

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland Housing and Property Chamber issued under Section 19(3) of the Property Factors (Scotland) Act 2011 ("the Act") and The First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, in an application made to the Tribunal under Section 17 of the Act

Chamber reference: HOHP/PF/16/0161

The Property: Flat G/03, 19 Brachelston Street, Greenock PA16 9AE ('the property')

The Parties:

Richard Bozzelli, 32 Arden Street, Greenock PA15 3AB ("the homeowner")

Morison Walker Property Management Limited, incorporated under the Companies Acts in Scotland (SC142763) and having a place of business at 23 St Patrick Street, Greenock PA16 8NB ("the property factors")

Tribunal Members – George Clark (Legal Member) and David Hughes Hallett (Ordinary Member)

Decision by the Housing and Property Chamber of the First-tier Tribunal for Scotland in an application under section 17 of the Property Factors (Scotland) Act 2011

The Tribunal determined to make a Property Factor Enforcement Order in respect of the failure by the property factors to comply with their duties under Sections 14 and 17 of the Act.

The Decision is unanimous.

Reasons for the Decision

On 1 May 2017, The property factors determined that the property factors had failed to comply with their duties under Section 14 of the Property Factors (Scotland) Act 2011 ("the Act") in that they had failed to comply with Sections 1 and 4.8 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors and had failed to carry out the property factor's duties in terms of Section 17(5)(a) of the Act.

The Tribunal's Decision was issued to the parties on 30 May 2017, together with a Section 19(2) Notice, detailing the terms of the Property Factor Enforcement Order that the Tribunal proposed to make. The terms of the proposed Order were:-

"Within 14 days of the communication to the property factors of the PFEO, the property factors shall pay to the homeowner the sum of £100 by way of compensation for the distress and inconvenience caused to him by the failure of the property factors to carry out the property factor's duties in terms of Section 17 of the Property Factors (Scotland) Act 2011 and to comply with Sections 1 and 4.8 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors, as required by Section 14(5) of the Act."

The parties were invited to submit any responses to the Tribunal within 14 days of receipt and had a period of 30 days from receipt within which to seek permission to appeal the decision to the First-tier Tribunal.

Neither party provided any response to the Tribunal and neither party sought leave to appeal within the 30 day period.

Accordingly, the Tribunal determined to make a Property Factor Enforcement Order and that the terms of the final Property Factor Enforcement Order should be the same as those of the proposed Order.

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.

G Clark

Signature of Legal Chair ..

Date 4 July 2017



Property Factor Enforcement Order

Chamber reference: HOHP/PF/16/0161

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The Parties:

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Tribunal Members – George Clark (Legal Member) and David Hughes Hallett (Ordinary Member)

Decision by the Housing and Property Chamber of the first-tier Tribunal for Scotland in an application under section 17 of the Property Factors (Scotland) Act 2011('the Act')

This Notice should be read in conjunction with the Decision of 1 May 2017 under reference HOHP/PF/16/0161

The Committee hereby makes the following Property Factor Enforcement Order:

Within 14 days of the communication to the property factors of the PFEO, the property factors shall pay to the homeowner the sum of £100 by way of compensation for the distress and inconvenience caused to him by the failure of the property factors to carry out the property factor's duties in terms of Section 17 of the Property Factors (Scotland) Act 2011 and to comply with Sections 1 and 4.8 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors, as required by Section 14(5) of the Act.

G Clark

Signed

Chairperson

Date 4 July 2017