

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**Certificate of Compliance and Decision relating to the Property Factor Enforcement Order ("PFEO") dated 4<sup>th</sup> February 2019 issued under the Property Factors (Scotland) Act 2001 ("the Act")**

**Chamber Ref: FTS/HPC/PF/18/1769**

**Flat 0/1, 56 Minerva Way, Glasgow, G3 8GA ("The Property")**

**The Parties:-**

**Miss Sairah Akbar, residing at Flat 0/1, 56 Minerva Way, Glasgow, G3 8GA represented by Mr Fariad Akbar, also residing at Flat 0/1, 56 Minerva Way, Glasgow, G3 8GA ("the Applicant")**

**Park Property Management Limited, a Company incorporated under the Companies Acts (Company Number SC413993) and having their registered office at 11 Somerset Place, Glasgow, G3 7JT ("the Respondent")**

**Tribunal Members:**

**Mr E K Miller (Legal Member)  
Mr D Godfrey (Ordinary Member)**

**Decision**

**The Tribunal determined that the Respondent had now complied with the terms of the PFEO issued on 10 July 2019 and accordingly the Tribunal resolved to issue the Certificate of Completion in confirmation that compliance had been achieved and that matters were at an end.**

**The decision was unanimous.**

**Reasons for the Decision**

Following the Tribunal's original Decision of 4 February 2019 it issued a PFEO on 10 July 2019 in the following terms:-

1. Within 30 days of service of the PFEO on the Respondent, the Respondent shall reimburse the Applicant all property management fees levied by the Respondent against the Applicant's account from 3 March 2018 until 7 December 2018.
2. Within 30 days of service of the PFEO on the Respondent, the Respondent shall obtain a report from a suitably qualified engineer on the condition of the security monitoring system at the larger development of which the Property forms part and shall carry out

any works recommended by such report, subject always to obtaining any required authority from other proprietors within the development.

Following the issue of the original Decision dated 4 February 2019 and the PFEO on 10 July 2019, the Respondent appealed to the Upper Tier Tribunal against the Decision of the Tribunal. On 28 January 2020, the Upper Tier Tribunal dismissed the Respondent's appeal against the original Decision of the Tribunal.

On 5 October 2020, a brief hearing to assess compliance with the PFEO was held by the Tribunal. Mr McDermott of the Respondent was again present. The Applicant had indicated that she was unable to attend due to work commitments.

The Respondent submitted that he had now complied with the terms of the PFEO and requested that a Certificate of Completion should be issued. In relation to the first part of the PFEO (repayment of management fees to the Applicant), the Respondent advised that this had been done and that the cheque in favour of the Applicant had been cashed. There had been some debate with the Applicant as she had anticipated that the Decision of the Tribunal meant that she should receive a refund of all sums paid by her to the Respondent. The Respondent had read the PFEO as meaning only the element that was payment to the Respondent for their services was to be repaid and contributions made by the Applicant towards insurances, repairs, etc did not need to be refunded.

The Tribunal confirmed that the wording of the PFEO stated that it was the property management fees that had been paid by the Applicant to the Respondent that were to be refunded. Costs towards insurance and repairs, etc. were not to be refunded to the Applicant. The Respondent indicated that he had correspondence with the Applicant and copies of the relevant accounts that would confirm this and undertook to send them to the Tribunal immediately following the hearing.

The second part of the PFEO required the Respondent to obtain a report over the door entry system and to carry out any works recommended by that, subject to any necessary authorisations by the residents within the larger building.

The Respondent confirmed that a report had been obtained. It highlighted that the door entry system was dated and would benefit from being replaced. The Respondent indicated that a request for approval to carry out the works had been put to all residents within the larger building. Only one resident confirmed they wished to proceed. The Applicant did not respond to the request for authorisation. Accordingly the works have not gone ahead as the Respondent did not have the necessary authorisation. Again the Respondent indicated he could provide information and confirmation in this regard.

There had been additional discussions with the Applicant regarding the replacement of the individual handset within the Applicant's flat (this being a cost for herself). Although this had been organised at one point, the Applicant had not gone through with this and given access to the security company to carry the works out. Funds that she had paid to the Respondent in this regard had been returned to her some time ago.

Immediately following the Hearing, the Respondent provided documentation confirming all of the above. The documentation was copied to the Applicant. No contrary comment was received from the Applicant on this.

The Tribunal considered matters. The Tribunal was satisfied that the property management fees for the relevant period specified in the PFEO had now been returned to the Applicant. The Tribunal was satisfied that the Respondent has carried out the necessary steps to ascertain whether repairs to the door entry system were required. It appeared that the system

would benefit from being replaced however as the proprietors were not prepared to pay the funds to do so, there was little else the Respondent could do in this regard.

Having considered matters, the Tribunal was satisfied that the Respondent had now complied with the PFEO and that this Certificate of Compliance should be issued.

### **Appeals**

**A homeowner or property factor 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.**

Legal Member and Chair

14 December 2020