

Housing and Property Chamber First-tier Tribunal for Scotland



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

NOTICE OF VARIATION OF A PROPERTY FACTOR ENFORCEMENT ORDER:

under section 21(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act") following upon a decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application made under section 17(1) of the Act.

Chamber Ref: FTS/HPC/PF/18/0146

Re: Flat 0/2, 11 Wilson Street, Renfrew, PA4 8NP

The Parties:-

Mr Stewart Murray, 49 Craighead Road, Bishopton, PA7 5DT ("the Homeowner")

Apex Property Factor, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the Factor")

Decision

The Tribunal has decided to vary the Property Factor Enforcement Order ("PFEO") dated 20th July 2018 and now requires compliance with the Order within the timescale as stated.

Reasons for Decision

By decision dated 21st May 2018, the Tribunal determined that the Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with sections 1.C.e, 2.5, 3.3, 5.2 and 7.2 of the Property Factor Code of Conduct ("the Code"). The Tribunal determined that the Factor also failed to carry out the Property Factor's duties.

As required by the Act, the Tribunal issued a PFEO after giving parties an opportunity to make representations on the terms of a proposed PFEO. The PFEO was issued on 20th July 2018 in the following terms:

"The Factor is required to carry out the following within 30 days of intimation of the PFEO:

1. Apologise in writing to the Homeowner for the breaches of the Code and the failure to carry out the property factor's duties;
2. Prepare a draft final statement of account. This should include a breakdown for each year of the Factor's appointment showing, on an itemised basis, a clear

description of each total cost incurred and the share due by the Homeowner, amounts of credits relating to that period, and payments made during that period. In respect of electricity charges these should be calculated on the basis of the Factor's actual readings.

3. Pay the Homeowner from their own funds the sum of £100, to reflect the strain and anxiety experienced by the Homeowner over the lack of compliance with the Code."

On 27th August 2018, the Homeowner informed the Tribunal by email that the PFEO had not been complied with, and he had not heard from the Factor.

By letter dated 31st August 2018, the Factor informed the Tribunal that all the requirements of the PFEO had been complied with by including a cheque in the sum of £100 and documentation in a letter to the Homeowner dated 23rd August 2018, and that, given that the Homeowner had not received said letter, a further copy and a further cheque had been sent to him.

By email dated 4th September 2018, the Homeowner confirmed that he had received a letter sent by the Factor on 3rd September 2018, including the cheque in the sum of £100, and a brief apology. The Homeowner said that, in respect of point 2 of the PFEO, he had received copies of invoices, along with a copy of a statement dated 13 June 2018, which documents had already been issued prior to the Tribunal hearing. In the circumstances, the Homeowner did not consider that point 2 of the PFEO had been complied with.

The Tribunal considered the representations made by the Homeowner and decided that, although the Factor had complied with the PFEO in respect of points 1 and 3, he had not complied with point 2 of the PFEO. The Factor has failed to provide the necessary documentation required by the Tribunal in terms of point 2 of the PFEO.

The Tribunal considered what steps should be taken in this case. Section 21(1)(a) of the Act provides that the Tribunal may, at any time, vary the order in such manner as it considers reasonable. Accordingly, the Tribunal decided to vary the PFEO to allow further time for the Factor to comply with the PFEO by preparing a draft final statement of account. This should include a breakdown for each year of the Factor's appointment showing, on an itemised basis, a clear description of each total cost incurred and the share due by the Homeowner, amounts of credits relating to that period, and payments made during that period. In respect of electricity charges these should be calculated on the basis of the Factor's actual readings.

Decision

In all the circumstances as hereinbefore narrated, the Tribunal hereby varies the PFEO by extending the timescale for compliance by 14 days.

Accordingly, the Tribunal varies the PFEO as follows:

The Factor is required to ensure that the following has been complied with within 14 days of intimation of the Variation of PFEO:

1. Apologise in writing to the Homeowner for the breaches of the Code and the failure to carry out the property factor's duties;
2. Prepare a draft final statement of account. This should include a breakdown for each year of the Factor's appointment showing, on an itemised basis, a clear description of each total cost incurred and the share due by the Homeowner, amounts of credits relating to that period, and payments made during that period. In respect of electricity charges these should be calculated on the basis of the Factor's actual readings.
3. Pay the Homeowner from their own funds the sum of £100, to reflect the strain and anxiety experienced by the Homeowner over the lack of compliance with 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.

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.

Legal Member and Chairperson

25th September 2018