

# Housing and Property Chamber First-tier Tribunal for Scotland



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

### DECISION in terms of Section 23 (1) of the Property Factors (Scotland) Act 2011

Chamber Ref: **FTS/HPC/PF/17/0023**

**1 Millcroft Road, Cumbernauld, Glasgow, G67 2QE**  
("the Property")

The Parties:-

**IAN McNAUGHT, 1 Millcroft Road, Cumbernauld, Glasgow, G67 2QE**  
("the Applicant")

**APEX PROPERTY FACTOR LIMITED, 46 Eastside, Kirkintilloch, East  
Dumbartonshire, G66 1QH**  
("the Respondents")

Tribunal Members:-

**Graham Harding (Legal Member)**  
**Carolyn Hirst (Ordinary Member)**  
("the tribunal")

### DECISION

The tribunal hereby determines that the Property Factors Enforcement Order ("PFE0") issued by the tribunal on 15 January 2018 has not been complied with. The decision was unanimous.

### REASONS FOR DECISION

1. The tribunal made a Property Factors Enforcement Order on 15 January 2018 in the following terms:-
  - (i) The Respondents must issue a credit note to the applicant in the sum of £1,345.94 within twenty eight days of the communication to the Respondents of the Property Factors Enforcement Order.
  - (ii) The Respondents must not issue any further invoices after 29 September 2017 or if they have issued any further invoices, these must be cancelled and a credit note issued within twenty eight days of the communication to the Respondents of the Property Factors Enforcement Order.

- (iii) The Respondents must pay within twenty eight days of the communication to the Respondents of the Property Factors Enforcement Order the sum of £300 by way of compensation.
  - (iv) The Respondents must provide documentary evidence of compliance with the above orders to the tribunal within seven days of having done so.
2. On 15 February 2018 the Respondents sought permission from the tribunal to appeal its decision to the Upper Tribunal. Having considered the Respondents' reasons for seeking permission to appeal, the tribunal unanimously decided to refuse permission to appeal by decision dated 23 February 2018. Thereafter the Respondents sought leave to appeal from the Upper Tribunal. By its decision of 19 March 2018, the Upper Tribunal refused the Respondents' leave to appeal.
  3. By representations dated 28 February 2018 the Applicant advised the tribunal that he had not received payment of the compensation ordered by the tribunal and that the Respondents continued to issue invoices. It also appeared to the tribunal that the Respondents had not issued a credit note to the Applicant. The tribunal did not receive any further representation from the Respondents. In particular the Respondent failed to provide documentary evidence of compliance with the Orders contained in the PFEO. The time limit for complying with the PFEO having passed and the Respondents having failed to comply with its terms, the tribunal unanimously determined that the Respondents had failed to comply with the PFEO.

### **EFFECT OF DECISION**

Notice of the Failure to Comply will be sent to the Scottish Ministers. The Respondents are reminded that a person who without reasonable excuse fails to comply with a Property Factors Enforcement Order commits a criminal offence.

### **RIGHT OF APPEAL**

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.

G Harding

Graham Harding, Legal Member

3 April 2018

Date