



Decision: Section 17 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”) and the Property Factors (Scotland) Act 2011 Codes of Conduct for Property Factors.

Chamber Reference: FTS/HPC/PF/22/3888

Re: Flat 2/2, 1 Donaldson Drive, Edinburgh, EH12 5FS (“the Property”)

Parties:

Mr Tim Latham, Flat 2/2, 1 Donaldson Drive, Edinburgh, EH12 5FS (“the Applicant”)

First Port Property Services Scotland Ltd, 3rd Floor, Troon House, 199 St Vincent Street, Glasgow, G2 5QD (“the Respondent” or “the Property Factor”)

Tribunal Members:

Martin McAllister, solicitor, (Legal Member) and Ahsan Khan, (Ordinary Member) (“the tribunal”)

Background

1. This is an application by the Applicant in respect of the Property in relation to the Respondent’s actings as a property factor. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act). The application alleges that the Respondent has not complied with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (2021 version) (“the Code”) and has failed to comply with the property factor’s duties. The application alleges that the Respondent has failed to comply with Overarching Standard of Practice 1. The Tribunal accepted the application for determination on 8th December 2022. The application was accompanied by a number of documents.
2. A Hearing was held on 17th May 2023.
3. Subsequent to the Hearing, a Decision and a proposed property factor enforcement order (“PFEKO”) was issued to the parties on 7 June 2023. The proposed PFEKO was issued in terms of Section 19(2) of the 2011 Act.

4. On 16 June 2023, the Applicant submitted an email to the Tribunal seeking a review. The Applicant also indicated that he wished his email to be considered as his representations in respect of the proposed PFEO.
5. On 30 June 2023, the Respondent emailed the Tribunal and stated that the AGM Minutes were issued on 29 June 2023. The email stated: "We are complying with the request for in-person meetings, with the next in-person meeting set for 13 July 2023."
6. On 5 July 2023, the tribunal issued its decision on the application for review and, in terms of Rule 39 (3) of the Rules, determined that the application was not wholly without merit and, in the interests of justice, should be considered.
7. The tribunal set out its preliminary views on the application for review and invited parties to give views with regard to whether the application could be determined without a Hearing.
8. On 18 July 2023, the Applicant emailed the Tribunal and, in relation to the preliminary views set out in the decision of 5 July 2023, noted that the "Tribunal sees the PFEO as clear and the initial indications from the Factor are that they are not continuing with virtual General Meetings unless the Deeds are amended." The email states that the Applicant is content and that his application for review can be considered to be withdrawn.

Application for Review

9. This does not require to be considered further since the Applicant has withdrawn the application.

Consideration of Parties' views on the Proposed PFEO

10. In terms of Section 19(2) (b) of the 2011 Act, parties must be given the opportunity to make representations to the Tribunal on a proposed PFEO.
11. The principal issue in the application under Section 17 (1) of the Act was around the arrangements for general meetings of homeowners and specifically whether they could be conducted in any manner other than in person.
12. The Respondent has indicated that such meetings are going to be in person and the Applicant has stated that this is satisfactory "unless the Deeds are amended."
13. Notwithstanding the representations of the Respondent on the matter of the proposed PFEO, the tribunal had regard to Section 19(3) of the 2011 Act and determined that it must make a PFEO.
14. In considering matters, the tribunal determined that it would be helpful if the PFEO made specific reference to in person meetings.

Property Factor Enforcement Order

15. The tribunal determined to make a PFEO in the following terms:

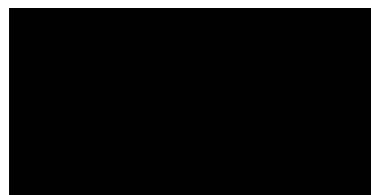
The Property Factor undertakes that, in relation to the development where the Property is situated, it will have regard to the terms of the relevant development management scheme and titles in relation to arrangements for general meetings of homeowners and the distribution of minutes for such meetings. It undertakes that general meetings will not be held virtually until and unless the Deeds of the development permit such arrangements.

Compliance

16. The tribunal was satisfied that the contents of the Respondent's email of 30 June 2023 demonstrated compliance with the PFEO and it determined to issue a certificate of compliance.

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.



**Martin J. McAllister
Legal Member
15 September 2023**