

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision in terms of Section 23(1) of the Property Factors (Scotland) Act 2011

**Chamber Ref : FTS/HPC/PF/17/0293, FTS/HPC/PF/17/0294,
FTS/HPC/PF/17/0295, FTS/HPC/PF/17/0289, FTS/HPC/PF/17/0292,
FTS/HPC/PF/17/0290 and FTS/HPC/PF/17/0291**

**Flat 2/1, 1276 Argyle Street, Glasgow, G3 8AA
Flat 2/2, 1276 Argyle Street, Glasgow, G3 8AA
Flat 3/3, 7 Radnor Street, Glasgow G3 7UA
9-11 Radnor Street, Glasgow, G3 7UA
13 Radnor Street, Glasgow, G3 7UA
3-5 Radnor Street, Glasgow G3 7UA
Flat 1/1, 1276 Argyle Street, Glasgow G3 8AA
(known collectively as “the Property”)**

The Parties:-

**Mr. Russell Hyslop, residing at 20 Peters Gate, Bearsden, Glasgow, G61 3RY
Mr. Colin Montgomery, residing at 71 Rodger Avenue, Newton Mearns,
Glasgow, G77 6JS, represented by Russell Hyslop
Dr Jeremy Roberts, Dr Hilary Melrose, Dr Gillian Eardley, Dr Anne Reid, Dr
Patrick MacLaren, Partners of Radnor Street Surgery, 3 Radnor Street,
Glasgow, G3 7UB, represented by Russell Hyslop
Mrs. Patricia Sampaio, residing at 24 St Anne’s Drive, Giffnock, Glasgow, G46
6JP, represented by Russell Hyslop
(known collectively as “the Homeowner and Applicant”)**

**Apex Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire,
G66 1QH
 (“the Factor and Respondent”)**

Tribunal Members:-

**Patricia Anne Pryce - Chairing and Legal Member
Ann MacDonald - Ordinary Member (Housing)**

This document should be read in conjunction with the First-tier Tribunal’s previous Decisions in this matter but in particular with those Decisions of 20 August 2018 and 2 January 2019.

Decision

The Tribunal determines that the PFEO issued in this matter has not been complied with.

The decision of the Tribunal is unanimous.

Reasons for Decision

The Tribunal issued a proposed PFEO on 20 August 2018. Both parties sought to review the Tribunal's decision. The request for review by the Respondent was refused. The request for review for the Applicants was partially granted. A hearing on the review was held and thereafter a PFEO was issued on 2 January 2019.

The Tribunal gave consideration to the Applicants' email on 21 February 2019 advising that the PFEO had not been complied with and that the Respondent had not made contact with them. The Applicants had not received any compensation from the Respondent.

The Respondent has not contacted the Tribunal in respect of the PFEO. The Respondent has not replied to the Tribunal's letter requesting representations about compliance with the PFEO.

There is no evidence of any attempt at compliance with the PFEO by the Respondent. The Tribunal accepts the position as stated by the Applicants.

The Tribunal accordingly finds that the PFEO has not been complied with.

Effect of Decision

Notice of the failure to comply with the PFEO will be sent to Scottish Ministers in terms of Section 23 of the 2011 Act.

The Tribunal had noted in its decision on 20 August 2018 the following: *"The tribunal was appalled to note that the Respondent accepted that the invoices, which were only issued 10 months after the termination of the Respondent's appointment as factor, were wholly erroneous in their terms. Despite this, the Respondent has founded on these wholly misleading documents when raising debt recovery actions at the Sheriff Court. The Respondent failed to correspond with the Applicants when they, quite correctly, raised questions about the invoices. In response, the Respondent resorted to using an NOPL without warning and to excessive phone calls to brow beat owners to pay up. In short, the tribunal is extremely concerned about the conduct of the Respondent in these cases."*

No doubt Scottish Ministers will give careful consideration to the conduct of the Respondent in these cases when considering the Respondent's ongoing registration as a property factor.

Appeals

A homeowner or property factor 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 Chair

5 March 2019 _____ Date