

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision in terms of Section 23(1) of the Property Factors (Scotland) Act 2011

Chamber Ref : FTS/HPC/PF/18/2154

**24D Inchinnan Court, Inchinnan Road, Paisley, PA3 2PA
("the Property")**

The Parties:-

**Miss Victoria Yuill, residing at the Property ("the Homeowner and Applicant"),
represented by Mr Kevin Montgomery, Renfrewshire Citizen Advice Bureau, 7
Glasgow Road, Paisley**

**Apex Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire,
G66 1QH ("the Factor and Respondent")**

Tribunal Members:-

Patricia Anne Pryce	- Chairing and Legal Member
Elizabeth Dickson	- Ordinary Member (Housing)

This document should be read in conjunction with the First-tier Tribunal's previous Decisions in this matter but in particular with those Decisions of 7 February and 21 March, both 2019.

Decision

The Tribunal determines that the PFEO issued in this matter has not been complied with.

The decision of the Tribunal is unanimous.

Reasons for Decision

The Tribunal issued a proposed PFEO on 7 February 2019.

The Tribunal gave consideration to the Applicant's email on 25 April 2019 advising that the PFEO had not been complied with and that the Respondent had not made

contact with her. The Applicant had not received any compensation from the Respondent.

The Respondent has not contacted the Tribunal in respect of the PFEO. The Respondent has not replied to the Tribunal's letter requesting representations about compliance with the PFEO.

There is no evidence of any attempt at compliance with the PFEO by the Respondent. The Tribunal accepts the position as stated by the Applicant.

The Tribunal accordingly finds that the PFEO has not been complied with.

Effect of Decision

Notice of the failure to comply with the PFEO will be sent to Scottish Ministers in terms of Section 23 of the 2011 Act.

The Tribunal had noted in its decision on 7 February 2019 the following observations: *"The tribunal noted the final submissions by parties. It was of some concern to the tribunal that the Respondent continued to insist on spurious grounds to justify its position. In particular, the Respondent founded on an unwritten "contractual agreement" with owners where there was none but where there were very clear and unequivocal terms within title deeds in relation to apportionment of charges among owners. The conduct of the Respondent is of concern to the tribunal. In addition, there was a clear and unanimous vote by the owners in a properly convened meeting in line with the procedures as contained within the title deeds. Despite very clear evidence, the Respondent continued to insist that it remained as factor. Despite continued questions by the Applicant, the Respondent refused to deal with the Applicant's concerns as a complaint and instead chose to threaten her with entirely unfounded and spurious threats of legal action. This left the Applicant with no option but to make the present application to the tribunal. The course of conduct by the Respondent in this matter has been bordering on bullying. Even when confronted with clear evidence at the hearing, the Respondent continued to stubbornly maintain its stance, despite all evidence to the contrary."*

No doubt Scottish Ministers will give careful consideration to the conduct of the Respondent in these cases when considering the Respondent's ongoing registration as a property factor.

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.

P Pryce

__Patricia Pryce____ Legal Member and Chair

15 May 2019 _____ Date