



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

Property Factor Enforcement Order (“PFOE”): Property Factors (Scotland) Act 2011 Section 19(2)(a)

Chamber Ref: FTS/HPC/PF/22/0658 and FTS/HPC/PF/22/1123

Re : Flat 7/4, Kirkmay House, North Market Gate, Crail KY10 3TH ("Property")

The Parties:-

Lorna Allport, 7 Bedcow View, Kirkintilloch, Glasgow G66 3JA ("Homeowner")

Abbey Forth Property Management Ltd, Balcairn House, Viewfield, Dunfermline KY12 8HY ("Factor")

Tribunal Members:

Joan Devine – Legal Member

Elaine Munroe – Ordinary Member

This document should be read in conjunction with the First-tier Tribunal's Decision of 24 April 2023.

Decision

The Tribunal has decided that it should make a PFOE in the terms originally proposed by it. The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal's decision of 24 April 2023 it proposed to make a PFOE as follows:

1. By no later than 24 May 2023 the Factor will provide to the Homeowner a summary of all charges made by the Factor to the Homeowner in the period 30 April 2013 to 3 March 2022 which will contain an explanation of the method of calculating the sum due by reference to the burdens contained in the title to the Property and in particular those set out in disposition by Kenneth Alan Preston to Dennis James Fordham and his executors and assignees recorded GRS (Fife) 30 July 1973. Any charges made which have not been properly calculated in accordance with the title must be identified.
2. By no later than 7 June 2023 any overpayment identified in terms of paragraph 1 hereof will be refunded by the Factor to the Homeowner or any resultant underpayment will be invoiced to the Homeowner by the Factor.
3. By 24 May 2023 the Factor will pay to the Homeowner from their own funds, £500 as compensation for breach of sections 1, 2, 3 and 7 of the 2012 and 2021 Code; sections 2, 6 and 11 of the overarching standards of practice in the 2021 Code and the property factor duties.

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 26 April 2023. No representations were received. The Tribunal confirms the decision made in terms of Section 19(1) (a) dated 24 April 2023.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

1. By no later than 24 May 2023 the Factor will provide to the Homeowner a summary of all charges made by the Factor to the Homeowner in the period 30 April 2013 to 3 March 2022 which will contain an explanation of the method of calculating the sum due by reference to the burdens contained in the title to the Property and in particular those set out in disposition by Kenneth Alan Preston to Dennis James Fordham and his executors and assignees recorded GRS (Fife) 30 July 1973. Any charges made which have not been properly calculated in accordance with the title must be identified.
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3. By 24 May 2023 the Factor will pay to the Homeowner from their own funds, £500 as compensation for breach of sections 1, 2, 3 and 7 of the 2012 and 2021 Code; sections 2, 6 and 11 of the overarching standards of practice in the 2021 Code and the property factor duties.

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.

Failure to comply with a PFEO has serious consequences and may constitute an offence.

Legal Member

Date : 16 May 2023