



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

Certificate of Non Compliance with Property Factor Enforcement Order (“PFEQ”): Property Factors (Scotland) Act 2011 Section 19(3)

Reference number: FTS/HPC/PF/23/3408

Re: Property at 33 Broomyhill Place, Linlithgow, West Lothian, EH49 7BZ (“the Property”)

The Parties:

Mr Steven McDade, 33 Broomyhill Place, Linlithgow, West Lothian, EH49 7BZ (“the Applicant”)

Hacking & Paterson Management Services, 103 East London Street, Edinburgh, EH7 4BF (“the Respondent”)

Tribunal Members: Alison Kelly (Legal Member) and Helen Barclay (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 27th May 2024.

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor: -
Has failed to comply with the Property Factor Enforcement Order which was issued on 24th June 2024.
2. The decision of the Tribunal is unanimous.

Reasons for Decision

3. On 24th June 2024 the Tribunal made a PFEQ as follows:

No later than 4 weeks from date of PFEQ the Property Factor must:

1. *Provide reconciliation statements for the Float for the last three financial years.*

4. The Property Factor has not provided reconciliation statements for the Float for the last three financial years.

Section 23 of the Property Factors (Scotland) Act 2011 states:

Effect of failure to 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 subsection (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 the property factor enforcement order.

5. The Tribunal consider that the Property Factor has failed to comply with the Property Factor Enforcement Order.
6. The Tribunal's decision is unanimous.

Appeal

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

Alison J Kelly Chairperson

16 September 2024