



Decision and Statement of Reasons under Section 23 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/17/0285/0286-0287

**65 Greenrigg Road, Cumbernauld G67 2QB
169 Greenrigg Road, Cumbernauld G67 2QB
223 Greenrigg Road, Cumbernauld G67 2QB
("the Properties")**

The Parties:-

Derek Nicholson and Gary Nicholson, 3 Clairmont Gardens, Glasgow G3 7LW ("Homeowner")

Apex Property Factor Limited, 46 Eastside, Kirkintilloch, Glasgow G66 1QH ("Factor")

Tribunal Members:

**Joan Devine – Chairing and Legal Member
Sara Hesp – Ordinary Member**

Background

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") considered an application by the Homeowner submitted in terms of Section 17 of the Property Factors (Scotland) Act 2011 (" 2011 Act"). A hearing took place before the Tribunal on 14 December 2017. The Tribunal unanimously determined that the Factor had failed to comply with the Code of Conduct for Property Factors as required by section 14 of the 2011 Act. The Tribunal unanimously determined that the Factor had failed to comply with its factor duties in terms of section 17(5) of the 2011 Act. The Tribunal issued a decision on 12 February 2018 ("Decision") along with a proposed property factor enforcement order.

2. The Tribunal received a letter from the Homeowner dated 21 February 2018 seeking a review of the Decision. The Tribunal also received a letter from the Factor dated 27 February 2018 setting out the Factor's response to the Decision. The Tribunal treated that letter as a request for a review. The Tribunal fixed an oral hearing which took place on 8 May 2018. Following that Hearing the Tribunal issued the Decision (as reviewed) dated 18 May 2018

along with the property factor enforcement order also dated 18 May 2018 ("PFEO").

3. By email dated 28 June 2018 attaching letter dated 27 June 2018 the Factor intimated that they wished to appeal the Decision (as reviewed). The Tribunal determined that the application for permission to appeal was wholly without merit and that it would not exercise its discretion to grant permission to appeal and issued a decision to that effect dated 19 July 2018.
4. The Factor sought permission to appeal to the Upper Tribunal for Scotland. By decision dated 14 August 2018 the Upper Tribunal for Scotland refused leave to appeal.
5. On 26 September 2018 a checklist was sent to the Parties in terms of which they were asked to state whether or not the actions required in the PFEO had been completed. The Homeowner completed the checklist stating that the Factor had not complied with any part of the PFEO. The Factor did not complete and return the compliance checklist.
6. On 5 November 2018 a hearing took place at which the Tribunal considered oral submissions from the Parties regarding compliance with the PFEO. At the hearing the Homeowners were in attendance. The Factor was not represented. The Tribunal noted that the date of the Hearing had been intimated to the Factor by email on 10 October 2018.

Discussion

7. Section 23 of the 2011 Act provides as follows:

"23 – Effect or failure of comply with Property Factor Enforcement Order

- (1) *It is for the First-tier Tribunal to decide whether a Property Factor has failed to comply with a Property Factor Enforcement Order made by the First-tier Tribunal.*
- (2) *Where the First-tier Tribunal decides that a Property Factor has failed to comply with the Property Factor Enforcement Order, the First-tier Tribunal must serve notice of the failure on the Scottish Ministers.*
- (3) *The First-tier Tribunal may not decide that a Property Factor has failed to comply with a Property Factor Enforcement Order –*
 - (a) *unless the period within which the Order requires any work to be executed has ended, or*

- (b) if the First-tier Tribunal is satisfied on the submission of the Property Factor or otherwise –
- (i) that the Property Factor is unable to comply with the Order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
 - (ii) that any action required by the Order is likely to endanger any person.
- (4) Where the First-tier Tribunal is prevented by reason only of sub-section 3(b) from deciding that a Property Factor has failed to comply with a Property Factor Enforcement Order, the First-tier Tribunal must serve notice on the Scottish Ministers stating that it considers the Property Factor to be unable to comply with a Property Factor Enforcement Order.
8. At the hearing on 5 November 2018, the Tribunal heard submissions from the Homeowner that the Factor had provided a Written Statement of Services which they received around the end of June/beginning of July 2018. A copy was provided to the Tribunal. The Homeowner said that there had been no compliance by the Factor with paragraphs 2, 3 or 4 of the PFEO. The Homeowner said that the Factor had sent invoices to the Homeowner dated 1 November 2018. Copies of the invoices were produced to the Tribunal. The invoices had attached a Statement of Account which listed invoice dates, invoice numbers, invoice amounts and a running balance. The Tribunal noted that the information contained in the invoices was not adequate for there to have been compliance with paragraphs 2 and 3 of the PFEO.

Decision

9. The Tribunal, having no reason to dispute the Home Owner's submission to it that paragraphs 2, 3 and 4 of the PFEO had not been complied with and having no grounds before it to engage Section 23(3) of the 2011 Act, determines in terms of Section 23(1) of the 2011 Act that the Factor has failed to comply with paragraphs 2, 3 and 4 of the PFEO.
10. The decision is unanimous.
11. In terms of Section 23(2) of the 2011 Act the Tribunal must serve notice of the failure to comply with the PFEO on the Scottish Ministers and accordingly a copy of this decision will be served on the Scottish Ministers.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014 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.

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Signed

Joan Devine, Legal Member and Chair

Date