



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

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/19/3413

The Parties:-

Mrs Maureen Loy, 5 Shepherds Court, Banchory AB31 5TG (“the Homeowner”)

The Property Management Company (Aberdeen) Ltd, Little Square, Old Meldrum AB51 0AY (“the Factor”)

The Tribunal:-

**Graham Harding (Legal Member)
Angus Anderson (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 23 September 2020.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it with the exception of paragraph (3) which has been amended.

The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 23 September 2020, it proposed to make a PFEO as follows:

Within a period of two months from the date of the PFEO the Factor must:

- (1) At their own cost instruct a reputable firm of specialist cleaning contractors to carry out a deep clean of the hard flooring, bannister and railings, window sills, internal and external front doors, stairs and stairwell windows;
- (2) At their own cost supply such additional gravel as may be required to complete the re-gravelling of the communal ground at the rear of the development including the individual parking bays and instruct reputable contractors to level and compact the gravel to avoid rutting as far as possible and provide owners with adequate notice for removal of vehicles.
- (3) Ensure that the property manager’s monthly inspection of the development is timed to coincide with or shortly after the monthly cleaning of the development and take such steps as may be necessary to ensure that the contractors are complying with the specification contained in the Written Statement of Services;

- (4) Provide to the Tribunal written confirmation that items (1) and (2) have been completed.

The Tribunal indicated that prior to making a property factor enforcement order, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 24 September 2020.

By email dated 28 September 2020 the Factor submitted written representations in respect of paragraphs (1) and (3) of the proposed PFEO. It suggested that a further deep clean at the development was unnecessary this having been done earlier in the year. It also suggested that it could not and would not be sensible to have monthly inspections coinciding with the monthly cleaning of the development as other services such as grounds maintenance and window cleaning were not done at the same time as the monthly cleaning. There was also an issue of annual leave or sickness that could affect the timing of inspections.

By email dated 5 October 2020 the Homeowner submitted that she did not understand how resubmitting photos of 7 February 2020 absolved the Factor from carrying out all the items in the proposed PFEO. The Homeowner provided the Tribunal with further photographs of the development taken that day which she suggested there had been no change from before.

The Tribunal considered the submissions made on behalf of both parties and was satisfied in all the circumstances that no amendment should be made to paragraphs (1), (2) and (4). The Tribunal was satisfied that notwithstanding there had been a significant cleaning of the development undertaken in February this year further deep cleaning was required. The Tribunal accepted to a degree that it may not be practical on an ongoing basis to have the monthly inspections coinciding with the monthly cleaning of the development but given the issues that clearly exist around the standard of cleaning the Tribunal determined that it would be appropriate for a period of three months that the monthly inspections took place on the same day as or shortly after the monthly cleaning in order that the quality of the contractors cleaning can be closely monitored and amended paragraph (3) accordingly.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

Within a period of two months from the date of the PFEO the Factor must:

- (1) At their own cost instruct a reputable firm of specialist cleaning contractors to carry out a deep clean of the hard flooring, bannister and railings, window sills, internal and external front doors, stairs and stairwell windows;
- (2) At their own cost supply such additional gravel as may be required to complete the re-gravelling of the communal ground at the rear of the development including the individual parking bays and instruct reputable contractors to level and compact the gravel to avoid rutting as far as possible and provide owners with adequate notice for removal of vehicles.
- (3) Ensure that the property manager's monthly inspection of the development for a period of three months is timed to coincide with or shortly after the monthly cleaning of the development and take such additional steps as may be necessary to ensure that the contractors are complying with the specification contained in the Written Statement of Services;

- (4) Provide to the Tribunal written confirmation that items (1) and (2) have been completed;

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A homeowner or property factor 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

Legal Member and Chair

15 October 2020

