

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision issued under s19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/20/2674

The Property: Flat 2/2, 336 Cumbernauld Road, Glasgow, G31 3LZ (“The Property”)

The Parties:-

Ridhouan Ahankour, residing at Flat 2/2, 336 Cumbernauld Road, Glasgow, G31 3LZ (“the applicant”)

W. M. Cumming, Turner & Watt, property managers, 40 Carlton Place, Glasgow, G5 9TS (“The property factor”)

Because the property factor has breached the code of conduct for property factors and has failed to carry out its duties in terms of s.17 of the Property Factors (Scotland) Act 2011, the tribunal unanimously decides to issue a Property Factor Enforcement Order (“PFEAO”).

Committee Members

Paul Doyle	Legal Member
Ahsan Khan	Ordinary Member

Reasons for decision

1 By application dated 24 December 2020, the applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of his complaint that the property factor has breached the code of conduct imposed by Section 14 of the 2011 Act & that the property factor has failed to comply with the property factor's duties.

2 In a decision issued on 7 April 2021 the tribunal notified parties of a proposed PFEAO and invited written representations within 14 days.

3. By e-mails dated 9 and 13 April 2021 the applicant offered greater clarification about his expenditure and asked the tribunal to take account of invoices and calculations which had not been placed before the tribunal in evidence.

4. A letter from the property factor, dated 1 April 2021, was not received by the tribunal until 9 April 2021, two days after the hearing in this case. The property factor tendered apologies and conceded that they had let the applicant down.

5. The tribunal's decision is based on the evidence placed before the tribunal. It would be wrong for the tribunal to consider evidence tendered after the hearing has finished and after the tribunal has issued their decision.

6. Section 19 of the Property Factors (Scotland) Act 2011 contains the following:

(2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to them.

(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order.

(4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal.

7. Neither parties' written representations change the tribunal's decision to issue a PFEO, nor do either parties' representations persuade the tribunal to change the proposed terms of the PFEO. The tribunal accordingly issues a PFEO in the terms proposed in the decision dated 7 April 2021.

PROPERTY FACTOR ENFORCEMENT ORDER

8. The tribunal makes the following property factor enforcement order (PFEO)

Within 28 days of the date of service on the respondent of this property factor enforcement order the respondent must pay the applicant £620.00 representing the property factors management fee for 2020 together with a financial penalty for breaching the code of conduct and failing in the property factors duties.

9. Failure to comply with a PFEO may constitute an offence.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

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.

26 April 2021

Legal Member