

Housing and Property Chamber

First-tier Tribunal for Scotland



FIRST-TIER TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY CHAMBER)

STATEMENT OF DECISION: in terms of Section 23 of the Property Factors (Scotland) Act 2011 ("the 2011 Act")

Chamber Ref: FTS/HPC/PF/21/0456

The Property: 64 Silvertrees Wynd, Bothwell G71 8FH ("the Property")

The Parties:

Mrs Moira Gardner, 64 Silvertrees Wynd, Bothwell G71 8FH ("the Applicant"), and

Mrs Caroline Adams, 18 Silvertrees Wynd, Bothwell G71 8FH ("the Applicant's Representative")

Miller Property Management Limited, Suite 2.2 Waverley House, Caird Park, Hamilton ML3 0QA ("the Respondent")

Tribunal Members:

**G McWilliams Legal Member and
M Lyden (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determines that the Respondent has failed to comply with the Property Factor Enforcement Order ("PFEO") imposed by it in respect of the Property and dated 19th January 2024. The Tribunal determines to serve notice of that failure on the Scottish Ministers in terms of Section 23(2) of the Act. The Tribunal intends to issue an Order for Payment of the sum of £200.00 against the Respondent, gives notice to the parties of this intention and directs the parties to make written representations in terms of Rule 16 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the 2017 Rules") within 14 days of the date hereof.

Background

1. In the Tribunal's decision, dated 11th July 2023, they stated that they proposed to make a Property Factor Enforcement Order ("PFEO") The Tribunal also stated that, prior to making a PFEO, the parties had a period of 14 days within which to make representations regarding the Proposed PFEO under section 19(2)(b) of the 2011 Act.
2. The Respondent made an application for review of the Tribunal's decision, of 11th July 2023, which was determined by the Tribunal on 12th October 2023. The Respondent subsequently made an application for permission to appeal the Tribunal's decision of 11th July 2023. The Tribunal refused the Respondent's application for permission to appeal in their decision dated 19th January 2024.
3. The Respondent had not made specific representations in respect of the proposed PFEO. The Applicant did not make any representations in respect of the proposed PFEO. In the circumstances the Tribunal was satisfied that it was fair and just to make a PFEO in the following terms, and did so in their decision, also dated 19th January 2024:

PFEO

- i) The Respondent is to make a compensation payment to the Applicant, in the sum of £200.00, within 28 days of the date of issue of the PFEO; and
- ii) The Respondent is to provide a letter of intimation of proposed works, additional to the repair, renewal and maintenance works which the Respondent routinely carries out at the Property and the development within which it is situated, with confirmation of the cost of such proposed works, to the Applicant, as well as all other homeowners at the development, in the event of such additional works being proposed, and prior to the execution of such works, from the date of this decision until the Respondent ceases to be the property factor for the Property. The Respondent is to provide a template letter of intimation of such proposed, additional works to the Tribunal within 28 days of the date of issue of the PFEO.

Compliance with PFEO

4. Following a PFEO compliance check, the Applicant, through her Representative, has notified the Tribunal's office that she has not received payment of the sum of £200.00, or any sum, from the Respondent.
5. The Tribunal have not received a template letter of intimation of proposed, additional works from the Respondent.
6. No information or representations about compliance have been received from the Respondent and no excuse or reason for the failure has been presented by them.

7. Section 23(1) of the 2011 Act states: “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”.
8. In the circumstances, the Tribunal determines that the Respondent has failed to comply with the PFEO and that there is no reasonable excuse for the failure.
9. Section 23(2) of the 2011 Act states “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.” The Tribunal, accordingly, serves notice on the Scottish Ministers.

Payment Order

10. Section 20 of the 2011 Act states: “A property factor enforcement order is an order requiring the property factor to...(b)where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable.”
11. The Tribunal considered it reasonable in the PFEO to order the Respondent to make payment to the Applicant of £200.00. The Respondent has failed to make that payment. The Tribunal proposes to issue an Order for payment of this sum to the Applicant by the Respondent. Before doing so, the Tribunal gives the parties notice of their intention and, in terms of Rule 16 of the 2017 Rules, directs the Parties to make written representations within 14 days of the date hereof for the Tribunal’s consideration.

Appeal

12. 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 Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

G McWilliams Tribunal Legal Member

Date: 8th July 2024

