

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Proposal regarding the making of a Property Factor Enforcement Order:
Property Factors (Scotland) Act 2011 Section 19(2)**

Chamber Ref: FTS/HPC/PF/18/0146

Re: Flat 0/2, 11 Wilson Street, Renfrew, PA4 8NP

The Parties:-

Mr Stewart Murray, 49 Craighead Road, Bishopton, PA7 5DT ("the Homeowner")

Apex Property Factor, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the Factor")

This document should be read in conjunction with the First-tier Tribunal's Decision of the same date.

The First-tier Tribunal proposes to make the following Property Factor Enforcement Order ("PFEO"):

"The Factor is required to carry out the following within 30 days of intimation of the PFEO:

1. Apologise in writing to the Homeowner for the breaches of the Code and the failure to carry out the property factor's duties;
2. Prepare a draft final statement of account. This should include a breakdown for each year of the Factor's appointment showing, on an itemised basis, a clear description of each total cost incurred and the share due by the Homeowner, amounts of credits relating to that period, and payments made during that period. In respect of electricity charges these should be calculated on the basis of the Factor's actual readings.
3. Pay the Homeowner from their own funds the sum of £100, to reflect the strain and anxiety experienced by the Homeowner over the lack of compliance with the Code."

Section 19 of the 2011 Act provides as follows:

"(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to it.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order."

The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a PFEO without seeking further representations from the parties.

Failure to comply with a PFEO may have serious consequences and may constitute an offence.

Right of 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.

Helen Forbes

Legal Member and Chairperson

21st May 2018