

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber Ref: HOHP/PF/16/0130

The Parties:-

Mrs Gillian Munro residing at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA ("the Homeowner")

And

Apex Property Factor Limited, having a place of business at 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the Property Factor")

The Property:-

Subjects at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA

Tribunal Members

Mr James Bauld (Legal Member)

Mr Mike Links, Surveyor (Ordinary Member)

Decision

The Tribunal determined that the Property Factor Enforcement Order which was dated 21st June 2017 should be varied.

Reasons for Decision

1. A hearing in this case took place on 23rd March 2017. Subsequent to that hearing the Tribunal issued a Decision proposing a Property Factor Enforcement Order. Representations were made by the Property Factor in respect of the proposed Property Factor Enforcement Order. By a further Decision dated 21st June 2017 the Tribunal explained their reasons for rejecting the Property Factor's submissions and determined to issue a Property Factor Enforcement Order.
2. The Property Factor Enforcement Order which was issued required the Property Factor to take certain steps within six weeks of the date of the Order.
3. In general, the Property Factor Enforcement Order required the Property Factor to recalculate invoices which had already been paid by the Homeowner and to make a payment to the Homeowner in respect of overpayments. The Property Factor was also required to return monies which had been paid in advance by the Homeowner in respect of works which had been proposed but had not been undertaken.

4. The period of time for compliance with the Property Factor Enforcement Order has now expired.
5. The Homeowner has sent a variety of emails to the Tribunal office indicating that she has received no contact from the Property Factor with regard to their compliance with the Property Factor Enforcement Order.
6. The Property Factor has also failed to respond to correspondence from the Tribunal office asking them to confirm whether they have complied with the Order.
7. Accordingly, it is clear that the Property Factor has failed to comply with the Order and has simply ignored the terms of the Order.
8. The Tribunal have accordingly considered matters and have determined that the appropriate way to proceed in this matter is to use the powers contained in section 21 of the Property Factors (Scotland) Act 2011. That provision allows the Tribunal which has made a Property Factor Enforcement Order to vary the Order in such manner as they consider reasonable. Accordingly, the Tribunal proposes to vary the Order which has already been made and to substitute in that Order a requirement that the Property Factor makes a specific payment to the Homeowner.
9. The Homeowner has provided a calculation of the sums which she believes should be refunded to her. That calculation was provided by the Homeowner in terms of correspondence sent by her to the Tribunal offices and which has been copied to the Property Factor. The Homeowner calculates that the total sums due to her in respect of monies paid in advance for works not undertaken and monies wrongly paid to her based on the wrong allocation of a share of her liability amounts to £1741.19. In the absence of any correspondence from the Property Factor or any comment from the Property Factor disputing that sum the Tribunal are happy to accept that sum is an accurate reflection of the monies which should be paid by the Property Factor to the Homeowner in respect of the matters contained in the original Property Factor Enforcement Order which will now be varied.
10. Additionally, the Tribunal has also decided that an additional payment should be made by the Property Factor to the Homeowner to compensate the Homeowner for her time and inconvenience in dealing with these matters. The Tribunal take the view that the appropriate amount in respect of this time and inconvenience should be fairly assessed at £500.00.
11. The Tribunal notes that in their original Decision following upon the hearing they indicated their disappointment that the Property Factor had decided not to attend the hearing nor to send any representation to the hearing. They indicated that the Property Factor's decision to deliver correspondence at 4.50 pm to the office of the Tribunal the day before the hearing was disrespectful in the extreme. The Tribunal noted that after receiving this Decision the Property Factor communicated with the Tribunal's office indicating that it was not their intention to be disrespectful to the Tribunal and that they were disappointed with the Tribunal's comments. The Tribunal are now further disappointed to note that the Property Factor has utterly ignored an Order of the Tribunal and had made no attempts to comply with the Order.
12. The Tribunal accordingly indicates that should the Property Factor not comply with the varied Property Factor Enforcement Order then it will immediately notify the Scottish Ministers of the Property Factor's failure to comply with the Property Factor Enforcement Order. The Tribunal would draw the Property Factor's attention to the provisions of section 8 of the Property Factors (Scotland) Act 2011 and the possibility that such notification may cause the Scottish Ministers to remove the Property Factor from the register of Property Factors.
13. The Tribunal accordingly determines that the Property Factor Enforcement Order which had previously been issued should be varied and a copy of the Property Factor Enforcement Order as varied is attached as separate document to this Decision. The decision of this Tribunal is unanimous.

Appeal

14. 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.

J Bauld

James Bauld, Chairperson

28 November 2017
Date