

Housing and Property Chamber First-tier Tribunal for Scotland



**Decision and Statement of Reasons under Section 21 of the Property Factors
(Scotland) Act 2011**

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") unanimously determined to vary the Property Factor Enforcement Order dated 21 September 2021 as revised and as remade by the Upper Tribunal by Decision dated 22 March 2023 ("PFEO") by deleting the words "*November 2022 to November 2023*" in paragraph one and substituting the words "*May 2022 to May 2023*".

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 Property Factor Enforcement Order as remade 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 November 2022 to November 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."*
2. The Upper Tribunal remitted the matter back to the Tribunal. On 18 October 2023 the Factor's Representative sought a variation of the PFEO in terms of section 21(1)(a) of the Act on the basis the period for which the insurance for the development of which the Property forms part is May 2022 to May 2023. The Homeowner responded to the request for variation by email dated 19 October 2023.

Discussion

3. Section 21(1)(a) of the 2011 Act provides as follows:

"21 – Variation and Revocation of Property Factor Enforcement Order

- (1) *Where the First-tier Tribunal has made a property factor enforcement order it may at any time –*

(a) vary the order in such manner as it considers reasonable.

4. The Factor submitted that the insurance for the development of which the Property forms part is taken for the period May 2022 to May 2023 and therefore it is impossible to provide a certificate for November 2022 to November 2023 as required by the PFEO. In the Upper Tribunal input was sought from the Parties as regards the terms of the PFEO being remade by the Upper Tribunal. At para [3] of the Decision dated 22 March 2023 the Upper Tribunal states "*it was agreed that insurance statement complying with the code of practice ought to be provided for the period November 2020 to November 2023*" at para [4] the Upper Tribunal states "*In light of the concession by the appellant regarding the building insurance statement and what requires to be provided in terms of the order, I will limit the term from November 2022 to November 2023.*" It is unfortunate that the change of the period for insurance from November to May was not raised when matters were being discussed with the Upper Tribunal or on receipt of their decision.

5. The Tribunal has been provided with a copy of a document headed "Evidence of Insurance" dated 17 May 2023 which specifies the period of insurance as being 28 May 2023 - 27 May 2024. The obligation in section 5.3 of the Code is to provide an annual insurance statement to each homeowner. The Tribunal noted that the Factor had lodged a copy of a document headed "Evidence of Insurance" dated 31 May 2022 which specifies the period of insurance as being 26 May 2022 - 27 May 2023 at pages 106 to 109 of the Factor's submission lodged on 2 September 2022. The documentation provided incorporates the period November 2022 to May 2023.
6. In the circumstances the Tribunal considered it reasonable to vary the PFEO.

Decision

7. The Tribunal determined to vary the PFEO by deleting the words "*November 2022 to November 2023*" in paragraph one and substituting therefore the words "*May 2022 to May 2023*".

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.

Legal Member
Date : 23 November 2023