayall for the Respondents advised the Tribunal that the outcome and findings of both reports are that water ingress is from the balcony door of the flat above the Property which is not a common part of the Block. Nevertheless, the Respondents undertake to investigate this further by instructing their own contractors and at their own cost.
9. The Applicant advised the Tribunal that she was unhappy that the Respondents had not instructed any repairs to remedy the water ingress but accepted the Tribunal's advice to her that instructing repairs of this nature was a matter for the owners of the Block, and, in respect of the water ingress from individual properties, the owners of those properties, and not the Respondents.

Issue for the Tribunal

10. The issue for the Tribunal is whether or not the Respondents have complied with the PFEO.

Findings in Fact

11. The Tribunal took account of the Survey Report, the Water Loss Report, its visual inspection at the Site Inspection and the Parties' submissions at the Hearing. The Tribunal had regard to the purpose of the PFEO which was to ensure that a comprehensive survey of the Block was carried out to determine the root cause of the continuing water ingress problem at the Property.

12. The Tribunal found that both the Survey Report and the Water Loss Report were detailed and thorough and that both identified probable causes of the water ingress and recommended works and actions to remedy those causes. The Tribunal found that the Respondents had arranged the owners' meeting as required by the PFEO.

Decision of the Tribunal

13. The Tribunal having regard to the terms of the PFEO and having found that the Respondents had obtained the Survey Report and the Water Loss Report and had arranged the owners' meeting all as required by the PFEO, determined that the PFEO had been complied with and being so satisfied, the Tribunal now issue this Certificate of Compliance. No further action is required by the Respondents in terms of the said PFEO.

Right of 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 to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined

Signed

Karen Moore, Chairperson

Date 20 January 2020
