

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) to issue a final Property Factor Enforcement Notice in terms of section 19 of the Property Factors (Scotland) Act 2011 ("the Act") issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2016 ("the regulations")

Chamber Ref: FTS/HPC/PF/18/1292

Property: 3A Jerviston Court, Motherwell, ML1 4BS ("the property")

The Parties:-

William Tweedie, 2, Kilnnell Quadrant, Motherwell, ML1 3JN ("the homeowner")

APEX Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the property factor")

Tribunal Members: -

Simone Sweeney (Legal Member), John Blackwood (Ordinary Member)

Decision of the Tribunal Chamber

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the property factor has not complied with the terms of the Proposed Property Factor Enforcement Order ("proposed PFEO") of 26th November 2018.
2. The Tribunal determined that it is necessary to issue a final Property Factor Enforcement Order ("PFEO") in this matter.
3. The decision of the Tribunal is unanimous.

Background

4. Reference is made to the decision of the Tribunal of 26th November 2018 in which the Tribunal determined that the property factor has breached duties in terms of Section 17 (5) of the 2011 Act in that there has been a failure to comply with the property factors' duties as required by section 14(5) of that Act.
5. As required by section 19(2) of the Act, the Tribunal issued a notice of a proposed PFEO accompanied with a written decision. The proposed PFEO was issued to parties on or around 29th November 2018. Parties were invited to submit to the tribunal any representations they might have to the terms of the PFEO.
6. No such representations were received from the property factor.
7. By email of 15th December 2018 the homeowner responded in the following terms:

"Can you give me an update on this case. Apex continue to harass me claiming i (sic) owe them money. when in fact it is them them (sic) that owe me a outstanding balance after their dismissal, as per the Panel decision."

8. The proposed PFEO required that:

"Within 28 days of the communication of the PFEO to the property factor, the property factor must:

- (i) *Pay compensation to the homeowner in the sum of £400 (Four hundred pounds) in respect of the time, distress and inconvenience occasioned by the factor's failure to comply with their duties under the Code.*
 - (ii) *Reimburse to the homeowner the sum of £606.12 (Six hundred and six pounds and twelve pence) being the balance of his factoring account as at 1st October 2018.*
9. No evidence has been produced and made available to the Tribunal by either party to indicate that any payment has been made to the homeowner by the

property factor. There is no evidence before the Tribunal that the property factor has satisfied the requirements of the proposed PFEO.

Reasons for decision

10. There being no evidence produced to show that the terms of the proposed PFEO have been met by the property factor, the Tribunal determines that it is necessary for a final PFEO to be issued in terms of section 19 (3) of the Act.

Appeals

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 within 30 days of the date the decision was sent H Forbes

S Sweeney

Sweeney, Legal member, 19th December 2018