

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) to not issue a final Property Factor Enforcement Notice in terms of section 19 of the Property Factors (Scotland) Act 2011 (“the Act”) issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2016 (“the regulations”)**

**Chamber Ref: FTS/HPC/PF/17/0428**

**Property at 2/2, 390 Main Street, Rutherglen, G73 3AX (“the Property”)**

**The Parties: -**

**Mr Matthew Hardie, 106 Invergarry Drive, Glasgow, G46 8UN (“the homeowner”)**

**South Lanarkshire Council, Property Services, Hamilton Business Unit, Pollock Avenue, Hillhouse, Hamilton, ML3 9SZ (“the property factor”)**

**Tribunal Members: -**

Simone Sweeney (Legal Member) Carol Jones (Ordinary Surveyor Member)

**Decision**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the property factor has complied with the terms of the Proposed Property Factor Enforcement Order of 19<sup>th</sup> June 2018.
2. The tribunal does not consider it necessary to issue a final Property Factor Enforcement Order (“PFEO”) in this matter.
3. The decision of the tribunal is unanimous.

**Background**

4. Reference is made to the decision of the tribunal of 19<sup>th</sup> June 2018 in which the tribunal determined that the property factor has breached duties in terms of Section 17 (5) of the 2011 Act in that there has been a failure to comply with the property factors’ duties as required by section 14(5) of that Act.

5. As required by section 19(2) of the Act, the tribunal issued a notice of a proposed PFEO accompanied with a written decision. The proposed PFEO was issued to parties on or around 20<sup>th</sup> June 2018. Parties were invited to submit to the tribunal any representations they might have to the terms of the PFEO. No such representations were received from either party by the tribunal.
6. The proposed PFEO required that:

*"Within 28 days of the communication of the PFEO to the property factor, the property factor must:*

- (i) *Waive the sum of £69.03 in respect of the homeowner's share of the cost of painting the ceiling of the close at the property.*
- (ii) *Confirm to the homeowner in writing that he no longer owes this sum to the property factor.*
- (iii) *Provide a written assurance to the homeowner that a detailed, written, update on the planned maintenance project to the walls of the building in which the property is situated will be provided within 3 months of the communication of the PFEO to the property factor."*

7. By email of 9th July 2018, the property factor wrote to the tribunal providing an undertaking that they would meet the terms of the proposed PFEO. The email read,

*"In relation to (i) and (ii) I can confirm that the £69.03 charges have been cancelled. Mr Hardie was notified of this in the Council's letter of 25 May 2018, sent following the Tribunal hearing. In respect of item (iii) we are currently undertaking a survey to determine the cost of the repair and decoration works required at block 390 Main Street, Rutherglen and look to confirm the costs for Mr Hardie as soon as possible and within the three month timeframe specified."*

8. The tribunal requested a copy of the letter of 25<sup>th</sup> May 2018 together with evidence of the information which the property factor had sent to the homeowner about the survey undertaken.

9. By email of 23<sup>rd</sup> July 2018, the property factor provided copy letters of 25<sup>th</sup> May and 25<sup>th</sup> June 2018.
10. The letter of 25<sup>th</sup> May 2018, addressed to the homeowner, stated,

*"Further to the First Tier Tribunal hearing dated 25 May 2018, as agreed I write to confirm that the balance of £69.03 will be cancelled from your factoring account."*

11. The tribunal is satisfied that this part of the letter meets the terms of (i) of the proposed PFEO.
12. The letter of 25<sup>th</sup> May 2018 also stated,

*"your factoring account has to be reduced by a total of £69.03. The reduction will be applied and will be recorded on your next quarterly factoring account statement to be issued shortly."*

13. The tribunal is satisfied that this part of the letter meets the terms of (ii) of the proposed PFEO.
14. The letter of 25<sup>th</sup> June 2018 provides,

*"South Lanarkshire Council are currently in the process of establishing the cost of close redecoration works for your and a number of other adjacent block at Main Street, Rutherglen. I am advised that if the work forms part of a programme of works involving a number of blocks, there will be financial savings for both the Council and flat owners opposed to establishing costs for only one block.....fire retardant paint requires to be applied to the internal close areas....The Council will issue notification letters to you and the other flat owners identified as soon as possible in relation to the proposed redecoration programme works. As soon as I have been provided with details of the scope of works and estimated costs, I will write to you separately within the three month time limit imposed by the Property Factors Enforcement Order."*

15. The tribunal is satisfied that this part of the letter meets the terms of (iii) of the proposed PFEO.

### **Reasons for decision**

16. Having seen evidence that the terms of the proposed PFEO have been met by the property factor, the tribunal determines that the property factor has complied with the order and do not consider it necessary for a final PFEO to be issued. In the absence of same, no certificate of compliance is appropriate and there is no requirement for any further action on the part of the property factor.

17. 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 within 30 days of the date the decision was sent to them.

S Sweeney

Simone Sweeney, Legal member, 3rd August 2018