



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

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

Chamber Ref: FTS/HPC/PF/22/0871
FTS/HPC/PF/22/0874
FTS/HPC/PF/22/0932
FTS/HPC/PF/22/0933
FTS/HPC/PF/22/2390

Re: Properties at Lauderdale Mansions, 44 Lauderdale Gardens and 47 Novar Drive, Hyndland Glasgow (“the Property”)

Parties:

Mrs Pauline Bourhill, Apartment 3/2, 44 Lauderdale Gardens, Lauderdale Mansions, Hyndland, Glasgow G12 9QT
Professor Sheila McLean, 47 Novar Drive, Hyndland, Glasgow G12 9UB
Mr Robert Friel and Mrs Marion Friel, Apartment 3/1 47 Novar Drive, Hyndland, Glasgow G12 9UB
Mr Mark McManus and Mrs Nadine McManus, 46 Lauderdale Gardens, Hyndland, Glasgow G12 9QT (“the Applicants”)

James Gibb Residential Factors, 65 Greendyke Street, Glasgow G1 5PX (“the Respondents”)

Tribunal Member:

Graham Harding (Legal Member)
Kingsley Bruce (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 9 February 2023 and corrected on 28 February 2023.

Decision

The Tribunal has decided that it should make a PFOE in the terms originally proposed by it.

The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 9 February 2023 and corrected on 28 February 2023, it proposed to make a PFOE as follows:

1. The Respondent must at their own expense within a period of 4 weeks from the date of receipt of this order instruct an independent HVAC engineer or other suitably qualified consultant to provide a report addressing the owners statutory

and other legal obligations in respect of ventilating the underground car park at the properties and with particular regard as to facilitate the owners to make a decision on the most appropriate option for repair, renewal or replacement of the current inoperative ventilation system. Said report must be sent to the Applicants and the Tribunal within two weeks of its receipt and a meeting of all owners called to discuss the report and any recommendations it contains as soon as practical thereafter.

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 9 February 2023. By correspondence dated 21 February 2023 Mrs Bourhill and Mr McManus submitted separate written representations to the Tribunal. Mr Mcmanus pointed out a typing error in the decision and this was corrected by the Tribunal. Mrs Bourhill provided the Tribunal with further information as regards the repairs to the stonework and the painting of her window sills. The Tribunal did not consider that the further information provided affected its decision or the terms of the proposed PFEO.

By email dated 13 March 2023 the Respondents advised the Tribunal that they had instructed WITT UK to provide a report as requested in the proposed PFEO. The report has not yet been submitted to the Tribunal.

Having considered the written representations received from the parties the Tribunal has determined to issue a PFEO in the terms originally proposed by it.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

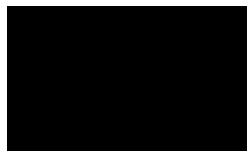
(1) The Respondent must at their own expense within a period of 4 weeks from the date of receipt of this order instruct an independent HVAC engineer or other suitably qualified consultant to provide a report addressing the owners statutory and other legal obligations in respect of ventilating the underground car park at the properties and with particular regard as to facilitate the owners to make a decision on the most appropriate option for repair, renewal or replacement of the current inoperative ventilation system. Said report must be sent to the Applicants and the Tribunal within two weeks of its receipt and a meeting of all owners called to discuss the report and any recommendations it contains as soon as practical thereafter.

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



Legal Member and Chair

24 April 2023 _____ Date

