

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision
under

Section 23(2) of the Property Factors (Scotland) Act 2011 of Failure to Comply with Property Factor Enforcement Order.

Chamber reference: FTS/HPC/PF/21/1771

The Parties:

Miss Alison McDonald, 2/3, 95 London Avenue, Glasgow G40 3GZ (“the homeowner”)

and

Lowther Homes Limited, incorporated in Scotland under the Companies Acts (SC402836) and having their registered office at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the property factors”)

Tribunal Members – George Clark (Legal Member/Chairman) and Elizabeth Dickson (Ordinary Member)

Decision of the Tribunal

The Tribunal determined that the property factors have failed to comply with the terms of a Property Factor Enforcement Order made on 23 February 2022 and that Notice of the Failure should be served on Scottish Ministers.

Reasons for Decision

On 23 February 2022, following a Hearing on 1 February 2022 at which the Tribunal determined that the property factors had failed to comply with Section 2.5 of the Property Factors Code of Conduct, the Tribunal made a Property Factor Enforcement Order (“PFEO”) under Section 19(3) of the Property Factors (Scotland) Act 2011 (“the Act”). The PFEO was in the following terms:

“Within one month of the communication to the property factors of this Order, the property factors shall cancel their Final Invoice in the sum of £292.79 issued to the homeowner, shall issue a letter of apology to the homeowner in respect of their failure to comply with Section 2.5 of the Property Factors Code of Conduct and shall pay to the homeowner the sum of £500 by way of compensation for inconvenience and distress.”

On 22 March 2022, the property factors told the Tribunal that the PFEO had been complied with. A full letter of apology had been sent to the homeowner, the balance

had been removed from her account as required, and a payment of £500 had been processed by bank transfer.

On 30 March 2022, the homeowner confirmed that she had received the bank transfer of £500 but that she had not received the letter of apology. On 25 April 2022, she advised the Tribunal that she had still not received it, but that she did not think it needed to be taken any further.

The Tribunal contacted the property factors by email on 26 April 2022, highlighting the fact that the homeowner had not received the letter of apology and gave the property factors until 9 May 2022 to reply. The property factors did not respond to the Tribunal's email.

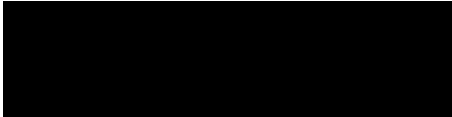
The Tribunal's view was that, as the property factors had failed to reply as required by 9 May 2022 to the email of 26 April 2022, then, notwithstanding the view of the homeowner that the matter need not be taken any further, the Tribunal had no option but to conclude that they had failed to comply with the PFE0.

The Tribunal decided that the property factors have complied with the PFE0 and that, in terms of Section 23(2) of the Act, notice of the failure must be served on the Scottish Ministers.

The Tribunal's Decision was unanimous.

Right of Appeal

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.

Signed Dated: 15 June 2022

George Clark Chairperson

