

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION:** in respect of a Property Factor Enforcement Order under section 19 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the Rules").

Reference number: FTS/HPC/PF/19/0660

Re: 4, Fairyknowe Court, Bothwell, G71 8SZ ("the Property")

The Parties: Miss Karen Steel residing at 4, Fairyknowe Court, Bothwell, G71 8SZ ("the Applicant")

and

James Gibb Property Management Limited having a place of business at 65, Greendyke Street, Glasgow, G1 5PX ("the Respondents")

### Tribunal Members

Karen Moore (Legal Member)

Ahsan Khan (Ordinary Member)

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined that the Factor has failed to comply with the Section 17 duty in terms of the Act, having proposed to make a Property Factor Enforcement Order under section 19 of the Act and having notified the Parties of that in terms of Section 19(2) of the Act now make a Property Factor Enforcement Order.

### Background

1. By application received by the First-tier Tribunal for Scotland (Housing and Property Chamber) between 4 March 2019 and 3 May 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 the Code at Sections 2, 4, 5 and 6 and the property factors' duties.

2. Following a hearing on Thursday 24 July at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT, the Tribunal found that the Factor has failed to comply with the Section 17 duty in terms of the Act, having proposed to make the following Property Factor Enforcement Order (PFEO) under section 19 of the Act:-

- (i) *No later than 4 weeks from the date of the PFEO 2019, the Respondents must at their own cost and expense instruct an independent Royal Institute of Chartered Surveyors registered building surveyor (i) to carry out a full inspection the Property and the block of flatted dwelling houses of which it forms part ("the Block"), including suitable water testing before and after any remedial works are completed, to provide a fully documented report on the water ingress to the Property which should include a report on the whole roof including its tiles, flashing and roof spaces, the external brickwork, the balconies and the guttering and downpipes ("the Survey Report"), the purpose of which Survey Report is to determine the cause of the water ingress to the Property and to recommend works to ensure that the Property is made wind and watertight and is in a reasonable state of repair;*
- (ii) *Within 7 days of their receipt of the said Survey Report, the Respondents must submit the Survey Report to the Tribunal, provide a copy to the Applicant and her co-owners in the Block and call a meeting of the owners of the Block to put in place a plan to carry out the works recommended by the Survey Report.*

3. The said proposed PFEO was intimated to the Parties for comment. The Respondent by email dated 23 August 2019 indicated to the Tribunal that it understood the outcome of the Hearing to be that it was agreed that a survey be carried out and stated that it had instructed a company called Water Loss Solutions in this regard. By email dated 9 September 2019, the Respondents submitted a copy of a report carried out by Water Loss Solutions. The Applicant by email dated 28 August 2019 indicated to the Tribunal that no satisfactory response had been forthcoming from the Respondents.

#### PFEO

4. The Tribunal having regard to its proposed PFEO and the Parties' representations took the view that the report by Water Loss Solutions was not sufficient to address its concerns and so determined to impose the PFEO as proposed.

5. 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

10 September 2019