

Housing and Property Chamber

First-tier Tribunal for Scotland



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

NOTICE OF VARIATION OF A PROPERTY FACTOR ENFORCEMENT ORDER:
Under section 21(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act")
following upon a decision of the First-tier Tribunal for Scotland (Housing and
Property Chamber) in an application made under section 17(1) of the Act.

Chamber Ref: FTS/HPC/LM/19/2134

Loch Tay Highland Lodges, Milton Morenish Estate, Killin FK21 8TY
("the Property")

The Parties:-

**Mrs Eleanor Morrison, 12 Donmouth Terrace, Bridge of Don, Aberdeen AB23
8DN**
("the Homeowner")

**Loch Tay Highland Lodge Park Limited, Loch Tay Highland Lodges, Milton
Morenish Estate, Killin FK21 8TY**
("the Factor") (represented by BTO Solicitors, Glasgow)

Tribunal Members:

Graham Harding (Legal Member)
David Godfrey (Ordinary Member)

DECISION

The Tribunal has decided to vary the Property Factor Enforcement Order ("PFEO") dated 24 February 2020 and now requires compliance with the order within the timescale as stated.

The decision is unanimous

Reasons for Decision

1. By decision dated 29 December 2019 the Tribunal determined that the Factor has failed to carry out its property factor duties and failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Sections 1.1bAb, 1.1bBc, 1.1bCd, 1.1bCf, 1.1bCg, 1.1bCh, 1.1bDl, 1.1bDm, 2.1, 2.4, 3.2, 3.5a, 4.1, 5.9, 6.1, 6.4 and 7.1 of the Property Factor Code of Conduct ("the Code").
2. As required by the Act, the Tribunal issued a PFEO after giving the parties an opportunity to make representations on the terms of a proposed PFEO. The Tribunal issued the PFEO on 24 February 2020.

3. By emails dated 10 and 16 March 2020 the Factor submitted a new Written Statement of Services said to be in compliance with the terms of the PFEO.
4. In an email of 12 March 2020, the Homeowner indicated she did not consider that the Written Statement of services sent to her by the Factor complied with the terms of the PFEO.
5. The Homeowner made further representations in respect of the Written Statement of Services submitted by the Factor in an email dated 22 March 2020.
6. By decision dated 8 April 2020 the Tribunal found that the Factor had not yet complied with the terms of the PFEO but as the time limit for compliance had by then not expired took no further action.
7. By letter dated 11 June 2020 the Factor's representatives BTO Solicitors, Glasgow wrote to the Tribunal enclosing a further revised version of the Written Statement of Services together with an explanation as to why the document had not been lodged within the time period specified in the PFEO.
8. By emails dated 15, 22 and 29 June 2020 the Homeowner indicated that she did not accept that the further Written Statement of Services submitted late by the Factor's representatives fully complied with the terms of the PFEO.
9. By email dated 26 June 2020 the Factor's representatives submitted a compliance response and comments indicating further responses to the Homeowner's comments on the further Written Statement of Services were required subject to the Tribunal's consideration of the correspondence of 11 June.
10. The Tribunal considered the explanation provided by the Factor's representatives in their correspondence of 11 June as to the reasons for the late submission of the further Written Statement of Services and accepted that the failure was due to an oversight and was not wilful and given the current outbreak of Covid-19 it would be appropriate to allow a degree of latitude.
11. The Tribunal considered what steps should be taken in this case. Section 21(1)(a) of the Act provides that the Tribunal may at any time, vary the order in such manner as it considers reasonable. Accordingly, the Tribunal decided to vary the PFEO to allow further time for the Factor to comply with the PFEO. This will allow the parties to consider further the Written Statement of Services submitted on 11 June and the parties' responses thereafter and will also allow any further amendments to the Written Statement of Services that the Factor or its representatives may wish to make in light of comments made by the Homeowner.

Decision

12. In all the circumstances as hereinbefore narrated the Tribunal hereby varies the PFEO by extending the timescale for compliance until 24 July 2020.

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.

Graham Harding Legal Member and Chair

30 June 2020 Date