

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 Reference: FTS/HPC/PF/22/0025 & FTS/HPC/PF/22/0668,

The Parties

Dr Yana Berezovskaya, 10 Warriston Road, Edinburgh, EH7 4HJ (“the Homeowner”)

James Gibb Residential Factors, 4 Atholl Place, Edinburgh, EH3 8HT (“the Property Factor”)

Land Register Title: MID151317

Subjects: The Printhouse, 10 Warriston Road, Edinburgh, EH7 4HJ (“the Property”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr D Godfrey (Ordinary Member)

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

1. In the Tribunal’s decision of 12th December 2022, it proposed to make a PFEO as follows:

“The Factor is required to do the following within 21 days of intimation to them of the PFEO:

- (i) Refund to the Homeowner the management fees charged from May 2020 to December 2022.

- (ii) Pay to the Homeowner the sum of £500 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience in having to deal with the complaints procedure and the tribunal proceedings in respect of the Property Factor's failure to comply with the Code of Conduct for Property Factors."
2. 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 decision was issued on 14th December 2022.
3. By emails dated 18th and 22nd December 2022, the Homeowner submitted an application for review.
4. By email dated 19th December 2022, the Property Factor submitted that the proposed PFEO had been complied with.
5. By decision dated 6th January 2023, the Tribunal found that the application for review was wholly without merit and refused the application.
6. The Tribunal indicated within its review decision that the management fees to be refunded included those charged in May 2020 and December 2022.
7. The Tribunal has now confirmed its decision made in terms of Section 19(1)(a) of the Act. The Tribunal agreed that it would be appropriate to make a PFEO.

Property Factor Enforcement Order

8. The First-tier Tribunal hereby makes the following PFEO:

The Factor is required to do the following within 21 days of intimation to them of the PFEO:

- (i) Refund to the Homeowner the management fees charged from May 2020 to December 2022.
- (ii) Pay to the Homeowner the sum of £500 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience in having to deal with the complaints procedure and the tribunal proceedings in respect of the Property Factor's failure to comply with the Code of Conduct for Property Factors.

Failure to comply with a PFEO may have serious consequences and may constitute an offence.

Right of Appeal

In terms of section 46 of the Tribunals (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.

Helen Forbes

Legal Member and Chairperson
16th January 2023