

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Refs: FTS/HPC/PF/22/3674

28 Chancellor House, 4 Parsonage Square, Glasgow, G4 0TH (“the Property”)

Parties:

Myah Guild, 28 Chancellor House, 4 Parsonage Square, Glasgow, G4 0TH (“the Homeowner”)

Ross & Liddell, 60 St Enoch Square, Glasgow, G1 4AW (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 26 January 2024.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 26 January 2024, it proposed to make a PFEO in the following terms:-

- (1) The Tribunal order the Property Factor to provide the Homeowner with a letter of apology for their failure to comply with Sections 2.1 and 2.7 of the Code, and

- (2) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience,

All within 28 days of intimation of the PFEO.

The Tribunal indicated that prior to making a PFEO, it would provide the parties with the opportunity to make representations under section 19(2)(b) of the Act.

The Tribunal received the following submissions from the parties:-

1. The Property Factor's solicitor submitted a copy of a cheque payable to the Homeowner in the sum of £100, a letter of apology addressed to the Homeowner and a statement showing both a credit and debit for £100 on the Homeowner's factoring account.
2. The Homeowner submitted an email which states that the payment of £100 "appears to have been issued as a credit" and not a payment. She says that this is one of the key problems throughout this case – "not giving back funds and assuming credit is sufficient." She states that it is very disheartening. The email goes on to say that the gesture does not cover the "unexplained overcharges of £30 to £50 per month since at least June 22.....amounting to an overcharge of £270 -£450 that R&L cannot account for and which certainly isn't reflected in the poor quality of service.....Therefore can this overcharge be reflected either in this payment or in another direction? Otherwise, the £100 will be absorbed by continuing overcharges, so R&L will profit." The Applicant adds " What will happen if R&L don't change their behaviour, in light of this order – as has been seen by their lack of heed to the police, this case and cases brought by others?"
3. The Property Factor submitted a response to the Homeowner's comments which states that it is not accepted that there have been overcharges. This claim is based on the home report. The Factor has provided the basis of their charges in a number of emails. The representative also states that the Tribunal can only deal with matters raised in the application and does not have the power to regulate future conduct.
4. In response to a request from the Tribunal about whether a cheque had been issued or a credit applied, the Homeowner did not respond. The Property Factor's solicitor stated that a cheque had been issued and a copy of it, payable to the Homeowner, had been exhibited. The purpose of the account that had been lodged was to show that the £100 was not just applied as a credit.

In their decision of 26 January 2024, the Tribunal only upheld some of the Homeowner's complaints. The Tribunal determined that the Property Factor had failed to comply with section 2.1 of the Code and failed to carry out its duties when it did not consult with (or obtain an estimate in relation to) the removal of beehive from the wall of the building in 2022. The Tribunal also determined that the Property Factor had

failed to comply with section 2.7 by failing to respond to three emails and providing a later response to a fourth email. The Tribunal did not uphold any complaints regarding the factoring charges or accounts. In those circumstances, there is no basis for issuing a PFEO in relation to the complaints made on that subject. The Tribunal is also notes that, in relation to the suggestion that some provision must be made for future conduct, that the Homeowner does not suggest how she expects the Tribunal address this. As the Property Factor points out, future breaches may form the basis of further applications and can be considered by the Tribunal if they occur.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Section 2.1 and 2.7 of the 2021 Code of Conduct for Property Factors. It has also failed to carry out its property factors duties in terms of Section 17(5) of the Act in that it failed to consult with homeowners about the beehive in 2022 or obtain a quote for its removal.

Section 19(3) of the 2011 Act states that if the Tribunal is satisfied that the Property Factor has failed to carry out its duties and/or comply with its section 14 duty, the Tribunal “must” make a PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to provide the Homeowner with a letter of apology for their failure to comply with Sections 2.1 and 2.7 of the Code, and
- (2) The Tribunal order the Property Factor to pay to the Homeowner the sum of £100 for her time, effort, and inconvenience.

All within 28 days of intimation of the PFEO.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A homeowner or property factor aggrieved by a 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.

Josephine Bonnar, Legal Member

4 April 2024