



# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber  
In an Application under section 17 of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/18/0043**

### **The Parties:-**

**Aylmer Millen, 5 Hillpark Grove, Edinburgh EH4 7AP ("the Applicant")**

**Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD ("the Respondent")**

**Re: Property at 5 Hillpark Grove, Edinburgh  
("the Property")**

### **Tribunal Members:**

John McHugh (Chairman) and Andrew Murray (Ordinary (Surveyor) Member).

### **Decision**

**The Tribunal hereby determines that the Property Factor Enforcement Order has been complied with.**

The decision is unanimous.

### **Reasons for Decision**

The Tribunal issued a Property Factor Enforcement Order ("PFOE") on 27 June 2018.

This required the Respondent to pay to the Applicant the sum of £300 within 40 days. It further required the Respondent to:

*"Make available for inspection by the Applicant by records relating to the tendering of works relating to the storm drains serving the Development."*

In terms of section 23(1) of the 2011 Act, the Tribunal is to determine whether the Respondent has complied with the PFOE.

The Tribunal gave consideration to the extent to which the PFOE had been complied with.

The Tribunal noted the Respondents' email of 20 August and its letter of 10 July 2018 addressed to the Applicant which demonstrated that a cheque for £300 had been sent to the Applicant.

The Tribunal fixed a hearing to determine whether the requirements of the PFEO had been met.

The hearing took place at George House, Edinburgh on 5 November 2018. The Applicant was present and the Respondent was represented by its Karen Jenkins.

The Applicant confirmed that the £300 had been received by him.

The only issue then became whether the Respondent had made the tender documentation available to the Applicant.

There was no dispute between the parties that the Respondent had provided documentation to the Applicant. Ms Jenkins confirmed that what had been provided was all that there was to provide and she provided the Tribunal with a copy of relevant correspondence.

The Applicant confirmed that he is not in a position to say that any of the relevant tender documentation had not been provided. However, his concern was that the documentation was not what he expected and that had led him to question what had been provided. In particular his concern was that the Respondent had provided a document marked "Draft" (although in fact the document was confirmed to be the principal) and, further, that the Respondent had failed to provide its terms and conditions to tenderers with a view to imposing the Respondent's terms and conditions (as opposed to those of the tendering contractor).

The Applicant was also concerned that although the basis of the Respondent's 10% management fee had been explained to him, he did not know what services it included. Some discussion was had at the hearing by way of the fact that the fee was essentially the Respondent's fee for dealing with the contractor and that there was little in addition which could be detailed. In any event, the content of the 10% is not relevant to the issue of compliance with the PFEO.

The Tribunal hereby finds that the PFEO has been complied with.

## **Appeals**

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

**Signed**

**Date 19 November 2018**

**JOHN M MCHUGH**

**Chairperson**