

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) not to issue a Property Factor Enforcement Order in terms of section 19 (1) of the Property Factors (Scotland) Act 2011 (“the Act”) issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the regulations”)

Chamber Ref: FTS/HPC/PF/19/0247

Property at 3 Neil Gordon Gate, Blantyre, Glasgow G72 0AP (“the property”)

The Parties: -

Mr Greg Hanley, 11 Pommern Parade, Co. Antrim, Belfast, BT6 9FX (“the homeowner”)

Newton Property Management Limited, 87 Port Dundas Road, Glasgow, G4 0HF (“the property factor”)

Tribunal Members: -

Simone Sweeney (Legal Member) Elaine Munroe (Ordinary Surveyor Member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the property factor has complied with the terms of the Proposed Property Factor Enforcement Order (“PFEO”) of 15th May 2019 as amended on 29th July and amended further on 5th September 2019.
2. The tribunal does not consider it necessary to issue a final PFEO.
3. The decision of the tribunal is unanimous.

Background

4. Reference is made to previous procedure, to the Proposed PFEO of 15th May as amended on 29th July and amended further on 5th September 2019 and the associated decisions of the tribunal of the same dates.
5. The Proposed PFEO as amended further on 5th September 2019 required that,

"Within 28 days of the communication of the PFEO to the property factor, the property factor must:

- (i) *Pay to the homeowner the sum of £226.66. This sum represents the float of £250 minus the homeowner's closing balance of £19.76 together with a closing bill of £3.58.*
 - (ii) *Confirm to the homeowner, in writing, that no further debt recovery action will be taken against the homeowner unless in accordance with clauses 18.2 and 18.3 of the Deed of Conditions the cost **cannot** be recovered from the proprietor*
 - (iii) *Pay to the homeowner compensation in the sum of £150.*
 - (iv) *Provide evidence to the Tribunal that the property factor has met the terms of this order."*
6. The proposed order and decision of the same date were issued to parties by the tribunal's administration by email.
 7. By email of 20th September 2019 the property factor sent to the tribunal copy of a letter to the homeowner from Martin J. Henderson, Executive Director of the same date. The letter read,

"Please find attached our cheque in the sum of £226.66 made payable to you...

We confirm that the debt referred to in the decision has been removed from your account...

Please accept this letter as confirmation that no further debt recovery action will be taken against you unless the cost cannot be recovered from the homeowner in accordance with clauses 18.2 and 18.3 of the Deed of Conditions...

Please find attached our cheque in the sum of £150.00 made payable to you...

This letter has been cc'd to the Tribunal as per the undernote."

8. The tribunal sought the homeowner's comments on the content of the property factor's letter.
9. By email of 10th October 2019 the homeowner replied in the following terms,
"I can confirm that the Property Factor has complied with the order and made payment to me."
10. The tribunal determines that the letter from the property factor to the homeowner of 20th September meets the terms of the proposed PFEO. Given the terms of his email of 10th October the tribunal determines that the homeowner is satisfied that the property factor has met the terms of the proposed PFEO.

Reasons for decision

11. Having had sight of evidence that the terms of the proposed PFEO have been met by the property factor and the homeowner is in agreement with this, the tribunal determines that the property factor has complied with the order. Therefore the tribunal does not consider it necessary for a final PFEO to be issued. In the absence of same, no certificate of compliance is appropriate and there is no requirement for any further action on the part of the property factor.

Appeals

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

Simone Sweeney, Legal Chair, 16th October 2019

