

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Decision: Section 43 Tribunals (Scotland) Act 2014 and Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Reference: FTS/HPC/PF/22/0025 & FTS/HPC/PF/22/0668,

The Parties

Dr Yana Berezovskaya, 10 Warriston Road, Edinburgh, EH7 4HJ ("the Homeowner")

James Gibb Residential Factors, 4 Atholl Place, Edinburgh, EH3 8HT ("the Property Factor")

Land Register Title: MID151317

Subjects: The Printhouse, 10 Warriston Road, Edinburgh, EH7 4HJ ("the Property")

Tribunal Members

Ms H Forbes (Legal Member)

Mr D Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determines that the application for review made by the Property Factor is wholly without merit and refuses the application.

Background

1. Following a Hearing on 9th November 2022, the Tribunal determined that the Property Factor had failed to comply with its section 14 duty in terms of the Property Factors (Scotland) Act 2011 ("the Act") by failing to comply with certain paragraphs of the 2012 and 2021 Property Factor Codes of Conduct. The Tribunal issued a proposed PFEO in the following terms:

“The Factor is required to do the following within 21 days of intimation to them of the PFEO:

- (i) Refund to the Homeowner the management fees charged from May 2020 to December 2022.
- (ii) Pay to the Homeowner the sum of £500 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience in having to deal with the complaints procedure and the tribunal proceedings in respect of the Property Factor’s failure to comply with the Code of Conduct for Property Factors.”

2. The decision was issued on 14th December 2022.
3. By emails dated 18th and 22nd December 2022, the Homeowner submitted an application for review.
4. By decision dated 6th January 2023, the Tribunal refused the Homeowner’s application for review.
5. By decision dated 16th January 2023, the Tribunal issued a PFEO in the original terms proposed.
6. By email dated 17th January 2023, the Property Factor made an application for review of the PFEO.
7. The application for review falls within the time limits for review under section 43 of the Tribunals (Scotland) Act 2014 and Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”).

Application for Review

8. The application was in the following terms and referred to paragraph 7(i) of the Tribunal’s PFEO decision:

We refer to the following statement in the PFEO.

The Tribunal indicated within its review decision that the management fees to be refunded included those charged in May 2020 and December 2022.

We do not believe the review decision clearly indicates that the management fees to be refunded include May 2020 and December 2022. The wording is clear that the management fees are to be refunded from May 2020 to December 2022. We have complied with this proposed order.

We formally request a review of the PFEO and clarity on the matter of the inclusion of May 2020 and December 2022 in the refund of management fees

Decision

9. The Tribunal considered the Property Factor's application for review. The Tribunal considered that the PFEO and the decision are clear that fees are to be refunded for the period from May 2020 to December 2022 inclusive.
10. The Tribunal can identify no basis to change the decision.
11. The Tribunal considers the application for review to be wholly without merit in terms of Rule 39(3) of the Tribunal Procedure Rules. The application is refused.

Helen Forbes

Legal Member

Date: 30th January 2023