

Housing and Property Chamber

First-tier Tribunal for Scotland



Failure to Comply Decision in relation to a Property Factor Enforcement Order made in terms of Section 19(3) of the Property Factors (Scotland) Act 2011.

Chamber Ref: FTS/HPC/PF/23/1527

Property: 18 Silvertrees Wynd, Bothwell G71 8FH (“the Property”)

The Parties:-

Mrs Caroline Adams, 18 Silvertrees Wynd, Bothwell G71 8FH (“the homeowner”)

Miller Property Management Limited, registered in Scotland under the Companies’ Acts (SC352726), having their registered office at 29 Brandon Street, Hamilton ML3 6DA and having a place of business at Suite 2, Waverley House, Caird Park, Hamilton ML3 0QA (“the property factors”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Kingsley Bruce (Ordinary Member)

Decision of the Tribunal

The Tribunal determined that the property factors have failed to comply with the terms of the Property Factor Enforcement Order made on 19 January 2024 and that Notice of Failure should be served on Scottish Ministers.

Reasons for Decision

Following a Case Management Discussion on 5 October 2023, the Tribunal notified the Parties on 5 November 2023 that it intended to make a Property Factor Enforcement Order (“PFEO”) requiring the property factors to pay to the homeowner the sum of £250 by way of compensation for inconvenience and distress in respect of their failure to comply with OSP2, OSP4, OSP10, OSP11, OSP12 and Sections 2.1 and 2.2 of the Property Factors Code of Conduct effective from 16 August 2021 and their failure to carry out the Property Factor’s duties.

The PFEO was made on 19 January 2024 and sent to the Parties. It required the property factors, within one month of the PFEO being intimated to them, to pay to the homeowner £250 by way of compensation and provide her with a letter of apology for any inconvenience and distress caused by their failures to comply with the Code of Conduct and to carry out the Property Factor’s duties.

On 1 March 2024, the homeowner told the Tribunal that the property factors had not complied with the PFEO. The property factors did not respond to correspondence from the Tribunal.

The Tribunal decided, therefore, that the property factors have failed to comply with the PFEO and that, in terms of Section 23 of the Property Factors (Scotland) Act 2011, notice of the failure should be served on the Scottish Ministers.

The Tribunal's Decision was unanimous.

Right of Appeal

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.

Signed

Dated: 21 March 2024

Chairperson