

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination in terms of Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/17/0147

**129/10 Gylemuir Road, Corstorphine, Edinburgh EH12 7DL
("the Property")**

The Parties:-

**Philip Cannon, 129/10 Gylemuir Road, Corstorphine, Edinburgh EH12 7DL
("the Homeowner")**

**Newton Property Management Limited, 87 Port Dundas Road, Glasgow G4 0HF
("the Factor")**

Tribunal Members:

Joan Devine - Chairing and Legal Member

Ann MacDonald - Ordinary Member (Housing)

Background

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") considered an application by the Homeowner submitted in terms of Section 17 of the Property Factors (Scotland) Act 2011 ("the 2011 Act"). The Tribunal unanimously determined that the Factor had failed to comply with the Code of Conduct for Property Factors as required by section 14 of the 2011 Act in that it did not comply with section 2.5 of the Code. The Tribunal unanimously determined that the Factor had not failed to comply with its factor duties in terms of section 17(5) of the 2011 Act. The Tribunal issued a decision dated 25 September 2017 on 31 October 2017 (the "Decision") along with a proposed property factor enforcement order.

The Tribunal received an application from the Homeowner for leave to appeal against the Decision which was rejected. The Tribunal received an application from the Factor for a review of the Decision which was also rejected.

In the application by the Factor for a Review the Factor produced to the Tribunal documents which included a breakdown of charges from Greenhome which explains the migrated balance of £166.37, all as required in the Proposed Property Factor Enforcement Order.

Decision

The Tribunal considered matters in light of the Overriding Objective set out in Regulation 2 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that in all the circumstances, as the Factor has complied with the proposed Property Factor Enforcement Order in the period between the issuing of the Decision and the period during which an appeal or review could be sought, it would not be appropriate to make a Property Factor Enforcement Order in this case.

The decision of the Tribunal was unanimous.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014 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.

If the First-tier Tribunal refuses its permission a homeowner or property factor aggrieved by the decision of the Tribunal may seek the permission of the Upper Tribunal. That party must seek permission to appeal from the Upper Tribunal within 30 days of the date the decision was sent to them.

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Date *9 January 2018*

Joan Devine, Legal Member and Chair