

Housing and Property Chamber
First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/PF/17/0346

2/1, 6 Ratho Drive, Springburn, Glasgow, G21 1NA
("the Property")

The Parties:-

Ms Fiona Taylor, 57F Drumbathie Mansions, Drumbathie Road, Airdrie, ML6 6EW
("the Homeowner")

James Gibb Property Management Limited, 65 Greendyke Street, Glasgow, G1 5PX
("the Property Factor")

Tribunal members

Susanne L M Tanner Q.C. (Legal Member)
Sara Hesp (Ordinary Member)

DECISION

1.
 - a. The tribunal is satisfied, there being no representations made under subsection (2)(b) of the 2011 Act, that the property factor has failed to carry out the property factor's duties and to comply with the section 14 duty.
 - b. The tribunal must make a Property Factor Enforcement Order in terms of Section 19(3) of the 2011 Act. The tribunal decided to make a Property Factor Enforcement Order in the same terms as the proposed Property Factor Enforcement Order.
 - c. The decision of the tribunal is unanimous.

STATEMENT OF REASONS

2. In this decision the tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 as "the 2017 Rules".

Background

1. The Homeowner lodged an application ("the Application") with the tribunal on 13 September 2017.
2. Following a hearing on 26 January 2018 the tribunal determined on 26 February 2018 in terms of Section 19(1) of the 2011 Act that the Respondent had failed to carry out the property factor's duties and had failed to comply with the duty under Section 14(5) of the 2011 Act to comply with **sections 1 and 5.2 of the Code**.
3. On 7 March 2018 the tribunal gave notice to parties that it proposed to make a PFEO, in accordance with Section 19(2)(a) of the 2011 Act. Parties were allowed the opportunity, if they so wished, to make representations on the terms of the proposed PFEO in terms of Section 19(2)(b) of the 2011 Act.
4. The proposed PFEO provided as follows:

"Within 30 days of intimation of the PFEO the Property Factor must:

- a. *Pay to the Homeowner the sum of £250 in respect of the delay, worry and inconvenience occasioned by the Factor's failure to carry out its property factor's duties and to ensure compliance with its duties under the Code (said payment to be made directly to the Homeowner and not as a credit to the Homeowner's account with the Property Factor); and provide documentary evidence to the tribunal of said payment.*
 - b. *Send a written apology to the Homeowner in respect of (i) the delay in answering her enquiries about insurance charges, (ii) the delay in providing a copy of its written statement of services, (iii) the delay in providing details of its in-house complaints procedure and (iv) the delay until 28 August 2016 in refunding the advance insurance charges; and provide a copy of the same to the tribunal."*
5. There have been no representations from either party on the terms of the proposed PFEO, in terms of Section 19(2)(b) of the 2011 Act.

6. An email dated 8 March 2018 was received from the Property Factor but that related to a matter that was not relevant to the terms of the proposed PFEO.
7. There being no representations for the tribunal to take into account under Section 19(2)(b) of the 2011 Act, the tribunal is satisfied that the property factor has failed to carry out the property factor's duties and to comply with the section 14 duty and the tribunal must make a property factor enforcement order in terms of Section 19(3) of the 2011 Act.
8. The tribunal has decided to make a PFEO in the same terms as the proposed PFEO.

9. 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.

S Tanner

Susanne L M Tanner QC
Legal Member and Chair

13 April 2018