

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in respect of applications under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").

Reference number: FTS/HPC/PF/19/1747 ("the Application")

Re: Flatted Property at 173C, Greenrigg Road, Cumbernauld, Glasgow, G67 2QD ("the Property")

The Parties:

Mrs. Zainab Kamara, residing 4, Upton Close, Bexley, Kent, DA5 1HJ ("the Applicant"), and

Apex Property Factor Limited having a place of business at 46, Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the Factor")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined that the Factor had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct ("the Code") having proposed to make a Property Factor Enforcement Order (PFEO) now makes a PFEO as follows:-

1. No later than 31 December 2019 the Factor shall pay to the Applicant the sum of £1,500.00 to compensate her in respect of the effect of its conduct and in respect of inconvenience caused to her by its failures and confirm to the Tribunal that it has done so;
2. No later than 31 December 2019 the Factor shall issue to the Applicant and copy to the Tribunal, evidence of the common building insurance policies, if any, for the Property which has been in place from March 2015 to 11 April 2019 and that to detail the basis upon which the Applicant's share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy and

3. In the event that the Factor cannot or does not comply with paragraph 2 above, no later than 31 January 2020 the Factor shall refund to the Applicant all of the insurance premiums paid by her to it and confirm to the Tribunal that it has done so.

Background

1. By application received by the First-tier Tribunal for Scotland (Housing and Property Chamber) between 5 June 2019 and 8 July 2019 ("the Application") the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondents had failed to comply with Section 1 D at m and n, Section 2 at 2.5, Section 5 at 5.5 and 5.2 and Section 7 at 7.1 and 7.2 of the Code and had failed to comply with its property factor duties.
2. Following a Hearing, the Tribunal determined that the Respondent had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct ("the Code") and had breached Sections 2 at 2.5, Section 5 at 5.5 and 5.2 and Section 7 at 7.1 and 7.2 of the Code and had failed to comply with its property factor duties but had not breached Section 1D at m and n of the Code. The Tribunal proposed a Property Factor Enforcement Order ("PFEO") which was intimated to the Parties.

Responses from the Parties on the proposed PFEO.

3. The Applicant responded to the proposed PFEO and asked that the Tribunal consider further compensation in respect of losses incurred in respect of her contract with her tenant. The Respondents did not comment

Issue for the Tribunal

4. Thereafter, the issue for the Tribunal is, having intimated the proposed PFEO to the Parties and having heard only from the Respondents in respect of its application for review, should the Tribunal proceed with the PFEO as proposed?

Decision of the Tribunal and reasons for the decision.

5. The Tribunal had regard to the Applicant's comments and took the view that these losses were remote from the Respondents' actions and so determined not to amend its proposed PFEO in this regard.
6. The 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

Karen Moore

Chairperson

9 December 2019