

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 Ref: FTS-HPC-PF-17-0108

Development at Drumsmittal Road, North Kessock, Inverness, IV1 3JU

The Parties:-

Mr Emrys Jones, residing at 30 Drumsmittal Road, North Kessock, Inverness, IV1 3JU (“the Homeowner”)

Allied Souter & Jaffrey, having a place of business at Lyle House, Fairways Business Park, Castle Heather, Inverness, IV2 6AA (“the Factor”)

Tribunal Members

Helen Forbes (Legal Member)

Elizabeth Dickson (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 9th May 2017.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it with the exception of the notification requirement at paragraph 4 of the proposed PFEO as the Factor has already reported to the Tribunal that steps 1 to 3 have been carried out.

The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 9th May 2017, it proposed to make a PFEO as follows:

“Within six weeks of the date of the communication of this correspondence to the Respondent, the Respondent must:

1. Pay to the Applicant the sum of £100.

2. Draft and provide to each homeowner and the Association a written statement of services taking cognisance of the requirements of the Code.
3. Draft and provide to each homeowner and the Association a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations, in terms of Section 4.4 of the Code.
4. Confirm in writing to the office of the Tribunal that the above steps have been carried out.”

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

The Tribunal’s decision was intimated to the parties on 21st June 2017.

The Homeowner wrote to the Tribunal on 30th June 2017 requesting that the Tribunal review its decision. The Tribunal determined not to exercise its discretion to do so and this was intimated to the parties

The Homeowner contacted the Tribunal by email on 17th July 2017 requesting permission to appeal the decision of the Tribunal to the Upper Tribunal for Scotland. The Tribunal determined not to exercise its discretion to allow permission to appeal and this was intimated to the parties.

The Factor wrote to the Tribunal on 20th July 2017, indicating that the terms of the proposed PFEO issued with the decision of the Tribunal dated 30th May 2017 had been complied with.

No representations were made by either party on the proposed terms of the PFEO.

The Tribunal confirmed its decision made on 9th May 2017 in terms of Section 19(1)(a) of the Act. The Tribunal agreed that it would be appropriate to remove the reporting requirement at paragraph 4 of the proposed PFEO as the Factor has reported to the Tribunal that steps 1 to 3 have been carried out.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

The Property Factor will:

1. Pay to the Applicant the sum of £100.
2. Draft and provide to each homeowner and the Association a written statement of services taking cognisance of the requirements of the Code.

3. Draft and provide to each homeowner and the Association a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations, in terms of Section 4.4 of the Code.

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 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.

H Forbes

Legal Member and Chair

28th September 2017

Date