

Housing and Property Chamber First-tier Tribunal for Scotland



Decision: Property Factors (Scotland) Act 2011 as amended by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Committees) Regulations 2016 (the 2011 Act): Section 19(1) (a)

Chamber Ref:HOHP/PF/16/0151

**42 Hollybank Street, Glasgow, G21 2EZ
("The House")**

The Parties:-

**Mrs Bethia Cormack, residing at the House
("homeowner")
(represented by Mrs Anne-Marie Cormack, residing at the House**

**Copperworks Housing Co-operative Ltd,
43 Tharsis Street, Roystonhill, Glasgow,
G21 2JF
("property factor")**

Members of the First-tier Tribunal for Scotland (Housing and Property Chamber): Martin J. McAllister, legal member and Robert Buchan, surveyor, ordinary member.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') issued a Decision on 24th February 2017 together with a proposed property factor enforcement order (PFEO). The proposed PFEO was in the following terms:

The property factor is to credit the sum of £400 to the factoring account which the homeowner has with it in relation to the House. The property factor is to make such a credit within fourteen days of service upon it of the property factor enforcement order.

Representations.

The property factor's solicitors wrote on 8th March 2017 indicating that their clients had credited the sum of £400 to the Homeowner's factoring account and they produced a copy of the account which showed that the credit had been made on 6th March 2017. They also made comment on the Note which had been part of the tribunal's Decision and which related to the timing of the Notice of Potential Liability. They enclosed a

copy of the Homeowner's title sheet which showed that the Notice was dated 15th June 2016 and had been registered in the Land Register on 20th June 2016. The tribunal's Decision made reference to the Notice being dated after the application to the homeowner housing panel.

The Homeowner wrote on 12th March and stated that the Notice of Potential Liability (the Notice) had been "added to the title" on 15th June 2016 but that she had only become aware of it on 6th December 2016 after her submission to the homeowner housing panel. The homeowner stated in her letter that she considered has direct bearing on her submission to the tribunal and she sought clarity with regard to the tribunal's finding that the property factor had not breached sections 7.1 and 7.2 of the Code of Conduct for Property Factors (the Code) because the property factor had claimed in submissions that their complaints procedure had not been exhausted but had issued the Notice "knowing that there was a long terms dispute which would result in a submission by me to the HOHP."

The tribunal considered the representations. It had no difficulty in acknowledging that it had erred in stating that the Notice of Potential Liability had postdated the Homeowner's application to the homeowner housing panel. The tribunal also accepted that the homeowner's factoring account had been credited with the sum of £400.

The tribunal considered the representations of the homeowner that in June 2016 the property factor would have known that the matter of dispute would have ended in an application to the homeowner housing panel. It considered that there is no evidence that the property factor would have known that. It considered that there was no way that the property factor could have known that the homeowner would apply to the homeowner housing panel. The application was not lodged until October 2016. The tribunal did consider it unfortunate that the property factor had not intimated to the homeowner that it was lodging the Notice. The tribunal did not consider that the fact that the property factor had proceeded with the Notice was, in itself, demonstrative that it was not following its complaints process. The tribunal accepted, in the particular circumstances of the case, that the property factor had not failed to follow its complaints process and it restated its position that it had found no evidence of breach of sections 7.1 and 7.2 of the Code.

The tribunal considered whether or not it required to make a property factor enforcement order. The property factor had credited the homeowner's factoring account with £400 and consequently the tribunal determined that it was not making a property factor enforcement order.

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.

Martin J. McAllister, solicitor,
legal member of the tribunal.

28th March 2017

