

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Compliance Decision: Property Factors (Scotland) Act 2011, Sections 20 and 23

Case Reference Number: FTS/HPC/PF/19/3126

The Property:

135 Greenrigg Road, Cumbernauld, G67 2QB

The Parties:-

Donald Maciver, 18A North Tolsta, Lewis, HS52 0NW

(“the Homeowner”)

and

Apex Property Factor, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH

(“the Factors”)

Tribunal Members:

Adrian Stalker (Chairman) and Andrew Taylor (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") determined that the Factors have failed to comply with the terms of the Property Factor Enforcement Order ("PFEQ") issued on 9 December 2020, and that the Tribunal will serve notice of the failure on the Scottish Ministers, in terms of section 23(2) of the Property Factor (Scotland) Act 2011.

Reasons for the Decision

1. By a decision dated 16 March 2020, the Tribunal determined that the Factors had breached their duties in terms of section 17(1)(b) of the Property Factor (Scotland) Act 2011 ("the 2011 Act") in that they had failed to comply with the

Code of Conduct for Property Factors as required by section 14(5) of the 2011 Act.

2. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEO. It invited representations thereon within 14 days of the Notice being received by the parties. It then issued a final PFEO on 9 December 2020.
3. The PFEO stated:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required to make a payment of £260 to the Homeowner, within 14 days of intimation of this order. Evidence of such payment should be provided to the Tribunal.

4. Since the Proposed PFEO was issued to the parties, the Tribunal has received no contact from the Factors. The Homeowner's emails of 19 and 28 January indicate that no payment has been made to him by the Factors.
5. In terms of Section 23 of the 2011 Act it is for the Tribunal to decide whether a Property Factor has failed to comply with a PFEO. On the basis of the information submitted by the Homeowner and in the absence of any further response from the Factors, the Tribunal is satisfied, in the foregoing circumstances, that the Factors have failed to comply with the PFEO.
6. Accordingly, the Tribunal is required by section 23(2) of the 2011 to serve notice of the failure to comply, on the Scottish Ministers.

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.

Signed

Date 18 February 2021

Chairman