

Housing and Property Chamber

First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber)
Statement of Decision in respect of an application under Section 17 of the Property Factors
(Scotland) 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2016**

Chamber Ref: HOHP/PF/17/0158, HOHP/PF/17/0159, HOHP/PF/17/0160 and HOHP/PF/17/0202

Property: Subjects at Flat 3/3, Block A, The Bridge Apartments, 310 Argyle Street, Glasgow, G2 8ND

The Parties:-

Mr Vinodh Singh Soundararajan, residing at Flat 3/3, Block A, The Bridge Apartments, 310 Argyle Street, Glasgow, G2 8ND ("the Homeowner")

and

MXM Property Solutions Limited, having a place of business at Baltic Chambers, Suite 544-549, 50 Wellington Street, Glasgow, G2 6HJ ("the Property Factor")

The Tribunal consisted of:-

Mr James Bauld – Legal Member

Ms Ann MacDonald – Ordinary Member

Decision

The Tribunal determined that a Property Factor Enforcement Order should be made.

Reasons for Decision

1. The Tribunal issued a Decision dated 16th October 2017 following upon a hearing which took place on 18th September 2017. In their Decision, the Tribunal determined that the Property Factor had failed to comply with certain duties arising from the Property Factors Code of Conduct ("the

Code"). The Tribunal provided the parties with a copy of a proposed Property Factor Enforcement Order ("PFEO"). The Tribunal invited parties to make further representations in terms of the relevant provisions of the Property Factors (Scotland) Act 2011. The Decision was issued to the parties by letters issued from the Tribunal's office. The Tribunal have received no further representations from the Property Factor. The Tribunal have received representations from the Homeowner via email dated 13th November 2017.

2. The Tribunal have considered the matters raised in the e-mail from the Homeowner. Having considered the representations made by the Homeowner the Tribunal have determined that they will proceed to issue the Property Factor Enforcement Order as proposed. The Tribunal do not propose to make any changes to the Decision originally made.
3. With regard to the representations made by the Homeowner, these are set out in five separate numbered paragraphs.
4. With regard to the points raised in paragraph 1 of the representations, the Tribunal's view is that they determined that they could not make a Decision with regard to any alleged breach of section 4.6 of the Code of Conduct as this was not raised in the applications raised by this Homeowner. The Tribunal had no jurisdiction to make such a finding and cannot do so at this stage. The Tribunal have explained in the Decision the reasons for this part of their determination. The Tribunal would point out that the Homeowner raises a comment with regard to a Decision made in another application heard on the same date relating to a different Homeowner. The Tribunal note that the Homeowner in this case admits that he became aware of the debt problems in March 2016. While he says he cannot see any difference between his situation and that of the other Homeowner, it is clear that the other Homeowner only purchased his property in June 2016 some three months after this particular Homeowner became aware of the potential debt problems. Accordingly, the Tribunal does not intend to amend any of the parts of the Decision previously made.

5. With regard to paragraph 2 of the representations, the Homeowner complains that he cannot see that the panel have included any information in relation to alleged breach of section 3 of the Code. The Tribunal would point to paragraphs 20 and 29 of their judgement which clearly set out that they considered alleged breaches of sections 3.2, 3.5a and 3.1 of the Code of Conduct but did not find them to be proved.
6. With regard to paragraph 3 of the representations, the Tribunal note that the Homeowner indicates he has not made any decision regarding raising court action. That is exactly the point made by the Tribunal in paragraph 31 of their initial judgement. If the Homeowner decides to pursue court action against the defaulting owners then he will be entitled to seek specific information from the Property Factor with regard to those debts. Unless and until the Homeowner makes a decision to raise court action then no such duty will lie with the Property Factor to provide such detailed information.
7. The matters raised in paragraph 4 of the representations are not matters which were raised at the Tribunal and are outwith the competence of the Tribunal to determine.
8. With regard to the matters raised in paragraph 5 of the representations, the Tribunal would point to their comments made in paragraph 31 of the judgement where they explained the reasons for that part of the judgement. The Tribunal reiterate their view that the Property Factor has carried out their obligations in respect of the provision of final accounting as required by the title deeds for the particular property in question.
9. The Tribunal accordingly have carefully considered the representations made by the Homeowner in his email. The Tribunal does not accept that the matters raised should affect the Decision which the Tribunal made after the hearing nor the terms of the Property Factor Enforcement Order.
10. The Tribunal accordingly determines that they should now issue a final Property Factor Enforcement Order in the same terms as the original Order proposed. The Property Factor

Enforcement Order is set out in a separate document to this Decision. The Decision of this Tribunal is unanimous.

Appeal

11. 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.
12. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

James Bauld, Chairperson

Date

28 November 2017