

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) in terms of section 23 (1) of the Property Factors (Scotland) Act 2011 (“the Act”) issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2016 (“the regulations”)

Chamber Ref: FTS/HPC/PF/18/1292

Property: 3A Jerviston Court, Motherwell, ML1 4BS (“the property”)

The Parties:-

William Tweedie, 2, Kilnnell Quadrant, Motherwell, ML1 3JN (“the homeowner”)

APEX Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH (“the property factor”)

Tribunal Members: -

Simone Sweeney (Legal Member), John Blackwood (Ordinary Member)

Decision of the Tribunal Chamber

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines that the property factor has not complied with the terms of the Property Factor Enforcement Order (“PFEO”) of 19th December 2018.
2. The decision of the Tribunal is unanimous.

Background

3. Reference is made to the decision of the Tribunal of 19th December 2018 in which the Tribunal determined that the property factor had not complied with

the terms of the Proposed Property Factor Enforcement Order of 26th November 2018 and that a final PFEO should be issued.

4. As required by section 19(3) of the Act, the Tribunal issued a PFEO accompanied with a written decision.
5. The PFEO required that:

“Within 28 days of the communication of the PFEO to the property factor, the property factor must:

- (i) Pay compensation to the homeowner in the sum of £400 (Four hundred pounds) in respect of the time, distress and inconvenience occasioned by the factor’s failure to comply with their duties under the Code.*
- (ii) Reimburse to the homeowner the sum of £606.12 (Six hundred and six pounds and twelve pence) being the balance of his factoring account as at 1st October 2018.”*

6. The PFEO and written decision of 19th December 2018 were intimated to both parties. The documents were issued to the parties on 9th January 2019
7. The last date for compliance with the PFEO was 6th February 2019.
8. By letter of 12th February 2019 the parties were asked to confirm whether the actions required by the PFEO had been completed. Parties were requested to respond no later than 26th February 2019.
9. A response was received by the homeowner on 19th February 2019. The homeowner did not agree that the actions required by the PFEO had been completed. Within the response, the homeowner stated, “I have heard nothing from Apex Property Factors except for more invoices. They have told the other owners in the block they are continuing as factors.”
10. There was no response received from the property factor.

Reasons for Decision

11. The date for compliance having passed and there being no evidence to show that the actions required by the PFEO have been completed, the Tribunal determines that the terms of the PFEO have not been met.

Appeals

12. 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 within 30 days of the date the decision was sent to them.

S Sweeney

Simone Sweeney, Legal member, 7th March 2019