

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/21/2061

The Property: 30 Brighouse Park Cross, Cramond, Edinburgh, EH4 6GU (“The Property”)

The Parties:-

Robert Finnie, residing at 30 Brighouse Park Cross, Cramond, Edinburgh, EH4 6GU (“the applicant”)

James Gibb Property Management Ltd, a company incorporated under the Companies Acts and having their registered office at Bellahouston Business Centre, 423 Paisley Road West, Glasgow, G51 1PZ (“The property factor”)

Because the property factor has failed to comply with the code of conduct as required by Section 14 of the Property Factors (Scotland) Act 2011 the tribunal unanimously decides to issue a Property Factor Enforcement Order (“PFEO”).

Committee Members

Paul Doyle	Legal Member
David Godfrey	Ordinary Member

Reasons for decision

1 By application dated 27 August 2021, 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.

2 The application stated that the applicant considered that the property factor failed to comply with Sections 2.5 and 6.9 of the code of conduct for property factors.

3. On 29 November 2021 the First-tier Tribunal for Scotland (Housing and Property Chamber) decided that the property factor has breached the code of

conduct for property factors, the tribunal notified parties of the terms of the proposed Property Factor Enforcement Order ("PFEO") and invited representations from parties about the terms of the proposed PFEO.

4. 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.

5. None of the parties has made any representations in response to the tribunal's decision dated 29 November 2021. The tribunal accordingly issues a PFEO in the terms proposed in the decision dated 29 November 2021.

PROPERTY FACTOR ENFORCEMENT ORDER

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

Within 28 days of the date of service on the property factor of this property factor enforcement order the property factor must pay the applicant £250.00 as solatium for the distress and inconvenience caused to the applicant

7. 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.

Signed

17 December 2021

Legal Member