

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Compliance Decision: Property Factors (Scotland) Act 2011, Sections 20 and 23

Case Reference Number: FTS/HPC/PF/17/0381

The Property:

26 Jennings Gardens, Kilbirnie, North Ayrshire, KA25 7BF

The Parties:-

Marc Miller, 26 Jennings Gardens, Kilbirnie, North Ayrshire, KA25 7BF

("the Homeowner")

and

Cunninghame Housing Association Ltd

("the Factors")

Tribunal Members:

Adrian Stalker (Chairman)

Decision

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") determined that the Factors have failed to comply with the terms of the Property Factor Enforcement Order ("PFEО") issued on 8 June 2018, and that the Tribunal will serve notice of the failure on the Scottish Ministers, in terms of section 23(2) of the Property Factor (Scotland) Act 2011.

Reasons for Decision

1. By a decision dated 7 April 2018, the Tribunal determined that the Factors had breached their duties in terms of section 17(1)(b) of the Property Factor (Scotland) Act 2011 ("the 2011 Act") in that they had failed to comply with the Code of Conduct for Property Factors as required by section 14(5) of the 2011 Act.
2. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEО. It did so on the same date as the said decision and invited representations thereon within 14 days of the Notice being received by the parties. It then issued a final PFEО on 11 May 2018.
3. The PFEО stated:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required, within 8 weeks, to take the following steps and produce confirmation that they have done so for consideration by, and to the satisfaction of, the Tribunal:-

1. To issue to the Homeowner an accurate and comprehensive Statement of Services, in writing, which complies with section 1.1b of the Code of Conduct for Property Factors, making reference where necessary to the relevant provisions within the Deed of Declaration of Conditions ("the Deed of Conditions"), registered on 30 September 2009, by the Factors, as owners of the development of which the property forms part, which Statement of Services describes the Property Factor's responsibilities and duties, and accurately sets out, in particular, any arrangements for funds for specific projects or cyclical maintenance in relation to the prospective costs for renewal or replacement of the CCTV system and Play Area, or any other part of the "Development Common Parts", confirming the amount, payment and repayment of charges (at change of ownership or termination of service), all in accordance with the detailed terms of section 1 of the Code.
 2. To arrange for an interest-bearing account or accounting structure to be put in place, for each group of homeowners paying charges in respect of the prospective costs for renewal or replacement of the CCTV system and Play Area, all in accordance with paragraph 3.6b of the Code.
 3. To make arrangements to ensure that the next factoring invoice issued to the Homeowner, and any further invoices in the future, set out the correct proportion, being one fiftieth, expressed as a percentage or fraction, of the management fees and charges for common works and services for which the Homeowner is responsible.
 4. To provide to the Homeowner a detailed financial breakdown of the charges made in the Factors' latest invoice rendered to him, and a description of the activities and works carried out which are charged for, all in accordance with paragraph 3.3 of the Code.
 5. To make a payment of £250 to the Homeowner.
4. Since the Proposed PFEO dated 8 April 2018 was issued to the parties, the Tribunal has received no contact from the Factors. It has received emails from the Homeowner. His email of 8 August stated:
- "a. I have not been issued with an accurate and comprehensive Statement of Services, in writing, which complies with section 1.1b of the Code of Conduct for Property Factors as required by Paragraph 1 of the PFEO;
 - b. the most recent invoice issued by Cunninghame Housing Association (dated the 11th of July 2018) falls short of the requirement of Paragraph 3 of the PFEO insofar as it does not set out the correct proportion of the management fees and charges for common works and services for which I am obliged to meet;

- c. I have not been issued with any material that meets the requirements of Paragraph 4 of the PFEO, and
 - d. I have received payment of £250 as required by Paragraph 5 of the PFEO.”
5. Thus, the Homeowner considers that the Factors have complied with paragraph 5 of the PFEO, but have not complied with paragraphs 1, 3 and 4. As regards paragraph 2, the Tribunal considers that compliance with this requirement is not within the Homeowner’s knowledge.
 6. In terms of Section 23 of the 2011 Act it is for the Tribunal to decide whether a Property Factor has failed to comply with a PFEO. On the basis of the information submitted by the Homeowner and in the absence of any further response from the Factors, the Tribunal is satisfied, in the foregoing circumstances, that the Factors have failed to comply with paragraphs 1, 3 and 4 of the PFEO. Given that failure, and in the absence of any assurance from the Factors to the contrary, the Tribunal also finds that the Factors have not complied with paragraph 2 of the PFEO.
 7. Accordingly, the Tribunal is required by section 23(2) of the 2011 to serve notice of the failure to comply, on the Scottish Ministers.

Appeals

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.

Adrian Stalker

Legal Member and Chair

14 September 2018