



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

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

Chamber Ref: FTS/HPC/PF/22/3455
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Re: 64 and 66 Montrose Avenue, Carmyle, Glasgow G32 8BY (“the Properties”)

Parties:

Miss Elizabeth Maguire, 64 Montrose Avenue, Carmyle, Glasgow G32 8BY (“the First Applicant”)

Mrs Donna Moore, 66 Montrose Avenue, Carmyle, Glasgow G32 8BY (“the Second Applicant”)

Lowther Homes, Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)
Mike Links (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 18 March 2024.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 18 March 2024, it proposed to make a PFEO as follows:-

- (1) The Tribunal order the Respondent to pay to the First Applicant the sum of £850 for her time, inconvenience, worry and distress, within 28 days of intimation of the PFEO.

(2) The Tribunal order the Respondent to pay to the Second Applicant the sum of £1250 for her time, inconvenience, worry and distress, within 28 days of intimation of the PFEO.

The Tribunal indicated that prior to making a property factor enforcement order, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 20 March 2024.

By email dated 9 April the First Applicant advised the Tribunal that there had been no communication from the Respondent and that she supported the terms of the email submitted to the Tribunal by the Second Applicant..

By email dated 8 April 2024 the Second Applicant stated:-

"We would like to appeal the Property Factor Enforcement Order (PFEO)- as we feel the sums noted for the inconvenience, worry and stress are too lenient. We would like to see these amounts raised to at least 50% of the cost of our partial roof renewal which is approximately £3135. I would like to re-iterate the following points:

1.Lowther Homes have admitted liability in their failings to carry out roof repairs to this property. Their admission has been by phone and noted during case management hearings.

2.These failings have resulted in the need for a partial roof renewal. This contradicts their claims that the roof was at end of life.

3.Lowther Homes continue to fail against their own policies by failing to communicate with homeowners in a timely manner if at all. They have only communicated with two of the three homeowners in our block throughout this partial roof renewal process. The only homeowners they have communicated with are the ones who have active complaints with the tribunal.

4.Lowther Homes only communicated with two of the three homeowners to sign off on the partial roof renewal.

5.To date Mrs Moore is the only homeowner who has received the work completion information.

6.Lowther Homes feel they have compensated both home owners who have taken them to tribunal by refunding our management fees and a previous roof repair cost from 2022. As homeowners we do not accept this as compensation to us this is a refund of services they failed to provide/carry out properly.

7.Lowther Homes have continued to invoice homeowners for management fees and are still failing to provide this service. We have held up my end of the agreement by continuing to pay these invoices even though they are failing to provide the service and we feel this is a waste of money.

8.Lowther Homes have covered the costs for the internal damage to Mrs Moore's property, damage that would not be there if they had done their job properly to begin with. This should not be deemed as compensation as this was to redress issues caused by their continued failings.

9.We have had to continually chase Lowther Homes over the past four-year period to carry out necessary repairs to our roof and personally feel this work has only been undertaken due to the ongoing tribunal process. The continual phoning and emailing Lowther Homes and receiving no acknowledgement has proved to be highly frustrating and has only added to the worry and stress.

10.Throughout this four-year period both Mrs Moore and her husband have experienced countless sleepless nights during spells of bad weather as they have been too worried about rain ingress and what additional internal damage this would result in.

11. Our current tribunal experience has been ongoing for 18 months; this is from date of first submission of application to the most recent case management hearing. This highly stressful process has had a negative impact on both our mental health. Lowther Homes continued failings and comments provided during tribunal hearings have only confirmed what we already believe to be true that Lowther Homes have not learned anything from past mistakes, previous or current tribunal cases. We no longer have any trust in Lowther Homes ability to carry out their factoring responsibilities/duties and hopefully we will never need to call on their services again. We personally feel that the tribunal should issue Lowther Homes with a notice of direction to cover the at least 50% of our partial roof renewal costs and in doing so this financial fine may help Lowther Homes realise the impact of their failings and pursue areas for improvement to ensure no other individual has to endure such a stressful and negative experience.

Kind regards

Ms Elizabeth Maguire and Mrs Donna Moore"

By email dated 19 April the Respondent advised the Tribunal that a cheque had been sent to the First Applicant and that a cheque would be sent to the Second Applicant.

The Tribunal considered the Second Applicant's submissions of 8 April 2024. Although the Applicants suggested they wished to appeal the terms of the proposed PFEO it

seemed to the Tribunal they were in fact asking the Tribunal to amend the terms of the PFEO by increasing the financial sums awarded to the Applicants.

Although the Applicants ought to have submitted their written representations within 14 days of the proposed PFEO being sent to them the Applicants' representations were not sent until 8 April 2024 a period of 19 days after the decision and proposed PFEO was sent. Nevertheless, in the circumstances the Tribunal determined to exercise its discretion and consider the Applicants request although late.

The Applicants written representations of 8 April did not contain any new information or suggest that in reaching its decision the Tribunal had failed to take account of any material facts before it at the CMD. The Tribunal was not satisfied from the information before it at the CMD that the failings of the Respondent had resulted in the requirement to replace the roof and therefore the cost of replacement fell to be borne by the Applicants. The Tribunal was however satisfied that the Applicants had experienced a substantial amount of worry and distress over a significant period and were therefore entitled to a financial payment to reflect that and the Tribunal therefore made significant awards in that regard. The Tribunal in making its decision also took into account in mitigation that the Factor did not deny the breaches of the Codes and its duties and voluntarily refunded management fees and paid for the repairs of the internal damage to the Second Applicant's property and reimbursed the cost of earlier repairs to both Applicants.

Therefore, after carefully considering the Applicants written representations the Tribunal is satisfied that the proposed terms of the PFEO should remain unaltered.

Although the Respondent has suggested that payment has been made to the Applicants as that has not yet been confirmed the Tribunal has decided to issue the PFEO in its original terms.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Respondent to pay to the First Applicant the sum of £850 for her time, inconvenience, worry and distress, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Respondent to pay to the Second Applicant the sum of £1250 for her time, inconvenience, worry and distress, 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 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.

Graham Harding

Legal Member and Chair

1 May 2024

Date

