

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) to not issue a final Property Factor Enforcement Notice in terms of section 19 of the Property Factors (Scotland) Act 2011 ("the Act") issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2016 ("the regulations")

Chamber Ref: HOHP/PF/16/0103

Property: Flat 1/2, 11 Aberfeldy Street, Glasgow, G31 3NS ("the property")

The Parties:-

Ms Wanda Anna Kawik, Flat 1/2, 11 Aberfeldy Street, Glasgow, G31 3NS ("the homeowner") represented by David Balmer, Citizen's Advice Bureau, 14 Anderson Street, Airdrie, ML6 0AA

Edzell Property Management, 1008 Pollokshaws Road, Glasgow, G41 2HG ("the property factors") represented by agent, Richard Taylor, solicitor and Timothy Lovat, managing partner.

Tribunal Members:

Simone Sweeney (Legal chairing Member) Elizabeth Dickson (Housing Member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the property factors have fully complied with the

terms of the Proposed Property Factor Enforcement Order (“PFEO”) of 9th May 2017.

2. The Tribunal does not consider it necessary to issue a final PFEO in this case.
3. The Tribunal does not consider any further action is required on the part of the property factors.
4. The decision of the Tribunal is unanimous.

Background

5. Reference is made to the decision of the Tribunal of 9th May 2017 in which the Tribunal determined that there had been a failure on the part of the property factors to meet their obligations in terms of the duties imposed on them by section 17 of the Act and a failure on the part of the property factors to comply with sections 2.5 and 6.9 of the Property Factors’ Code of Conduct (“the Code”).
6. As required by section 19(2) of the Act, the Tribunal issued a notice of a Proposed PFEO. The PFEO was issued on 9th May 2017. Parties were invited to submit any representations they may have to the decision and PFEO within 14 days of receipt of the documents.
7. The PFEO required that the property factors:
 - (i) *Issue a written apology to the homeowner for their failure to comply with section 2.5 of the code of conduct and for their failure to meet the property factors duties as required by the Act.*
 - (ii) *Make a payment to the homeowner of £100 in recognition of the inconvenience which the homeowner has experienced and by way of*

compensation for the failure to provide an adequate service between January and June 2013.

8. The property factors were ordered to comply with the terms of the PFEO within 21 days of receipt of the Notice.
9. By correspondence of 1st June 2017 the property factors produced a copy of a letter which they had sent to the homeowner dated, 23rd May 2017. The letter read,

"As instructed by the Housing and Property Chamber, we apologise for our failure to comply with section 2.5 of the code of conduct and for our failure to meet the property factors duties as required by the Act."
10. Attached to the copy letter was a photocopy of a cheque made payable to the homeowner for the sum of £100. The letter stated further,

"Please find enclosed £100 in recognition of the inconvenience which you have experienced by way of compensation for our failure to provide an adequate service between January and June 2013."
11. By letter of 30th May 2017, the homeowner's representative wrote to the Tribunal, *"accepting the decision of the Tribunal."* The representative wished to clarify that he was, *"not an experienced legal representative of the Citizen's Advice Bureaux but rather a Generalist Adviser."*
12. The Tribunal did not consider there to be anything within the letter of 30th May 2017 which offered a challenge to the decision and PFEO of 9th May 2017.
13. The Tribunal is satisfied that the letter of 23rd May 2017 provides evidence of the property factors having provided a written apology to the homeowner for

the failure of the property factors to comply with section 2.5 of the code of conduct and for their failure to meet the property factors duties as required by the Act. The Tribunal is satisfied that the property factors have complied with part (i) of the PFEO therefore.

- 14.** The Tribunal is satisfied that the cheque made payable to the homeowner attached to the letter of 23rd May 2017 provides evidence of the property factors having complied with part (ii) of the PFEO.

Reasons for decision

- 15.** Having had sight of evidence that the terms of the PFEO have been met in full by the property factors the Tribunal determines that the property factors have complied with the order and do 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 factors.

Appeal provisions

- 16.** 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 firstly seek permission to appeal from the First-Tier Tribunal. That party must seek permission to appeal within 30 days of the date on which the decision was sent to them.

Simone Sweeney

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Simone Sweeney Legal Chairing Member, Glasgow, 1st July 2017