

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision in terms of Section 23(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/18/0146

Re: Flat 0/2, 11 Wilson Street, Renfrew, PA4 8NP

The Parties:-

Mr Stewart Murray, 49 Craighead Road, Bishopton, PA7 5DT ("the Homeowner")

Apex Property Factor, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH
("the Factor")

Tribunal Members

Ms Helen Forbes (Legal Member)

Mr Andrew McFarlane (Ordinary Member)

Decision

The Tribunal hereby determines that the Property Factor Enforcement Order ("PFEO") issued on 26th July 2018 has not been complied with. The decision of the Tribunal is unanimous

Reasons for Decision

1. The Tribunal made a PFEO on 20th July 2018 in the following terms:

"The Factor is required to carry out the following within 30 days of intimation of the PFEO:

- (1) Apologise in writing to the Homeowner for the breaches of the Code and the failure to carry out the property factor's duties;
- (2) Prepare a draft final statement of account. This should include a breakdown for each year of the Factor's appointment showing, on an itemised basis, a clear description of each total cost incurred and the share due by the Homeowner, amounts of credits relating to that period,

and payments made during that period. In respect of electricity charges these should be calculated on the basis of the Factor's actual readings.

- (3) Pay the Homeowner from their own funds the sum of £100, to reflect the strain and anxiety experienced by the Homeowner over the lack of compliance with the Code.”
2. By email dated 27th August 2018, the Homeowner informed the Tribunal that no action had been taken by the Factor to comply with the PFEO.
3. By letter dated 31st August 2018, the Factor confirmed to the Tribunal that payment in the sum of £100 had been made to the Homeowner by cheque enclosed with a letter dated 23rd August 2018. Annual itemised accounts for the period of their appointment as property factor to the date of termination, were included with the letter. As the letter had not been received by the Homeowner, the Factor informed the Tribunal that they had cancelled the cheque and re-issued the letter and a further cheque.
4. By email dated 4th September 2018, the Homeowner confirmed receipt of a letter and cheque from the Factor which had been posted on 1st September 2018. The Homeowner said that the Factor had complied with points 1 and 3 of the PFEO, but had failed to address point 2. The information provided by the Factor, purporting to be in compliance with point 2, was copies of invoices and a statement dated 13th June 2018. This information had been provided previously and had been before the Tribunal at the time of the hearing on 21st May 2018, and there was no information provided in respect of electricity bills.
5. The Tribunal considered the representations of both parties and decided to vary the PFEO to allow a further period for the Factor to comply by providing a draft final statement of account including a breakdown for each year of the Factor's appointment showing, on an itemised basis, a clear description of each total cost incurred and the share due by the Homeowner, amounts of credits relating to that period, payments made during that period, and electricity charges calculated on the basis of the Factor's actual readings.
6. On 27th September 2018, a varied PFEO dated 25th September 2018 was issued varying the time for compliance to allow a further two weeks for the Factor to comply.
7. By email dated 18th October 2018, the Homeowner informed the Tribunal that no further information had been received from the Factor.
8. The Tribunal did not receive any further information or representations from the Factor.
9. Accordingly, the Tribunal finds that the Factor has failed to properly comply with the 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.

H Forbes

Legal Member and Chairperson

5th November 2018