

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of decision of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016 (contained in schedule 1 of the Chamber Procedure Regulations 2016 (SSI No 339) as amended by the Chamber Procedure Amendment Regulations 2017 (“the regulations) in relation to a request for further review of decision under section 43 (2) (b) of the Tribunals (Scotland) Act 2014.

Chamber Ref: FTS/HPC/PF/19/0247

Property at 3 Neil Gordon Gate, Blantyre, Glasgow G72 0AP (“the property”)

The Parties: -

Mr Greg Hanley, 11 Pommern Parade, Co. Antrim, Belfast, BT6 9FX (“the homeowner”)

Newton Property Management Limited, 87 Port Dundas Road, Glasgow, G4 0HF (“the property factor”) represented by Messrs Hardy MacPhail solicitors

Tribunal Members: -

Simone Sweeney (Legal Member) Elaine Munroe (Ordinary Member)

Decision of the Tribunal chamber:-

1. The Tribunal refuses the application of the property factor for review of the Proposed Property Factor Enforcement Order (“Proposed PFEO”) by removing paragraph (ii) of Proposed PFEO.
2. The Tribunal amends paragraph (ii) of Proposed PFEO to qualify that the property factor can only take further debt recovery action against the homeowner if in accordance with clauses 18.2 and 18.3 of the Deed of Conditions the cost **cannot** be recovered from the proprietor.

Background

3. Following a request for review of its decision of 9th July 2019, the Tribunal issued a decision and amended PFEO dated 29th July 2019. Reference is made to the terms of these respective documents.
4. By letter of 8th August 2019 the property factor's solicitor intimated a letter requesting a review of the Tribunal's proposed amended PFEO in light of the terms of the Tribunal's decision of 29th July 2019. Specifically the property factor sought amendment of paragraph (ii) of the amended PFEO.
5. The first paragraph of the property factor's letter of 8th August 2019 provided,

“Representations relate not to the terms of the decision but to the terms of the proposed Property Factors Enforcement Order. In paragraph (ii) of the Order the obligation is for the Respondent to remove the debt on the account and to confirm to the homeowner in writing that the debt has been removed and that no further action will be taken in this regard. The Respondents position however is that... the Order should not contain any requirement that they take no further action. The Respondents are entitled to pursue the previous homeowner for recovery of the outstanding account. It is their intention to do so. In the event however that having taken further legal action against the debtor, the debt cannot be recovered in accordance with the terms of Clause 18.3 of the Deed of Conditions they would be entitled to revert back to the homeowner and seek to recover from him a proportion of the debt due by the previous owner.”

6. Paragraph (ii) of the amended PFEO of 29th July 2019, requires that the property factor:-

“remove the debt from the homeowner's account and confirm to the homeowner, in writing, that the debt has been removed and that no further action will be taken in this regard.”

Reason for decision

7. Reference is made to paragraph 21 of the Tribunal's decision of 9th July 2019. The Tribunal accepts that the property factor has the right to pursue

proprietors for debts incurred during the property factor's period of management. The debt belonging to the proprietor against whom the property factor took court action in 2017 remains outstanding. Clause 18.2 of the deed of conditions enables the property factor to bring debt action against the homeowner only where it can be shown that the debt owed by the proprietor *cannot* be recovered in terms of Clause 18.3. There is no evidence that this debt *cannot* be recovered. Until such times as that can be shown and only when the homeowner has received evidence from the property factor that the debt owed by the proprietor *cannot* be recovered will the property factor be able to recover the proprietor's debt from the homeowner in terms of Clause 18.3 of the deed of conditions.

8. Accordingly, the Tribunal amends the Proposed PFEO in the following terms:-

“Within 28 days of the communication of the PFEO to the property factor, the property factor must:

- (i) Pay to the homeowner the sum of £226.66. This sum represents the float of £250 minus the homeowner's closing balance of £19.76 together with a closing bill of £3.58.*
- (ii) Remove the debt from the homeowner's account and confirm to the homeowner, in writing, that the debt has been removed.*
- (iii) Confirm to the homeowner, in writing, that no further debt recovery action will be taken against the homeowner unless the cost **cannot** be recovered from the proprietor in accordance with clauses 18.2 and 18.3 of the Deed of Conditions.*
- (iv) Pay to the homeowner compensation in the sum of £150.*
- (v) Provide evidence to the Tribunal that the property factor has met the terms of this order. “*

9. This decision is not subject to appeal.

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Simone Sweeney, Legal chairing member, 5th September 2019