

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factors (Scotland) Act 2011 ("the Act")

Property Factor Enforcement Order ("PFEO") Section 23

The First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure)

Amendment Regulations 2017 ("the regulations")

Chamber Ref: FTS/HPC/PF/21/0458

Re.: 66 Silvertrees Wynd, Bothwell, G71 8FH ("the property")

The Parties:-

Mrs Eileen Wright, 66 Silvertrees Wynd, Bothwell, G71 8FH ("the homeowner") represented by Ms Caroline Adams, 18 Silvertrees Wynd, Bothwell, G71 8FH

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

Tribunal Members: - Simone Sweeney (Legal Member) Andrew Taylor (Ordinary Member)

Decision:

The Tribunal determines that the property factor has failed to comply with the Property Factor Enforcement Order ("PFEO") of 13th May 2022 in terms of section 23 of the Act and proceeds to serve notice of the failure on the Scottish Ministers.

Background:

1. Reference is made to earlier procedure. In particular, reference is made to the decision and Property Factor Enforcement Order ("PFEO") of the Tribunal dated 13th May 2022.
2. The PFEO was in the following terms:

Within 28 days from the date of issue of this order, for the property factor to:-

- *provide to the homeowner payment of £750 in recognition of:- the property factor's failure to reply to the homeowner's communications of, 22nd January, 2nd February and 25th February and 14th March 2021; to follow the property factor's complaints procedure and; in recognition of the time, preparation and inconvenience the homeowner has expended in having to bring this application.*
 - *To provide evidence of same to the Tribunal's administration.*
3. The PFEO and decision of 13th May 2022 were issued to parties by email. The consequences for the property factor, should he fail to comply with the terms of the PFEO, were set out within the document.
 4. Parties were contacted by the Tribunals administration in June 2022, provided with forms and requested to revert with confirmation on whether the property factor has completed the actions required in the PFEO.
 5. The homeowner completed the form, dated 14th June 2022 and returned it to the Tribunal by email. The homeowner did not accept that the property factor had completed the actions required in the PFEO.
 6. The homeowner provided, "*The respondent has failed to comply with the PFEO as specified.*"
 7. The Tribunal received the homeowner's response in July 2022.
 8. A copy of the homeowner's form dated 14th June 2022 was intimated to the property factor by the Tribunal's administration by email.

9. In August 2022, the Tribunal became aware that the property factor had previously sought permission to appeal the decision of the Tribunal of 27th March 2022. That request had never been brought to the attention of the Tribunal. The Tribunal addressed the property factor's request, *ex proprio motu*. Reference is made to the decision of the Tribunal of 26th August 2022. The Tribunal refused the property factor's request for permission to appeal its decision of 27th March 2022. A further period for appeal then took place.

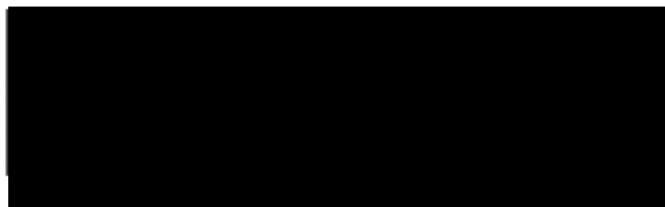
Reasons for decision

10. To date there has been no evidence produced from the property factor that he has provided to the homeowner £750 as required by the PFEO. The homeowner has indicated to the Tribunal that the property factor has failed to furnish her with the funds.
11. In the absence of anything to the contrary and there having been no response from the property factor to contradict the homeowner's position of 14th June 2022, the Tribunal determines that the property factor has failed to comply with the terms of the PFEO.
12. As required by the PFEO, the property factor has failed to provide to the Tribunal evidence that he has complied with the terms of the PFEO. In the absence of same the Tribunal is satisfied that the property factor has failed to comply with the terms of the PFEO.
13. Accordingly, the Tribunal proceeds to serve notice of the property factor's failure on the Scottish Ministers.

Appeals

14. 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 within 30 days of the date the decision was sent to them.



Simone Sweeney, Legal chair, at Glasgow on 4th October 2022