

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Reference number: FTS/HPC/PF/19/3303

10 Dudley Drive, Glasgow, G12 9SB (“the Property”)

The Parties:

John Dunn, 10 Dudley Drive, Glasgow, G12 9SB (“the Homeowner”)

W.M. Cumming, Turner and Watt, 40 Carlton Place, Glasgow G5 9TS (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Andrew McFarlane (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 30 October 2020.

Decision

The Tribunal determined that it should make a PFEO in the terms originally proposed by it, but stipulating that the time allowed for completion of part 2 of the Order should also be 28 days.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 30 October 2020, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £400 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO. This payment is to be made by cheque or bank transfer and not as a credit on the Homeowner’s factoring account.

- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for their failure to respond to the Homeowner's enquiries and complaints.

The Tribunal indicated that prior to making a PFEO, it would provide the parties with the opportunity to make representations under section 19(2)(b) of the Act. The Tribunal's decision was intimated to the parties. Neither party lodged written representations regarding the proposed PFEO

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Section 2.5, 3.3 and 7.2 of the Code of Conduct for Property Factors.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO but that part 2 of the Order should also be completed within 28 days of intimation of the PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £400 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO. This payment is to be made by cheque or bank transfer and not as a credit on the Homeowner's factoring account.
- (2) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for their failure to respond to the Homeowner's enquiries and complaints, within 28 days of intimation of the PFEO.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A homeowner or property factor aggrieved by a 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.

Josephine Bonnar, Legal Member:

14 December 2020