



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 21(1) of the Property Factors (Scotland) Act 2011 (“the Act”)

Reference numbers: FTS/HPC/LM/23/0079 FTS/HPC/LM/23/0081

Re: Land at Dinart Street, Glasgow and Property at Flat 0/1, 95, Dinart Street, Glasgow, G33 2DS (“the Property”)

The Parties:

Ms Marlene Hay, residing at Flat 0/1, 95, Dinart Street, Glasgow, G33 2DS, (“the Homeowner”)

Lowther Homes, having a place of business at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland determined that the Property Factor Enforcement Order made by it on 18 July 2023 (“the PFEO”) be varied to allow the Property Factor further time to comply

Background

1. By applications received between 10 January 2023 and 20 March 2023 (“the Applications”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the Codes of Conduct for Property Factors and had failed to comply with the Property Factor Duties.
2. A CMD took place on 16 June 2023 at 10.00 by telephone conference call. The Homeowner was present on the call and was not represented. The Property Factor was not present and was not represented. The Property Factor did not submit written representations.
3. The outcome of the CMD was that the Tribunal proposed a PFEO. The proposed PFEO was intimated to the Parties. Neither Party made comment and so the Tribunal made the PFEO as follows:

“No later than 8 August 2023 the Property Factor must at its own cost and expense:

1. *Provide the Homeowner and the Tribunal with hard copies of the Written Statement of Services for the Property, their Debt Recovery procedure and their Complaints procedure;*
2. *Provide the Homeowner and the Tribunal with a named property manager or contact for the Property with whom the Homeowner can communicate directly;*
3. *Provide the Homeowner and the Tribunal with their schedule for routine garden maintenance and grass cutting for the current year April 2023 to March 2024 and confirm whether or not the schedule has been complied with to date;*
4. *Provide the Homeowner and the Tribunal with their proposals for carrying out the drain repair which was purported to have been carried out previously and carry out this repair at their own cost;*
5. *Compensate the Homeowner in the sum of £250.00 by a direct payment and not by a credit to her common charges account for the inconvenience caused to her by the Property Factor's actions;*
6. *Refund to the Homeowner all of the management fees paid by her to the Property Factor since the Property Factor took over factoring of the Property in October 2020 to date;*
7. *Credit the Homeowner's common charges account with the sums withheld by her so that the account is not in debit*
8. *Credit the other Homeowners co-owners who have paid for the purported drain repair the sums paid by them in respect of that common charge and*
9. *Evidence to the Tribunal that items 4- 8 above have been carried out."*

Hearing in respect of compliance with PFEO.

4. Both Parties submitted written submissions to the Tribunal in respect of the compliance of the PFEO, following which a Hearing in respect of compliance was held on 11 March 2024 at 10.00 in the Glasgow Tribunal Centre. The Homeowner, Ms.Hay, was present and was not represented. The Property Factor was represented by Ms. M. Rush, one of the Property Factor's Directors.

5. Ms. Rush fairly and without hesitation accepted that the Property Factor had not complied with the PFEO in its entirety and explained that the Property Factor was in the process of improving its processes and procedures. Ms. Rush offered genuine apologies to the Homeowner on behalf of the Property Factor and on her own behalf as the Director with responsibility for the factoring service. Ms. Hay accepted the apology but was clear that the Property Factor continued to fail to deliver a satisfactory service and stated that she had little faith in the Property Factor improving.

6. The Tribunal took the Parties through the various elements of the PFEO.

7. *"1. Provide the Homeowner and the Tribunal with hard copies of the Written Statement of Services for the Property, their Debt Recovery procedure and their Complaints procedure"*

The Tribunal noted that the Property Factor had provided these documents but it became apparent that a core part of the Complaint Procedure was amiss.

8. *“2. Provide the Homeowner and the Tribunal with a named property manager or contact for the Property with whom the Homeowner can communicate directly”*

The Tribunal noted that although a name had been given to the Homeowner, the Homeowner had had difficulty making contact and that prior to the Hearing further named contacts had been provided. At the Hearing, Ms. Rush provided details and promised to contact the Homeowner direct.

9. *“3. Provide the Homeowner and the Tribunal with their schedule for routine garden maintenance and grass cutting for the current year April 2023 to March 2024 and confirm whether or not the schedule has been complied with to date”*

The Tribunal noted that although the schedule had been given to the Homeowner and the Property Factor had confirmed that the schedule had been complied with, the Homeowner disagreed that schedule had been complied with. The Homeowner asked if the Property Factor could in some way evidence when the maintenance and grass cutting is carried out.

10. *“4. Provide the Homeowner and the Tribunal with their proposals for carrying out the drain repair which was purported to have been carried out previously and carry out this repair at their own cost.”*

The Homeowner explained that although three attempts had been made to carry out the drain repair, none had been successful. She explained that the contractor, Hanlon, did not make any attempts to remedy the blockage in the down pipes which, she considered to be root cause. Although, Hanlon had attended at the Property recently, she had been told that scaffolding would be needed to carry out the work properly.

With regard to charging for the work carried out by Hanlon, the Homeowner advised that the cost had been removed from her account but later re-appeared and explained that this had happened again in the last few weeks.

Ms. Rush advised that the Property Factor had arranged for scaffolding to be erected in order that the repair could be carried out properly. She advised further that the cost of the work had been removed from the Homeowner's account.

11. *“5. Compensate the Homeowner in the sum of £250.00 by a direct payment and not by a credit to her common charges account for the inconvenience caused to her by the Property Factor's actions;*

6. Refund to the Homeowner all of the management fees paid by her to the Property Factor since the Property Factor took over factoring of the Property in October 2020 to date;

7. Credit the Homeowner's common charges account with the sums withheld by her so that the account is not in debit

8. Credit the other Homeowners co-owners who have paid for the purported drain repair the sums paid by them in respect of that common charge”

The Parties agreed that these parts of the PFEO had been complied with.

12. The Tribunal discussed with the Parties the options open to the Tribunal, being that the Tribunal could find that the PFEO had been complied with, the PFEO could be varied or the

Tribunal could make a finding of failure to comply and explained that the effect of a failure to comply is a referral by the Tribunal to the Scottish Ministers for further action which can include de-registration and a criminal prosecution.

13. The Parties agreed that their preferred course of action is for the PFEO to be varied, albeit that the Homeowner remained sceptical.

Findings in Fact.

14. From the Hearing and for the reasons set out above, the Tribunal found that the Property Factor had complied with parts 3, 5, 6, 7 and 8 of the PFEO, had complied in part with parts 1 and 2 of the PFEO and had not complied with part 4 of the PFEO.

Decision of the Tribunal with reasons.

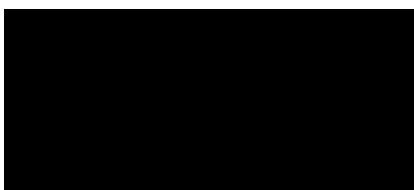
15. Having made its Findings in Facts, the Tribunal had regard to the views of the Parties. The Tribunal took into account the fact that the Property Factor had not complied with those elements of the PFEO which were at the core of the Homeowner's complaints, and so, although the Property Factor had made monetary redress, it had not improved matters for the Homeowner. The Tribunal also took into account the submissions made by Ms. Rush that the Property Factor is in the process of addressing its weaknesses in respect of service delivery and took the view that it is reasonable to allow the Property Factor a further opportunity to comply with the PFEO.

16. Therefore, the Tribunal determined to vary the PFEO.

17. This Decision is unanimous.

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/Chair

11 April 2024
Date