

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Property Factors (Scotland) Act 2011 Section 19

Chamber Ref: FTS/HPC/PF/17/0260

Raeburn Common, Pettinain ("The Property")

The Parties: -

Mrs Shelagh Craig, 8 Grange Road, Pettinain, Lanark, ML11 8SP ("the Homeowner")

Park Property Management Ltd, 11 Somerset Place, Glasgow, G3 7JT ("the Property Factor")

Tribunal Members:

Josephine Bonnar (Legal Member)

Ahsan Khan (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal's Decision of 8 December 2017.

Decision

The Tribunal decides not to issue a Property Factor Enforcement Order (PFEO).

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal's decision of 8 December 2017, it found that the Property Factor had breached sections 1.1a and 3.2 of the Code of Conduct for Property Factors and proposed to make a PFEO as follows;

1. The Tribunal order the Property Factor to pay to the Homeowner the sum of £60 as compensation for her time, effort and inconvenience within 28 days of intimation of the Property Factor Enforcement Order.

The Tribunal indicated that prior to making a property factor enforcement order, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 13 December 2017. On 4 January 2018 the Homeowner notified the Tribunal that she had received a cheque from the Property Factor in the sum of £60. She stated that she also expected to receive a full refund of the credit balance on her account which she understood to be £301.25. Although not part of the proposed PFEO, she understood that it had been established at the hearing that she was entitled to this refund. On 2 February 2018 the Homeowner advised the Tribunal that she had now received a cheque for £290.92, together with a final account showing deductions from the credit balance of £1.03 and £9.25, the latter being described as an apportionment correction. She provided a copy of the cheque and account indicating that she disputed these deductions. In response the Property Factor lodged representations advising that the £1.03 was the Homeowner's share of a charge for the meeting of proprietors which took place on 2 February 2017 and which was discussed at the hearing. He further stated that the £9.25 deduction represents the homeowner's share of an invoice wrongly sent to the proprietors of the property known as "the schoolhouse", who are not liable to contribute to the maintenance of the common ground. Further representations from the Homeowner indicate that she believes that the schoolhouse is liable for a share of the charges and furthermore that she does not accept that she should have to pay a share of the hire of the hall.

The Tribunal notes firstly that parties are agreed that the compensation proposed of £60 has been paid. The proposed PFEO did not include an order in relation to the refund of the credit balance. The reason for this is that the Tribunal noted at the hearing that the Property Factor had offered to pay to the Homeowner the sum of £245.55, being the credit balance on the account less a share of the development debt. This was rejected by the Homeowner who advised that she preferred to await the Tribunal's decision and meantime disputed the amount which was being offered. In the decision dated 8 December 2017, the Tribunal found that the Property Factor is not entitled to charge the proprietors a share of unpaid development debt. The Tribunal assumed that the Property Factor would therefore make arrangements to refund the Homeowner the full credit balance less any outstanding charges she might owe and recommended in the decision that he do. The Tribunal did not make any finding in relation to the issue of the number of liable properties in the development. Neither party (nor the homeowner in a related application who also gave evidence) was able to advise the Tribunal whether the schoolhouse is part of the development, although the Property Factor indicated that he intended to investigate. No evidence was presented to the Tribunal which established the position. The Tribunal therefore concluded that this matter required to be clarified before the Property Factor could determine what parties owed or were owed. The Tribunal notes that the Property Factor has concluded that the schoolhouse is not part of the development for the purposes of maintenance of the common property and has therefore re-distributed that property's share of an account issued among other homeowners. Assuming this is correct, the deduction seems appropriate, as does the charge for the meeting which took place. It appears that the Property Factor has not otherwise charged the Homeowner a share of unpaid development debt as the refund originally proposed was £245.55, with £290.92 actually being paid. The

Tribunal notes that If the Homeowner considers that further sums are due to her, then she may have a right of action for payment at the Sheriff court.

The Tribunal is satisfied from the evidence presented at the hearing, and the written representations from both parties in relation to the proposed PFEO, that the Property Factor has implemented the proposed PFEO. Furthermore, the Property Factor has refunded the Homeowner the credit balance on her account and has not deducted a share of unrecovered development debt, in accordance with the Tribunal's findings that it is not entitled to do so. Accordingly, the Tribunal does not require to issue a PFEO.

Appeals

A homeowner or property factor aggrieved by a 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.

J Bonnar

Josephine Bonnar,
Legal Member

24 February 2018