

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision issued under s19 of the Property Factors (Scotland) Act 2011

Chamber Ref: Reference number: FTS/HPC/LM/22/2880

Property: 17 Corn Mill Road, Lenzie, Kirkintilloch, Glasgow, G66 3TL ("The property")

Parties:

Dr Gordon Jahn, residing at 17 Corn Mill Road, Lenzie, Kirkintilloch, Glasgow, G66 3TL ("the Applicant")

and

Residential Management Group Scotland Ltd, a company incorporated under the companies Acts and having their registered office at Unit 6, 95 Morrison Street, Glasgow, G5 8BE ("the Respondent")

Tribunal Members:

Paul Doyle (Legal Member)

Helen Barclay (Ordinary Member)

Unanimous Decision of the Tribunal

At today's date the respondent complies with the code of conduct & the Property Factors Duties. A Property Factor Enforcement Order is not necessary.

Background

1. By application dated 15 August 2022, the applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of his complaint that the respondent has breached the code of conduct imposed by Section 14 of the 2011 Act and breached the Property Factor's duties.

2. The applicant says that the respondent failed to comply with Sections 2, 4, 8, 11, & 12 of the Overarching Standards of Practice, and failed to comply with sections 1.2, 1.19, and 1.21 of the code of conduct for property factors effective from 16 August 2021. In addition, the application says that the respondent has failed to carry out the Property Factor's duties.

3. On 2 February 2023 the First-tier Tribunal for Scotland (Housing and Property Chamber) issued a decision dismissing the applicant's application for an order under The Property Factors (Scotland) Act 2011.

The Review

4. By email dated 17 February 2023 the Respondent asked for a review of the decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) dated 2 February 2023.

The Proposed PFEO

5. In a review decision dated 3 May 2023, the tribunal found that the respondent had breached of section 1.2 of the code of conduct and notified the parties that the tribunal intended to issue a Property Factor Enforcement Order in the following terms

"1. Within 30 days of the date of service on the property factor of this property factor enforcement order the property factor must pay the applicant £250.00 as solatium for the distress and inconvenience caused to the applicant.

2. Within 30 days of the date of service on the property factor of this property factor enforcement order the property factor must deliver a copy of the most up to date written statement of services to the applicant"

Reasons for Decision

6. At paragraph 28 of the decision dated 3 May 2023 the tribunal said

If the respondent pays the applicant £250 within 30 days, and sends the applicant the current version of the written statement of services within 30 days, days, then a PFEO might not be necessary.

7. By email dated 18 May 2023 the respondent sent proof of payment of £250 to the applicant and proof of delivery of the current up to date written statement of services. The tribunal has seen an email form the applicant to the respondent acknowledging receipt of the payment of £250.

8. Section 19 of the 2011 Act contains the following:

(1) The First-tier Tribunal must, in relation to a homeowner's application referred to it under section 18(1)(a), decide—

(a) whether the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

- (b) if so, whether to make a property factor enforcement order.
- (2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—
 - (a) give notice of the proposal to the property factor, and
 - (b) allow the parties an opportunity to make representations to it.
- (3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order.
- (4) Subject to section 22, no matter adjudicated on by the First-tier Tribunal may be adjudicated on by another court or tribunal.

9. The tribunal is satisfied that the concerns voiced in the proposed Property Factor Enforcement order have been adequately addressed by the respondent, and that no meaningful purpose would be served in serving a property factor enforcement order. There has been a material change in circumstances since the decision of the tribunal intimated on 3 May 2023.

10. Having considered matters anew, in light of the actions of the respondent since 3 May 2023, the tribunal finds that at today's date the respondent complies with the code of conduct & the Property Factors Duties, and that a Property Factor Enforcement Order is no longer necessary.

Appeals

11. 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 23 May 2023.