

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) to issue a final Property Factor Enforcement Notice in terms of section 19 of the Property Factors (Scotland) Act 2011 ("the Act") issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2016 ("the regulations")

Chamber Ref: FTS/HPC/PF/18/1483

Property: Flat 16 C Inchinnan Court, Inchinnan Road, Paisley, PA3 2RA ("the property")

The Parties:-

Ms Lesley Cochrane, Flat 16 C Inchinnan Court, Inchinnan Road, Paisley, PA3 2RA ("the homeowner")

APEX Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the property factor")

Tribunal Members: -

Simone Sweeney (Legal Member) Carol Jones (Ordinary Surveyor Member)

Decision of the Tribunal Chamber

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the property factor has not complied with the terms of the Proposed Property Factor Enforcement Order ("proposed PFEO") of 30th April 2019.
2. The Tribunal determined that it is necessary to issue a final Property Factor Enforcement Order ("PFEO") in this matter.
3. The decision of the Tribunal is unanimous.

Background

4. Reference is made to the decision of the Tribunal of 30th April 2019 in which the Tribunal determined that the property factor has breached duties in terms of Section 17 (5) of the 2011 Act in that there has been a failure to comply with the property factors' duties as required by section 14(5) of that Act.
5. As required by section 19(2) of the Act, the Tribunal issued a notice of a proposed PFEO accompanied with a written decision.
6. The proposed PFEO required that:

"Within 28 days of the communication of the PFEO to the property factor, the property factor must:

- (i) *Re-calculate all bills and invoices issued to the homeowner by the property factor on a 1/61st share;*
 - (ii) *Refund to the homeowner the difference between the sums she has paid on a 1/45th share and the re-calculated figure based on a 1/61st share.*
 - (iii) *Provide to the homeowner all information regarding the total sum of compensation which the insurance company assessed as being due to be paid in settlement of the claim for the property;*
 - (iv) *Pay to the homeowner any monies owed to her from the insurance claim.*
 - (v) *Provide to the homeowner a detailed financial breakdown of all monies paid by her to the property factor since 2012 which are within the property factor's ring-fenced account;*
 - (vi) *Pay compensation to the homeowner in the sum of £3000 (Three thousand pounds) in respect of the time and inconvenience occasioned by the property factor's failure to comply with their duty under the Code and the Act between 2012 and 2018.*
 - (vii) *Produce evidence to the Tribunal that the property factor has complied with each section of this order.*
7. The proposed PFEO was issued to parties on or around 2nd May 2019.
 8. Parties were invited to submit to the tribunal any representations they might have to the terms of the PFEO within 14 days.
 9. No such representations or communications were received from the property factor.

10. The Tribunal's administration received a phone call from the homeowner on 17th May 2019 from the homeowner. She advised that she had received information that the property factor had been de-registered and were appealing the decision.
11. By email of 19th May 2019, the homeowner responded in the following terms,
"I apologise for my letter being outside the fourteen days that you give for comments regarding Property Factor Enforcement Order. This is due to me being in hospital again....I would like to ask that this proposed Property Factor Enforcement Order is enforced as soon as possible."
12. No evidence has been produced and made available to the Tribunal by either party to indicate that the property factor has carried out any part of the proposed order. There is no evidence before the Tribunal that the property factor has satisfied the requirements of the proposed PFEO.

Reasons for decision

13. The date for compliance having passed and there being no evidence produced to show that the terms of the proposed PFEO have been met by the property factor, the Tribunal determines that it is necessary for a final PFEO to be issued in terms of section 19 (3) of the Act.

Appeals

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

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Simone Sweeney, Legal member, 22nd May 2019