

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") in terms of Section 19 of the Property Factors (Scotland) Act 2011

Chamber reference: FTS/HPC/PF/17/0391

The Property: 3 Dempster Street, Greenock PA15 4QE ("the property")

The Parties:

John Miller, residing at Flat 2E Dempster Court, 3 Dempster Street, Greenock PA15 4QE ("the homeowner")

Speirs Gumley Property Management, registered in Scotland under the Companies Acts (SCO78921) and having their registered office at 194 Bath Street, Glasgow G2 4LE ("the property factors")

Tribunal Members – George Clark (Legal Member) and Susan Napier (Ordinary Member)

Decision

Having considered representations made by the parties following the Tribunal's Decision of 20 June 2018, the Tribunal determined that it would not make a Property Factor Enforcement Order.

Statement of reasons

1. The Tribunal issued a Decision dated 20 June 2018 that the property factors had failed to comply with their duties under Section 14 of the Property Factors

(Scotland) Act 2011 and that, accordingly, the Tribunal proposed making a Property Factor Enforcement Order.

2. The homeowner, by e-mail dated 10 July 2018, made lengthy comments on the Decision, including expressing disappointment at the level of compensation that the Tribunal proposed to order. The Tribunal determined that this was a request for a review of its Decision, in terms of Rule 38 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
3. The Tribunal considered carefully the comments made by the homeowner in support of the request for a review of its Decision, but did not consider that they contained any information that had not been taken into account by the Tribunal in arriving at its original Decision or any further information that would have caused the Tribunal to review that Decision and the request for review was refused on 15 August 2018.
4. The period for appeal against the Tribunal's Decision to refuse the request for a review has expired.
5. The Decision issued on 20 June 2018 advised the parties that the Tribunal proposed making a Property Factor Enforcement Order requiring the property factors to pay to the homeowner the sum of £200 by way of compensation. The parties were given an opportunity, in terms of Section 19(2) of the Property factors (Scotland) Act 2011, to make representations to the Tribunal prior to an Order being made. The homeowner's representations comprised a request for review, which was refused by the Tribunal. The property factors advised the Tribunal that they had sent a cheque for £200 to the homeowner and, in an e-mail dated 28 August 2018, the homeowner confirmed to the Tribunal that he had received the cheque.
6. The Tribunal determined that, as the payment of the compensation figure which would have been required by an Order had already been made by the property factors to the homeowner and the Order would not have required any further action on the part of the property factors, it was unnecessary for the Tribunal to make a Property Factor Enforcement Order.
7. The Decision of the Tribunal was unanimous.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

George Clark
Legal Member/Convener
Date: 22 September 2018