

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision and Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 19(3) of the Property Factors
(Scotland) Act 2011**

Chamber Ref: FTS/HPC/LM/22/1988 and FTS/HPC/LM/22/1991

Re : 47 Fairbairn Path, Glasgow G40 3RR ("Property")

The Parties: -

James Williamson, 47 Fairbairn Path, Glasgow G40 3RR ("Homeowner")

Thenue Housing Association, 423 London Road, Glasgow G40 1AG("Factor")

TC Young, Solicitors, 7 West George Street, Glasgow G2 1BA ("Factor's Representative")

Tribunal Members:

Joan Devine – Legal Member

Elizabeth Dickson – Ordinary Member

Background

In this Decision the Property Factors (Scotland) Act 2011 is referred to as the "2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective prior to 16 August 2021 is referred to as the "2012 Code" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors effective from 16 August 2021 is referred to as the "2021 Code".

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") considered an application by the Homeowner submitted in terms of Section 17 of the 2011 Act. The Tribunal unanimously determined that the Factor had failed to comply with the Code of Conduct for Property Factors as required by section 14 of the 2011 Act in that it did not comply with section 3.3 of the 2012 Code and section 3.4 of the 2021 Code. The Tribunal unanimously determined that the Factor had not failed to comply with its factor duties in terms of section 17(5) of the 2011 Act. The Tribunal issued a decision dated 24 November 2022 ("Decision") along with a proposed property factor enforcement order.

By email dated 29 November 2022 the Factor's Representative produced to the Tribunal a copy of a letter from the Factor to the Homeowner dated 29 November 2022 enclosing a cheque for £50 which payment was required in the Proposed Property Factor Enforcement Order.

Decision

The Tribunal considered matters in light of the Overriding Objective set out in Regulation 2 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that in all the circumstances, as the Factor has complied with the proposed Property Factor Enforcement Order in the period between the issuing of the Decision and the period during which an appeal or review could be sought, it would not be appropriate to make a Property Factor Enforcement Order in this case.

The decision of the Tribunal was unanimous.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014 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.

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Legal Member

Date : 11 January 2023