

Housing and Property Chamber

First-tier Tribunal for Scotland



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

NOTICE OF VARIATION OF A PROPERTY FACTOR ENFORCEMENT ORDER:

under section 21(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act") following upon a decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application made under section 17(1) of the Act.

Chamber Ref: FTS/HPC/PF/17/0317

Re: 14 Forbes Park, Echt, Westhill, Aberdeenshire, AB82 6HN

The Parties:-

Mrs Paula Houston, 14 Forbes Park, Echt, Westhill, Aberdeenshire, AB82 6HN ("the Homeowner")

The Property Management Company, Little Square, Old Meldrum, Aberdeenshire, AB51 0AY ("the Factor") (represented by Mr John Taylor, Solicitor)

Tribunal Members

Helen Forbes (Legal Member)

Mike Scott (Ordinary Member)

Decision

The Tribunal has decided to vary the Property Factor Enforcement Order ("PFEO") dated 30th January 2018 and now requires compliance with the Order within the timescale as stated.

Reasons for Decision

By decision dated 21st November 2017, the Tribunal determined that the Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Sections 1.1bDk and 7.1 of the Property Factor Code of Conduct ("the Code").

As required by the Act, the Tribunal issued a PFEO after giving parties an opportunity to make representations on the terms of a proposed PFEO. The Tribunal issued the PFEO on 5th February 2018.

On 13th March 2018, the Factor informed the Tribunal that the PFEO had been complied with.

On 21st March 2018, the Homeowner informed the Tribunal that, in her opinion, the PFEO had not been complied with for the following reasons:

1. The Factor explains that the Ombudsman has now withdrawn from the process of offering a complaints resolution process and that, in its place, the Factor has

offered residents the alternative, before First-tier application, to refer a complaint to a RICS approved Third Party Dispute Resolution Scheme without giving clear direction on how to access this scheme or whether it is a free service (lack of clarity);

2. The procedure does not give specific reasonable timescales (4 weeks is specified in the written statement of services only) to guide a resident to assess when it would be considered reasonable to no longer wait for the three stage internal procedure to be exhausted before applying to First-tier;
3. Nor does the procedure set out how complaints against contractors will be handled as required by section 7.1 of the Code of Conduct for Scottish Property Factors.

The Tribunal considered the representations made by the Homeowner and decided that the Homeowner's second and third points had merit and that the Factor had not complied with the PFEO as the Factor has failed to include timescales in steps 2 and 3 of the revised complaints procedure, to link to those in the Written Statement of Services, as required by section 7.1 of the Code. In addition, section 7.1 of the Code requires that the written complaints resolution procedure must include details of how the Factor will handle complaints against contractors.

The Tribunal considered what steps should be taken in this case. Section 21(1)(a) of the Act provides that the Tribunal may, at any time, vary the order in such manner as it considers reasonable. Accordingly, the Tribunal decided to vary the PFEO to allow further time for the Factor to comply with the Code.

Decision

In all the circumstances as hereinbefore narrated, the Tribunal hereby varies the PFEO by extending the timescale for compliance by three weeks.

Accordingly, the Tribunal varies the PFEO as follows:

Within three weeks of the date of the communication of this variation of the Property Factor Enforcement Order to the Factor, the Factor must:

Draft and provide to each homeowner within the development and the First-tier Tribunal a written statement of services taking cognisance of the requirements of the Code.

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

6th April 2018