

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Compliance Decision: Property Factors (Scotland) Act 2011, Sections 20 and 23

Chamber Ref: FTS/HPC/PF/18/0157

**Shop, 140 Gorgie Road, Edinburgh, EH11 2NS
(Title Number MID61796)
("The Property")**

The Parties:-

**Nadia Cusmano, 250 High Street, Prestonpans, EH32 9BD
("the Homeowner")**

**James Dromey, 250 High Street, Prestonpans, EH32 9BD
("the Homeowner's representative")**

**James Gibb, 65 Greendyke Street, Glasgow, G1 5PX and 4 Atholl Place,
Edinburgh, EH3 8HT
("the Property Factor")**

Tribunal Members:

**Susanne L M Tanner QC (Legal Member)
Andrew Taylor (Ordinary Member)**

Decision

The First-tier Tribunal (Housing and Property Chamber) ("the tribunal") unanimously determined that the Property Factor has complied in full with the terms of the Property Factor Enforcement Order ("PFEFO") dated 10 February 2019 and therefore no further action on the part of the Property Factor is required.

Statement of reasons

1. By decision dated 10 February 2019, the Tribunal made a Property Factor Enforcement Order of the same date. The Decision and PFEO were intimated to parties.
2. The PFEO so issued required the Property Factor to carry out the following within 30 days of the Notice:
 - i. Pay to the Homeowner £150.00, for the Homeowner's distress and inconvenience; and provide documentary evidence of said payment to the tribunal.
3. On 19 March 2019 the Homeowner's Representative confirmed that a cheque had been issued to the Homeowner from the Property Factor. The Homeowner's Representative raised other matters in his email which were not relevant to the order in the PFEO. The tribunal's administration sent a letter to the Homeowner's Representative stating that the only matter on which views were sought in relation to compliance was the receipt of payment of the specified sum of £150.00 and that in the absence of any other written submissions being received the tribunal would proceed to consider the question of compliance or otherwise on the basis of the information available from both parties.
4. On 26 March 2019 the Property Factor submitted documentary evidence to confirm that the payment of £150.00 had been made to the Homeowner by cheque issued to her home address, as requested, namely: covering letter to Homeowner dated 4 February 2019 accompanying cheque number 022035; internal email dated 1 February instructing issue of the cheque to the Homeowner at her nominated postal address; redacted cheque, noting payee, sum and cheque number, bank statement noting the cheque being cashed on 13 February 2019.
5. In terms of Section 23 of the 2011 Act it is for the tribunal to decide whether a Property Factor has complied or failed to comply with a PFEO. On the basis of the information submitted by the Property Factor that payment has been made to the Homeowner and the cheque has been cashed, and given the acknowledgement by the Homeowner's Representative that such a cheque was received by the Homeowner and in the absence of any representations to counter the evidence that the cheque was cashed by the Homeowner, the tribunal is satisfied that the PFEO had been complied with in full within the required period.

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

Susanne L M Tanner QC
Legal Member and Chair

18 April 2019