



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Issued under Section 19 of the Property Factors (Scotland) Act 2011 (“the Act”)

Case Reference Number: FTC/PF/19/0322

Re: Flat 3/2, 22 Roxburgh Street, Glasgow G12 9AP (the property)

The Parties:

Dr Kevin Owusu-Agyemang, residing at the property (the homeowner)

Speirs Gumley, Red Tree Magenta, 270 Glasgow Road, Glasgow G73 1UZ (the property factor)

Tribunal members: Sarah O’Neill (Chairperson), Andrew Taylor (Ordinary (surveyor) member)

1. In its decision dated 22 January 2020 and issued on 28 January 2020 (“the decision”), the tribunal determined that the property factor had failed to comply with its duties as a property factor under section 14 of the Property Factors (Scotland) Act 2011 (“the Act”) in respect of sections 2.5; 5.5; and 6.4 of the code of conduct for property factors. The reasons for the tribunal’s determination are set out in full in the decision.
2. In terms of section 19 (2) of the Act, the tribunal issued a Notice of Proposal to make a Property Factor Enforcement Order (PFEО) dated 22 January 2020 on 28 January 2020. This stated:
 1. Within 28 days of the communication to the property factor of this Property Factor Enforcement Order, the property factor must:
 - a. *Issue a formal written apology to the homeowner in respect of the property factor’s failure to comply with its duties under sections 2.5 and 5.5 of the code of conduct for property factors (‘the code’).*

- b. Make payment to the homeowner of the sum of £150 in recognition of the stress and inconvenience caused to him by the property factor's failure to comply with its duties under section 2.5 and 5.5 of the code.*
 - c. Prepare a programme of works for the tenement in which the homeowner's property is situated, as required by section 6.4 of the code, clearly setting out when the gutter cleaning will be carried out each year.*
 - d. Send the programme of works to the homeowner and all other homeowners within the tenement.*
 - e. Provide documentary evidence to the tribunal of its compliance with the above by sending such evidence to the office of the First-tier Tribunal for Scotland (Housing and Property Chamber) by email or by recorded delivery post.*
3. The Notice of Proposal gave notice to both parties that any written representations they wished to make on the terms of the proposed PFEO should be made within 14 days of the date the decision was sent to them.
 4. An email was received from the property factor on 7 February 2020, asking the tribunal to clarify whether it was acceptable to make payment of £150 towards the homeowner's common charges account in respect of point d) of the proposed PFEO. An email was received from the homeowner on 10 February 2020, thanking the tribunal for the conclusions arrived at. He also noted that: 1) the debt recovery policy mentioned in the tribunal's decision was only sent to him after the tribunal had requested a copy and 2) the dry rot repairs had been attended to and that he had transferred the balance for the repairs to the property factor.
 5. Regarding the above point raised by the homeowner relating to the debt recovery policy, the tribunal does not consider that this is relevant to either its decision of 22 January or the proposed PFEO. The homeowner's complaint under section 4.8 of the code (which the tribunal did not uphold) was that the property factor had taken legal action without taking reasonable action to resolve the matter and giving notice of its intention. While section 4.1 of the code requires the property factor to have a clear written debt recovery procedure, it does not state that this needs to be provided to homeowners, and in any case the homeowner did not complain under that section. The property factor's written statement of services also confirms that it has a debt recovery process which is available on request, and may also be available online, which complies with section 1A C.g. of the code.

6. The tribunal administration wrote to both parties on 21 February clarifying that the Notice of Proposed PFEO was not the PFEO itself, and that the tribunal was considering the representations received from the parties. On 27 February, an email was received from the property factor, enclosing a letter dated 25 February addressed to the homeowner. In that letter, the property factor apologised for its failure to comply with sections 2.5 and 5.5 of the code; stated that a cheque for £150 was enclosed; and set out a schedule of works relating to the gutter cleaning.
7. On 2 March 2020, the tribunal administration wrote to the property factor asking it to confirm whether the programme of works had been sent to all other homeowners in the tenement, and if so to provide documentary evidence of this. On 10 March, the property factor replied by email, attaching a copy letter dated 6 March addressed to the homeowner, setting out details of the programme of works and stating that the property factor's management of the tenement would cease on 28 May 2020. The email stated that the letter had been issued to all homeowners within the tenement.
8. An email was received from the homeowner on 16 March 2020, confirming that he had received the letter of apology and the cheque, and a subsequent letter stating that the property factor was withdrawing its services from 28 May.
9. The tribunal noted that both parties had confirmed that the letter of apology dated 25 February and the cheque for £150 had been sent to / received by the homeowner. While the homeowner did not make reference to the programme of works in his emails, it was clear from the letter of 25 February that this had been prepared and sent to him. The only evidence before the tribunal that the programme of works had been sent to the other homeowners in the tenement was the statement in the property factor's email of 10 March that the letter dated 6 March had been sent to all homeowners. The homeowner had not made any reference to this in his emails either way. The tribunal concluded that, on the balance of probabilities, the letter had been sent to all homeowners. It also noted that in any case the works were not due to be carried out until at least six months after the property factor intends to withdraw its services.
10. In the circumstances outlined above and bearing in mind the tribunal's overriding objective in terms of regulation 3 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, the tribunal in its discretion decides that it is not necessary to make a PFEO. The tribunal determines that the terms of the proposed PFEO have been complied with, and no further remedy is appropriate or necessary under the Act.

Right of 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.

Chairperson

Date – 19 March 2020