



PROPERTY FACTOR ENFORCEMENT ORDER

**Issued by the First-tier Tribunal for Scotland (Housing and Property Chamber)
Under section 17 of the Property Factors (Scotland) Act 2011**

Chamber Ref: FTS/HPC/PF/22/2528

6G Hazelden Park, Glasgow, G44 3HA ('the Property')

Anthony Halifax residing at 6G Hazelden Park, Glasgow, G44 3HA ('the Homeowner')

Hacking and Paterson ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Elizabeth Dickson (Ordinary Member).

NOTICE TO THE PARTIES

1. The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for Property Factors, in terms of the Property Factors (Scotland) Act 2011 ('the 2011 Act') determined that the Factor had failed to comply with the following sections of the Code of Conduct:

Complaint Seven: Sections 3.1, 3.2 and OSP 1, OSP 3 of the Code of Conduct.

Complaint Eight: Sections 2.1, 6.9, OSP 1, OSP2, OSP6 and OSP11 of the Code of Conduct.

all as stated in their decision dated 27th July 2023.

2. The Tribunal intimated to the parties, in terms of their said decision dated 27th July 2023, that they proposed to make a Property Factor Enforcement Order, in the following terms:

'One. The Factor must pay the homeowner £300 for the inconvenience he has suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order.'

Two. The Factor must provide the Homeowner with a clear and transparent account and reconciliation for the Garden and Fabric Funds Account showing all debits, credits and balances of the account and transaction details within 28 days of the Property Factor Enforcement Order.'

3. The parties were given notice that they should ensure that any written representations they wish to make under section 19(2)(b) of the Act reach the Housing and Property Chamber's office by no later than 14 days after the date that the Decision and the notice of the proposed Property Factor Enforcement Order was intimated to them.

4. The Property Factor did not provide any written representation in relation to the proposed PFEO.

5. The Homeowner sent the Tribunal written representations in relation to the Proposed PFEO by email dated 10th August 2023 as follows:

'Enforcement orders for the Garden Contract.

This should require HPMS to inform all owners of this outcome as they are not aware of this and they are entitled to know what action has been taken by their Factor and how they have failed them and breached the Act.

Does The Enforcement Order include provisions for ; 1). instructing how the property factor shall comply with the Act; 2). changing its procedures to comply with the act and in order to prevent such breaches happening again. 3).instructing HPMS to not use misleading communication / definitions such as inter alia like " collective owners". 4). instructing HPMS to state / define that contracts are core services and not additional services. I request that this is reviewed to include items 1-4 above Enforcement order for Garden Funds.

This should specify 1. a minimum financial information requirement otherwise improvement may not be achieved. This should also specify a minimum standard of, opening balance, closing balance actual expenditure, purpose of expenditure, date of expenditure, delegation of authority and authorised person approved for expenditure thereof. 2. that this should be the standard practice for all future statement and perhaps for all owners. Without such requirements it is possible that HPMS could revert to past practice. I request that the enforcement order is reviewed to include the minimum legal requirements a trustee of these funds, viz the property factor must comply with under the Act 5

Expenses.

I have incurred expenditure of £380.60 over the 2 years of this complaint and I request recovery of this as part of completion. These expenses are for photocopying, paper, printing, transport and travel costs, postage and other miscellaneous costs directly and only associated with this claim.'

6. The Tribunal considered the Homeowner's written representations. The Tribunal's response is as follows:

6.1 The application was brought by the Homeowner and it is not appropriate to require the Factor to advise the other homeowners of the development at Hazelden Park of the Tribunal's decision.

6.2 The ongoing obligations of the Factor are contained in the Code of Conduct, The Factor's written statement of services and title deeds.

6.3 In connection with the request for the Homeowner to be reimbursed the sum of £380.60. The Homeowner did not provide the Tribunal with any vouching. In addition, the Homeowner's application included 63 complaints of which only ten were upheld. Consequently, it is not reasonable for the Tribunal to provide any reimbursement of the expenses requested.

7. Consequently, the Tribunal make the following Property Factor Enforcement Order:

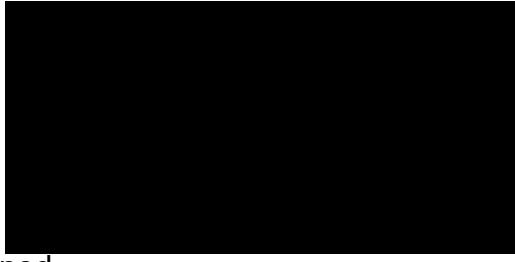
'One. The Factor must pay the homeowner £300 for the inconvenience he has suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order.

Two. The Factor must provide the Homeowner with a clear and transparent account and reconciliation for the Garden and Fabric Funds Account showing all debits, credits and balances of the account and transaction details within 28 days of the Property Factor Enforcement Order.'

Failure to comply with a PFEO may have serious consequences and constitute an offence.

Appeals

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

Chairperson Date: 16th October 2023