



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 39 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PF/22/1597

Re : Flat 3/2, 87 Dunlop Street, Glasgow G1 4ET ("Property")

The Parties: -

John Blair, Flat 3/2, 87 Dunlop Street, Glasgow G1 4ET ("Homeowner")

James Gibb Residential Factors, 65 Greendyke Street, Glasgow G1 5PX ("Factor")

BTO solicitors LLP, 48 St Vincent St, Glasgow G2 5HS ("Factor's Representative")

Tribunal Members:

Joan Devine – Legal Member

Andrew McFarlane – Ordinary (Surveyor) Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined to review the Non-compliance Decision of the Tribunal dated 4 October 2023 and unanimously determined that the Property Factor Enforcement Order dated 21 September 2021 as revised and as remade by the Upper Tribunal by Decision dated 22 March 2023 and as varied by Decision dated 23 November 2023 ("PFEO") has been complied with.

Background

1. On 21 September 2022 the Tribunal made a determination under sections 14 and 17(5) of the Property Factors (Scotland) Act 2011 ("Act") and issued a statement of decision and made a Property Factor Enforcement Order. Both the Homeowner and the Factor appealed the decision of the Tribunal. By decision dated 22 March 2023 the Upper Tribunal refused the appeal by the Factor. By decision dated 22 March 2023 the Upper Tribunal upheld the appeal

by the Homeowner and remade the Property Factor Enforcement Order. The Upper Tribunal remitted the matter back to the Tribunal. By Decision dated 4 October 2023 the Tribunal determined that the Factor had failed to comply with the Property Factor Enforcement Order (“Non-compliance Decision”). By Decision dated 23 November 2023 the Tribunal determined to vary the Property Factor Enforcement Order.

2. The Property Factor Enforcement Order as remade and varied is hereinafter referred to as the “PFEO”. The PFEO is in the following terms :

1. *By 8 September 2023 the Factor will provide to the Homeowner an insurance statement as specified in section 5.3 of the 2021 Code for the period May 2022 to May 2023.*
2. *By no later than 8 September 2023, the Factor will apportion the insurance costs for the Property as required by the Written Statement of Services that is in accordance with the Deed of Conditions registered on 22 December 2005.*
3. *By no later than 8 September 2023, the Factor will calculate, in accordance with the Deed of Conditions registered on 22 December 2005, the amount due by the Homeowner in respect of insurance costs for the development of which the Property forms part, for the periods November 2019 to November 2020; November 2020 to November 2021; November 2021 to November 2022 and November 2022 to November 2023. Thereafter any resultant overpayment will be refunded by the Factor to the Homeowner or any resultant underpayment will be invoiced to the Homeowner by the Factor.”*

Application for Review

3. By email dated 18 October 2023 the Factor sought a review of the Non-Compliance Decision in terms of rule 39 of Tribunal procedure regulations.

Discussion

4. The Non-compliance Decision set out three matters which indicated non-compliance. Matters one and two are referred to at paragraph 7 of the Non-compliance Decision. Matter one was failure to state the name of the insurance company. The Factor pointed out that this information is provided on page one of the insurance certificate. The second matter was that the period covered by the certificate was 28 May 2023 to 27 May 2024 and not the period referred to in the PFEO before variation which is November 2022 to November 2023. By Decision dated 23 November 2023 the Tribunal varied the PFEO to change the relevant dates to May 2022 to May 2023. The third non-compliance matter is

set out at paragraph 9 of the Non-compliance Decision and relates to the failure to provide separate calculations for the four periods specified in paragraph 3 of the PFEO. These calculations were provided by the Factor by email dated 18 October 2023.

Reasons for the Decision

5. The Tribunal determined to allow the application for a review of the Non-compliance Decision. There were three matters which formed the basis of the Tribunal making the Non-compliance Decision. The first was a failure to name the insurance company in the insurance statement. This was an oversight on the part of the Tribunal. The second was that the period covered by the statement did not comply with the period set out in the PFEO before variation. By Decision dated 23 November 2023 the Tribunal varied the PFEO. The statement provided complies with the PFEO as varied. The third matter was the failure to provide calculations for the separate periods set out in paragraph 3 of the PFEO. Those calculations were provided on 18 October 2023.

Decision

6. The Tribunal determined to review the Non-compliance Decision of the Tribunal dated 4 October 2023 and unanimously determined that the Property Factor Enforcement Order dated 21 September 2021 as revised and as remade by the Upper Tribunal by Decision dated 22 March 2023 and as varied by Decision dated 23 November 2023 ("PFEO") has been complied with.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Legal Member

Date : 23 November 2023