

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision by the Tribunal
In an Application under section 17 of the Property Factors (Scotland) Act 2011
(“the 2011 Act”)

Anne Boyd, 40/12 Littlejohn Road, Edinburgh EH10 5GJ (“the Applicant”)

James Gibb Residential Factors, 4 Atholl Place, Edinburgh EH3 8HT (“the Respondent”)

Re: 40/12 Littlejohn Road, Edinburgh EH10 5GJ (“the Property”)

Chamber Ref: FTS/HPC/PF/20/1400

Tribunal Members:

John McHugh (Chairman) and Ahsan Khan (Ordinary (Housing) Member).

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") hereby determines that the Respondents' application for review is granted in respect of one of the issues raised and the Decision will be issued in a corrected form.

The decision is unanimous.

Reasons for Decision

The Decision under Review

On 1 February 2021, the Tribunal issued its decision that the Respondent had failed to carry out its property factor's duties. The Tribunal issued a draft Property Factor Enforcement Order ("PFEO") on the same day.

Basis for Review

The Applicant has, by email of 8 February 2021, raised certain alleged inaccuracies in the Decision and has requested a review.

The issues identified by her are:

"Page 6 paragraph 2. The focus of my complaint was initially the Common Property repairs. I was unaware of the problem with the electricity until Deed Clause Twenty First mentioned the store. I spoke to this at the Hearing when I explained how I discovered the problem. I refer you also to the minute of the meeting on 14/11/18 which was included as evidence with my application. James Gibb chose to introduce their evidence by focusing on the electricity problem.

Page 6 Paragraph 9. The Respondents advised that title searches should be carried out at a cost of £67.74 per property. This included a fee of £240 for working out the apportionments. They were proposing to charge £63.60 for the title Deed which can be purchased online for £3.60. The evidence to support this is in the file Tribunal Evidence 2 15-TE2-13 , 19-TE2-M1 dated 6/5/20 and 22-TE2 M4 dated 5/5/20. I spoke to the evidence of the £3.60 cost at the Hearing when I introduced the Deed.

Page 7 Paragraph 1. I did not vote no on the ballot form. I emailed my reasons for not completing the ballot. James Gibb chose to register this as a no vote. The evidence for this is in the Tribunal Evidence 2 folder at 23-TE 2 N and TE 2 O."

As regards the first and second issues, the Decision is not intended to be an exact record of every statement made by parties at the hearing and the points raised seem to the Tribunal to be of no material significance in that they would not affect the outcome of the Decision or the terms of the PFEO. The Tribunal did specifically note in its Decision the Applicant's concern regarding maintenance costs beyond electricity charges. It did also specifically note that the solicitors were to charge a further fee for the title examination exercise.

As regards the third point, the Tribunal notes that the Applicant advises that she did not vote against the proposal to carry out the title examination; rather she did not vote in favour of it. Again, that makes no difference to the substantive outcome but as the Applicant evidently regards this as of importance in the context that the Decision is publically available and may convey to third parties an incorrect position regarding her vote, the Decision will be corrected to reflect this by removal of the words "(including the Applicant)".

The Respondent has advised that it has no specific additional representations to make in respect of the review request. Both parties have indicated that they do not wish a hearing in respect of the review application.

Decision

The Decision will be corrected to remove the words "(including the Applicant)" and re-issued.

This Decision is not subject to appeal.

JOHN M MCHUGH

Chairing Member

Date 1 March 2021