

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision

**Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Procedure Rules”)
Property Factors (Scotland) Act 2011 (“the 2011 Act”)
Tribunals (Scotland) Act 2014, section 43 (“the 2014 Act”)**

Chamber Ref: FTS/HPC/LM/18/1725

**Flat 1/1, 10 Andrews Street, Paisley, PA3 2EP
 (“the Property”)**

The Parties:-

**Mr Dave Sinclair, Flat 1/1, 10 Andrews Street, Paisley PA3 2EP
 (“the Homeowner”)**

**Link Group Limited, Watling House, Callendar Business Park, Falkirk FK1 1XR
 (“the Factor”)**

Tribunal Members:

**Graham Harding (Legal Member)
Carol Jones (Ordinary Member)**

DECISION

The Tribunal having reviewed its decision and proposed Property Factor Enforcement Order (“PFEO”) at the request of the Factor has decided to amend its decision and proposed PFEO as set out in this decision.

This decision will be accompanied by an amended Decision and proposed PFEO for the reasons set out below.

The decision is unanimous.

Background

1. The Tribunal issued its decision in respect of the Homeowner’s application on 14 November 2018, together with a proposed PFEO of the same date.
2. By email dated 28 November 2018 the Factor sought a review of the decision and the proposed PFEO. The reasons for seeking a review were set out in written representations attached to said email.

3. The Homeowner provided further written representations in response to the Factor's request for a review.
4. In light of the representations received the Tribunal did not consider that the application for review was wholly without merit. It therefore decided to consider whether the decision and proposed PFEO should in fact be reviewed.
5. With the agreement of the parties the Tribunal held a hearing attended by the parties on 14 March 2019 at Glasgow Tribunals Centre, 20 York Street Glasgow.

Hearing

6. The Factor's position was largely as set out in its written representations. Firstly, The Factor complained that the PFEO imposed on the Factor a requirement to change its core services without consulting homeowners. Any change to its core services required consultation and agreement of owners. Any increase in the frequency of inspections would increase the cost to Homeowners.
7. Secondly the Factor felt that the award of compensation to the Homeowner of £150.00 was excessive given that it had agreed to provide a moss brush and improve the back-court areas free of charge throughout the development. Also, the award was disproportionate.
8. The Factor also submitted that the Tribunal had incorrectly decided that it had provided the Homeowner with false or misleading information when there had been no culpability or deliberate conduct on the part of the Factor. The Factor referred the Tribunal to a previous decision of the Tribunal (FTSHPC/PF/18/0601)
9. The Factor confirmed that it was continuing on a voluntary basis for a six-month period to have monthly inspections to ensure the contract was being properly managed. The Factor was also prepared to engage in a consultation with the homeowners in Andrews Street to see if they wished to change the core service in the future to include monthly inspections.
10. For his part the Homeowner accepted that the majority of owners would have to agree to a variation of the core services. He also indicated he would not be averse to there being monthly inspections.
11. With regards to the award made to him the Homeowner felt that he had undergone a considerable amount of inconvenience and it had taken a long time for his complaints to be addressed. He still was not entirely satisfied with the work that was carried out or the inspections undertaken by the Factor's staff.

12. For the Factors, Mr Gibb advised the Tribunal that there had been no further complaints that he was aware of.

13. The Tribunal having resumed consideration of the grounds of review presented to it, decided to amend its decision of 14 November 2018 and proposed PFEO in the manner set out below and for the reasons stated.

The Tribunal Decision

14. The Tribunal accepted that in order to change the core service provided by the Factor it would require the majority of homeowners' agreement. Therefore, the Tribunal accepted that it would not be appropriate to impose a regime of monthly inspections on the Factor. The Tribunal therefore decided to remove part (1) of the proposed PFEO.

15. The Tribunal did not accept that the financial award of £150.00 made to the Homeowner was excessive. Although the Homeowner was benefitting from the moss brush at no cost it remained a fact that he had been put to a considerable amount of inconvenience over a lengthy period of time. His complaints had not been particularly well handled by the Factor in the First instance. Furthermore, the award was in the Tribunal's view a modest one. The Tribunal therefore did not consider that the amount awarded to the Homeowner should be reviewed.

16. With regards to the information provided by the Factor to the Homeowner, whilst accepting that the Factors conduct had not been wilful, the Tribunal felt that the Factor had initially placed too much reliance on the information it was being provided by its contractor without having the necessary checks in place to try to ensure that the information provided to it was accurate. The Tribunal was not bound by a previous Tribunal decision and each case fell to be decided on its own particular set of facts and circumstances. The Tribunal was not prepared to amend its decision in this regard.

G Harding

Legal Member and Chair

30 March 019 Date