

Housing and Property Chamber

First-tier Tribunal for Scotland



CERTIFICATE OF COMPLIANCE IN TERMS OF SECTION 23(1) OF THE PROPERTY FACTORS (SCOTLAND) ACT 2011 AND RULE 31 OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER (PROCEDURE) REGULATIONS 2016

Chamber Ref: HOHP/ pf/16/0014

The Property:

Flat 1/1, 10 Andrews Street, Paisley PA3 2EP

The Parties:-

Mr Dave Sinclair, residing at the property. ('the homeowner')

Link Housing Association, registered in the Register of Factors under Number PF000355 and having its registered office at Watling House, Callendar Business Park, Falkirk FK1 1XR, per Ms Laura McCabe, HBJ Gately, Solicitors, Cornerstone, 107 West Regent Street Glasgow G2 2BA. ('the property factor')

The First-tier Tribunal for Scotland (Housing and Property Chamber) formerly the Private Rented Housing Committee):

David Preston (Chairman); and Kingsley Bruce (Surveyor Member), ('the tribunal')

Decision of the Tribunal:

The Tribunal certifies that the factors have complied with the Property Factor Enforcement Order relative to the Property dated 30 December 2016.

Background

On 30 December 2016 the tribunal issued a Property Factor Enforcement Order (PFOEO) in the following terms:-

Within one month from the date of service of this PFOEO the factors will:

1. Complete a review of their accounting and invoicing process to ensure that homeowners are provided with clear and unambiguous explanations and descriptions of outlays and expenses incurred in their statements.
2. Carry out at their own expense, and not from funds held on behalf of homeowners, and with the cooperation of the homeowner adequate

investigation to identify the cause of the problem related to the downpipe serving the homeowner's kitchen sink. In the event that the problem is found to be a common repair, the factors will bear, at their own expense, and not from funds held on behalf of homeowners, the share of the cost of the repair which would be attributable to the homeowner's property. In the event that the problem is found to be a specific problem for which the homeowner is responsible, the homeowner to be advised accordingly in order that he can effect any necessary repair at his own cost.

Reasons for decision

1. By email dated 6 January 2017 the landlord's agent advised, amongst other matters, that the factors had completed a review of its accounting and invoicing process to ensure that homeowners are provided with clear and unambiguous explanations and descriptions of outlays and expenses incurred in their statements. Following expiry of the time limit specified in the PFEO, the email from the factors' agents was sent to the homeowner for comment. The homeowner did not disagree that the accounts remained unclear and no adverse comment has been made by him over the nine months since then. Accordingly the tribunal is satisfied that the factors have complied with section 1 of the PFEO.
2. The email of 6 January 2017 as well as a number of further emails from the factors or their agents also detailed the steps taken by the factors in relation to section 2 of the PFEO. All of these emails were passed to the homeowner for comment and for confirmation from him that in his view the issues relating to water backing up into his kitchen sink had been resolved.
3. The homeowner did not provide any helpful responses to these requests and asked for further time to see if the problem recurred. By email dated 25 August 2017 he suggested that it was not his position to ascertain if the terms of the PFEO have been fulfilled but that was a matter for the tribunal. It is his kitchen sink and it is only he who is able to confirm whether water continues to back up or whether there has been any further incidence of the issue complained of originally.
4. The factors have outlined in detail the steps they have taken and to the tribunal's knowledge there have been numerous periods of torrential rain in the area since those steps were reported to have been taken. The factors say that the homeowner has not complained about the problem recurring and the homeowner said in his email of 25 August 2017 that it did not recur following a thunder and lightning storm during that week.

5. The tribunal is accordingly satisfied that the factors have complied with the terms of the PFEO.

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.

D Preston

Chairman

9 September 2017