

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order ("PFEО"): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/18/0822

Flat 2/1, 27 Napiershall Street, Glasgow, G20 6EZ ("The Property")

The Parties:-

Shawbrook Bank Limited, Lutea House, Warely Hill Business Park, The Drive, Great Warely, Brentwood, Essex, CM13 3BE ("the Homeowner")

First Port Property Services, 3rd Floor, Troon House, 199 St Vincent Street, Glasgow, G2 5QD ("the Property Factor")

Decision

The Tribunal has decided that it should make a PFEО in the terms originally proposed by it. The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal's decision of 26th June 2018, it proposed to make a PFEО as follows:

"The Factor is required, within four weeks of the date that the PFEО is issued, to repay to the Homeowner all sums referred to in the Notices of Potential Liability for Costs that relate to anything other than maintenance or work."

The Tribunal's decision was intimated to the parties on 20th July 2018. The Tribunal indicated that, prior to making a PFEО, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

By email dated 2nd August 2018, the representative for the Homeowner requested that the Tribunal review clause 27 of its decision. The representative for the Homeowner also indicated that the representative for the Factor had contacted him with a breakdown of the sums to be paid to the Homeowner, following the issue of the proposed PFEО, and that he disagreed with the sum proposed to be repaid by the Factor in respect of account number 15960002721Y.

By decision dated 10th August 2018, the Tribunal intimated that it considered the application for review in respect of the request to review clause 27 of its decision to

be wholly without merit and the application was refused. The Tribunal did not consider that disagreement over the sums to be repaid was a matter for it to consider at that time.

By email dated 13th August 2018, the representative for the Factor informed the Tribunal that a refund of the non-maintenance costs in the sum of £1721.87 had been made to the Homeowner on 8th August 2018.

By email dated 11th September 2018, the representative for the Homeowner confirmed that payment in the sum of £1721.87 had been made by the Factor; however, he continued to disagree with the Factor's calculation in respect of account number 15960002721Y.

By letter dated 1st October 2018, the Tribunal requested further information from the representative for the Homeowner as to his calculation of the sums he believed to be due with reference to any document supporting his position. No response was received by the Tribunal.

The Tribunal confirmed its decision made on 26th June 2018 in terms of Section 19(1)(a) of the Act. The Tribunal agreed that it would be appropriate to make a PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

The Factor is required, within four weeks of the date that the PFEO is issued, to repay to the Homeowner all sums referred to in the Notices of Potential Liability for Costs that relate to anything other than maintenance or work.

Failure to comply with a PFEO may have serious consequences and may constitute an offence.

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.

Legal Member and Chairperson

12th October 2018