



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

Certificate of Non Compliance with Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Reference number: FTS/HPC/PF/23/4244 & FTS/HPC/PF/24/0011

Re: Property at 3/1 642 Alexandra Parade, Glasgow, G31 3BU (“the Property”)

The Parties:

Mr Alistair Beith, 3/1 642 Alexandra Parade, Glasgow, G31 3BU (“the Applicant”)

W.M. Cumming, Turner & Watt, 40 Carlton Place, Glasgow, G5 9TS (“the Respondent”)

Tribunal Member: Alison Kelly (Legal Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 9th September 2024.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor: -

Has failed to comply with points 1, 3 and 4 of the Property Factor Enforcement Order which was issued on 22nd October 2024.

Reasons for Decision

On 22nd October 2024 the Tribunal made a PFEO as follows:

No later than 4 weeks from date of PFEO the Property Factor must:

1. Provide a copy of all invoices from January 2005 to May 2022 relating to Scottish Power charges for stair lighting in relation to the block
2. Provide a copy of all invoices from Engie from May 2022 to 1st October 2023 for stair lighting in relation to the block

3. Provide a copy of all invoices rendered by the Respondent to the Applicant during his period of ownership so that he can reconcile the payments made
4. Provide the Applicant with a final accounting to the date that the Respondent ceased to factor the block
5. Make payment to the Applicant his float and any other sums due to him
6. Pay the Applicant the sum of £1500 in total in respect of the breaches of the Code.

Background to Decision

The PFEO was sent to the parties on 22nd October 2024.

On 18th December 2024 the Tribunal sent emails to the parties asking for an update on compliance.

On 27th December 2024 the HO sent an email confirming that the sums ordered in terms of points 5 and 6 had been paid. He said that he would be happy for further time to be given to the PF to comply with the rest of the order.

On 31st December 2024 the PF sent an email to the Tribunal confirming the sums had been paid, the invoices from Engie had been sent in accordance with point 2 and that the Scottish Power invoices would be sent as soon as the PF's accounts department reopened on 6th January.

On 20th January 2025 the HO confirmed that he had received the Engie invoices but had not received any of the Scottish Power ones.

Section 23 of the Property Factors (Scotland) Act 2011 states:

Effect of failure to comply with property factor enforcement order

(1)It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a property factor enforcement order made by the First-tier Tribunal .

(2)Where the First-tier Tribunal decides that a property factor has failed to comply with the property factor enforcement order, the First-tier Tribunal must serve notice of the failure on the Scottish Ministers.

(3)The First-tier Tribunal may not decide that a property factor has failed to comply with a property factor enforcement order—

(a)unless the period within which the order requires any work to be executed has ended, or

(b)if the First-tier Tribunal is satisfied, on the submission of the property factor or otherwise—

(i)that the property factor is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or

(ii)that any action required by the order is likely to endanger any person.

(4)Where the First-tier Tribunal is prevented by reason only of subsection (3)(b) from deciding that a property factor has failed to comply with a property factor enforcement order, the First-tier Tribunal must serve notice on the Scottish Ministers stating that it considers the property factor to be unable to comply with the property factor enforcement order.

The Tribunal considers that the Property Factor has failed to comply with points 1, 3 and 4 of the Property Factor Enforcement Order.

Appeal

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.

Alison Kelly
Legal Member
17th March 2025