

Housing and Property Chamber First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(1) of the Property Factors (Scotland) Act 2011 (“the Act”) and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, in an application made to the Tribunal under Section 17 of the Act

Chamber reference: HOHP/PF/16/1001

The Property: 26 Sharpe Place, Montrose DD10 9FH (‘the property’)

The Parties:

Michael Holm, Lornty Bank, Main Road, Hillside, Montrose DD10 9HT (‘the homeowner’)

Atholls Limited, incorporated under the Companies Acts in Scotland (SC324592) and having their Registered Office at Johnstone House, 52-54 Rose Street, Aberdeen AB10 1HA (‘the property factors’)

Tribunal Members – George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision by the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 19(1)(b) of the Property Factors (Scotland) Act 2011

The Tribunal is satisfied, after taking account of the representations made under Section 19(2)(b) of the Property Factors (Scotland) Act 2011, that the Property Factors have complied with the terms of the Property Factor Enforcement Order that it proposed making following a hearing on 31 March 2017 and that, consequently, it is no longer necessary to make the Order.

The Decision is unanimous.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as “the Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code of Conduct”; and the Housing and Property Chamber of the First-tier Tribunal for Scotland as “the Tribunal”.

REASONS FOR THE DECISION

Following a hearing at Montrose Public Library on 31 March 2017, the Tribunal decided that the property factors had failed to comply with their duties under Section 14 of the Act, in that they had failed to comply with Section 2.5 of the Code of Conduct. That Decision, together with a Notice issued under Section 19(2)(a) of the Act was sent to the Parties. The Notice gave the Parties a period of 14 days from the date of intimation to them of the Decision and Notice within which to make written representations to the Tribunal in terms of Section 19(2)(b) of the Act, and the Decision also included information relating to the right of the Parties to seek to appeal the Decision. Neither Party sought permission to appeal the Decision.

The Property Factors exhibited to the Tribunal a letter that they had sent to the homeowner dated 19 June 2017, in which they apologised to the homeowner for not responding to his e-mail of 17 October 2016 and enclosed a cheque for £50 as compensation for the upset and inconvenience caused to the homeowner by their failure to respond to that e-mail. A copy of the cheque was also exhibited to the Tribunal. The Tribunal accordingly determined that, as the Property Factors had taken the action that the proposed Property Factor Enforcement Order would have required them to take, it was not necessary or appropriate to make the Order.

Appeals

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.

G Clark

Signature of Legal Chair ...

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Date 29 June 2017