



## Property Factor Enforcement Order under s19 (3) of the Property Factors (Scotland) Act 2011

**Case reference:** FTS/HPC/PF/21/0124

**Re:- 3/1 397 Great Western Road, Glasgow G4 9HY**

### **The Parties:-**

**Okay Limited, having a registered office at Summit House, 4-5 Mitchell Street, Edinburgh EH6 7BD (“the Applicant”)**

**and**

**James Gibb Property Management Ltd, 65 Greendyke Street, Glasgow G1 5PX (“the Respondent”)**

### **Tribunal Members:**

**Richard Mill (legal member) and Sara Hesp (ordinary member)**

### **Decision**

The Tribunal unanimously makes a Property Factor Enforcement Order in the following terms:

- “1. Within 14 days of the date of service of this PFEO the respondent must pay the applicant £1,000 for breaching the Code of Practice for Property Factors, which forms part of the contractual arrangements between the parties.
2. Within 14 days of the date of service of this PFEO the respondent must prepare a schedule of proposed staff training to ensure that all relevant staff are fully aware of the respondent’s obligations in respect of the property at flat 3/1 397 Great Western Road, Glasgow G4 9HY and the tenement within which it is situated, and in particular:
  - (i) To have detailed knowledge of the terms of the Code of Practice and to ensure that they comply with it.

- (ii) To accurately record all homeowners complaints in writing whether such complaints are received in writing or by telephone, and to record the dates when corresponding contractors are instructed including their identity and a summary of the work undertaken and when it is completed.”

## **Background**

Following a hearing on 29 April 2021 the Tribunal unanimously determined that the respondent had failed to comply with sections 2.5, 6.1 and 6.4 of the Code of Conduct for Property Factors (“the Code”), and in all other respects had adhered to the Code. The Tribunal also unanimously determined that the respondent had complied with their property factor duties. A Property Factor Enforcement Order (“PFEO”) was found to be necessary and the terms of the proposed PFEO were set out. Parties had 14 days to make submissions on the terms of the proposed PFEO.

## **Reasons for the PFEO**

The applicant has made no comment upon the terms of the proposed PFEO. The respondent’s solicitors lodged submissions under cover of letter dated 17 May 2021. The Tribunal fully considered these.

Neither party made any submissions on part 1. of the proposed PFEO. In the circumstances the Tribunal proceeded to make that element of the PFEO as earlier proposed and which is reflected above.

The Respondent took issue with part 2. of the proposed PFEO.

It was submitted that in the terms previously proposed, which did not specify the applicant’s property / tenement, that it did not relate to the proceedings before the Tribunal and went beyond the scope of the subject matter of the dispute between the parties. It was submitted that the proposal was incompetent. The Tribunal accepts that without specification of the relevant property this would be the case and accordingly the applicant’s property and the tenement are now specified.

It was also submitted that such a requirement as proposed by part 2. was not necessary. Reference was made to the Respondent’s practices and the recordings made by them. The Tribunal made clear findings on the evidence and found that the respondent’s practices are lacking thus causing them to have breached the Code of Practice. The suggestion that such issues are historical only is not supported by the oral evidence of the respondent’s own witnesses at the hearing. The Tribunal are disappointed by the respondent’s suggestion that their practices cannot be improved. Part 2. of the PFEO is necessary to avoid a repeat of the issues which arise in this application. Further evidence of the respondent’s practices and procedures will be taken account in consideration of the respondent’s compliance with the PFEO made.

It was further submitted that part 2. lacked specification. Any concerns in this respect are resolved by specification of the applicant’s property / tenement. It will be a matter for the Tribunal to determine whether the respondent has complied with the requirement to prepare a schedule of staff training. Common sense will dictate the

nature and extent of such training. It would be inappropriate for the Tribunal to be overly prescriptive. All the respondent has to do is to evidence the specification of the training, when it will take place and with whom. The submission regarding the respondent's lack of knowledge as to how the Tribunal would enforce any breach is erroneous. All breaches are dealt with in the same way. Reference is made to sections 23 and 24 of the 2011 Act.

The respondent should note that failure without reasonable excuse to comply with the Property Factor Enforcement Order is a criminal offence in terms of Section 24 of the 2011 Act. Additionally Scottish Ministers can take any failure into account in respect of the future registration of the respondent on the register of property factors.

## **Appeals**

**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**

May 2021