

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) to issue a certificate of compliance 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/19/0987

Property: Flat 28, The Fairways, 823 Clarkston Road, Glasgow, G44 3UZ (“the property”)

The Parties:-

Mrs Kathleen Stalker, Flat 28, The Fairways, 823 Clarkston Road, Glasgow, G44 3UZ (“the homeowner”) represented by Moira Stalker

McCarthy and Stone Management Services, 4th Floor, 100 Holdenhurst Road, Bournemouth, BH8 8AQ (“the property factor”)

The Tribunal members:

Simone Sweeney (legal chairing member) and Elizabeth Dickson (ordinary housing member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the property factor has complied with the terms of the Property Factor Enforcement Order, as amended, of 18th September 2019.
2. The Tribunal issues a certificate of compliance in this matter.
3. The decision of the Tribunal is unanimous.

Background

4. Reference is made to earlier procedure and, in particular, the decision of the Tribunal of 18th September 2019 in which the Tribunal determined that the property factor had failed to comply with the full terms of the proposed Property Factor Enforcement Order (“PFEO”) of 13th August 2019. Accordingly the Tribunal determined it necessary to issue a final PFEO, as varied, dated 18th September 2019 all in terms of section 21 of the Act.

5. The varied PFEO removed part (iii) from the proposed PFEO but required the property factor to meet the remaining parts of the proposed PFEO, specifically:

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

- (i) Issue to the homeowner a written apology for its failures and for the actions and inactions of Carol Elliott which gave rise to the original complaint and for which Carol Elliott has already provided an oral apology.*
- (ii) Facilitate and meet the cost of mediation for parties to attempt to improve relations going forward.*
- (iii) Pay to the homeowner compensation in the sum of £150.”*

6. The varied PFEO was issued to parties on or around 19th September 2019 together with a form requesting parties’ respective submissions on whether or not the property factor had complied with the varied PFEO of 18th September 2019.

7. By way of response, the homeowner’s representative, Ms Stalker, returned the form completed on 2nd October 2019. Within the form, Ms Stalker confirmed that the actions required of the property factor in the varied PFEO had been completed.

8. The property factor completed and submitted their form dated 5th November 2019. The property factor confirmed that the actions required of the property factor in the varied PFEO had been completed, also.

9. The property factor’s legal representative, Kate Skeens, submitted the form under cover of email dated 5th November 2019. Also attached to the email was copy

letter from the property factor to the homeowner dated, 4th October 2019. The letter read,

“We write further to the decision from the First-tier Tribunal for Scotland...In accordance with the Order, we would like to apologise once again for Alison Downie’s failure to deal with your complaint within our complaints timescales, and for the actions and inactions of Carol Elliott which gave rise to the original complaint and for which Carol Elliott apologised to you in person earlier this year. As you will be aware, Carol Elliott is leaving the business and we hope that will now be the end of the matter for all concerned. We understand that you are not well at the moment and in no condition to participate in mediation, however, we will facilitate and meet the cost of mediation if you and Mrs Stewart would like to take part in this process with the McCarthy & Stone staff for your area...when you feel better...Lastly we have transferred £150 compensation by BACS payment to the account we have on file for you. As directed by the Tribunal, this came from our own funds and at no cost to the Homeowners within the development.”

Reasons for decision

10. The Tribunal is satisfied that the letter from the property factor of 4th October 2019 provides a written apology to the homeowner for the failures, actions and inactions of Carol Elliott which gave rise to the original complaint of the homeowner and for which Carol Elliott has already provided an oral apology, all in terms of part (i) of the varied PFEO.

11. The Tribunal is satisfied that within the letter from the property factor of 4th October 2019, the property factor offers to facilitate and meet the cost of mediation for parties to attempt to improve relations going forward, all in terms of part (ii) of the varied PFEO.

12. The Tribunal is satisfied that the letter from the property factor of 4th October 2019 indicates that the property factor has made payment of £150 compensation to the homeowner by BACS transfer.

13. The Tribunal is satisfied that the homeowner accepts that the property factor has met the requirements of the varied PFEO in light of the content of the form dated 2nd November 2019 completed by the homeowner's representative.

14. The Tribunal determines that the property factor has complied with the order. The Tribunal determines that a certificate of compliance is appropriate.

Appeals

15. 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.

Simone Sweeney, Legal chairing member, 11th November 2019