

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
Decision under Section 21 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/18/3124

Flat 0/2, 29 Eriboll Place, Glasgow G22 6PA
(“the Property”)

The Parties:-

Eric Hamilton, Flat 0/2, 29 Eriboll Place, Glasgow G22 6PA
(“the Applicant”)

(1) Your Place Property Management Limited, (company number SC245072)
(formerly known as GHA (Management) Limited, Wheatley House, 25 Cochrane
Street, Glasgow G1 1HL
(“the First Respondent”)

(2) Wheatley Homes Glasgow Limited, (Company number SP2572RS) (formerly
known as The Glasgow Housing Association Limited), Wheatley House, 25
Cochrane Street, Glasgow G1 1HL
(“the Second Respondent”)

Tribunal Members:
Graham Harding (Legal Member)
Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) having considered the written representations made by or on behalf of both parties determined that part 2 of the Property Factor Enforcement Order (“PFEO”) dated 11 January 2023 should be revoked.

Background

1. By decision issued on 5 December 2022, the Tribunal determined that the Factor failed to comply with its duties under section 14(5) of the 2011 Act in that it did not comply with sections 2.1 and 2.2 of the Code.
2. The Tribunal issued a Notice of Proposed PFEO together with the decision on 5 December 2022 and invited representations within 14 days of the Notice being received by the parties.

3. By email received on 21 December 2022 the Factor requested the Tribunal review its decision and proposed PFEO.
4. The Tribunal considered the Factor's request for a review and by its decision dated 11 January 2023 partially granted the application and issued an amended PFEO.
5. By emails dated 19 January 2023 the Homeowner submitted written representations to the Tribunal complaining about the method of payment of £500.00 made to the Homeowner by the Second Respondents. The Tribunal did not uphold the Homeowners complaint.
6. By email dated 8 February 2023 the Homeowner sought permission to appeal the Tribunal's decision to issue the PFEO in the terms it did.
7. By its decision dated 24 February 2023 the Tribunal refused the Homeowners application for permission to appeal.
8. By email dated 15 June 2023 the Second Respondents representative submitted written representations and requested that part 2 of the PFEO be revoked.
9. By email dated 17 June 2023 the Homeowner submitted written representations to the Tribunal disputing the position adopted by the Second Respondents.
10. The Homeowner submitted an application to the Upper Tribunal for permission to appeal the tribunal's decision of 5 December 2022 said application was received by the Upper Tribunal on 31 May 2023. By its decision dated 1 September 2023 the Upper Tribunal refused the Homeowners application.
11. By email dated 19 October 2023 the Homeowner sought clarification of the Tribunal's decision of 5 December 2022 and a reply was sent to the Homeowner on 23 October 2023.

Reasons for Decision

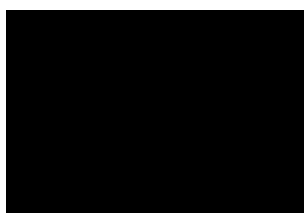
12. Section 21(1) of the Property Factors (Scotland) Act 2011 ("the 2011 Act") provides that the Tribunal can vary or revoke a PFEO at any time if it is reasonable to do so or if the order is no longer necessary. The Tribunal accepted that the Second Respondents had made satisfactory progress in terms of Section 21(3) the 2011 Act by carrying out inspections of the NETS team's cleaning in January and February 2023. It was apparent however that there continued to be issues between the Homeowner and the Second Respondents' staff that were beyond the current jurisdiction of this Tribunal.
13. The Tribunal determined in its decision of 5 December 2022 the Factor was in breach of Sections 2.1 and 2.2 of the Code and made a PFEO in the terms specified. The Respondents have complied with Parts 1 and 3 of the PFEO and have submitted that they are, because of the ongoing behaviour of the

Homeowner, unable to comply further with Part 2 and that it should therefore be revoked.

14. The Homeowner has complained that the inspections of the stair cleaning by staff outwith the NETS team were insufficient and the standard of work was still unsatisfactory.
15. It is apparent that the Homeowner still has issues with the Factor but these do not form part of the current application which was restricted only to the issues contained in the application dated 19 November 2018. Therefore any issues that the Homeowner has with the Factor after the date of that application are beyond the current jurisdiction of the Tribunal.
16. Considering the information the Tribunal has before it, it is satisfied that the Second Respondents have used their best endeavours to comply with the terms of the PFEO and that reasonable progress has been made. Although there are disputed issues remaining between the parties as regards the current standard of cleaning at the block, that is outwith the current jurisdiction of the Tribunal. In the circumstances the Tribunal is satisfied that it is reasonable to vary the PFEO by revoking Part 2.

A party aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.



Graham Harding

28 October 2023

Legal Member

Date