

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFOE”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/22/2146

Property at 2 Whitehalls Lane East, Cove, Aberdeen, AB12 3TG (“the Property”)

Parties:

Mr Manuel Suarez, 2 Whitehalls Lane East, Cove, Aberdeen, AB12 3TG (“the Homeowner”)

James Gibb Residential Factors, Bellahouston Business Centre, 423 Paisley Road West, Glasgow, G51 1PZ (“the Property Factor”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Elaine Munroe (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 7 May 2023.

Decision

The Tribunal has decided that it should make a PFOE in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 7 May 2023, it proposed to make a PFOE as follows:

- (1) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the failure to provide a response to his email of 1 August 2021

and to provide him with a full response to the enquiries contained in the said email.

All within 28 days of intimation of the PFEO.

The Tribunal indicated that prior to making a PFEO, it would provide the parties with the opportunity to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties. On 11 May 2023, the Property Factor submitted a copy of a letter of apology addressed to the Homeowner in which they apologise for their failures in relation to the complaints process and the failure to issue the response to his complaint which they had prepared. The Homeowner did not provide any comments or submissions.

The Tribunal notes that the Property Factor issued the letter following receipt of the proposed PFEO and did not wait to see if an order in similar terms would be issued. The Tribunal also notes that the letter of apology appears to relate to the failure by the Property Factor to respond to a complaint dated 29 August 2022. The proposed PFEO does not relate to the complaint but to an email which the Homeowner sent on 1 August 2022 asking for information on a number of matters. The Tribunal was satisfied from the evidence at the hearing that he did not receive a response to this email and was not provided with the information requested. The proposed PFEO requires the Property Factor to apologise for this omission and to provide the information requested. The letter issued on 11 May 2023 does neither.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Section 2.5 of the Code of Conduct for Property Factors.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to issue a letter of apology to the Homeowner for the failure to provide a response to his email of 1 August 2021 and to provide him with a full response to the enquiries contained in the said email.

All within 28 days of intimation of the PFEO.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

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.

Josephine Bonnar, Legal Member
23 June 2023