

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) (Procedure) to issue a Certificate of Compliance 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: FTS/HPC/PF/17/0530

Property at Flat 3, 3 Fairyknowe Court, Bothwell, South Lanarkshire, G71 8SZ ("the Property")

The Parties: -

Dr Brian Lynas and Dr Annette Ferri, Flat 3, 3 Fairyknowe Court, Bothwell, South Lanarkshire, G71 8SZ, represented by James Carmichael, solicitor, James M. Carmichael and co, solicitors ("the homeowners")

James Gibb Property Management Ltd, trading as James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX ("the property factor")

Tribunal Members: -

Simone Sweeney (Legal Member) Carolyn Hirst (Ordinary 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 Property Factor Enforcement Order ("PFEQ") of 23rd July 2018.
2. The tribunal considers it necessary to issue an appropriate certificate in this matter.

3. The decision of the tribunal is unanimous.

Background

4. Reference is made to the decision of the tribunal of 23rd July 2018 in which the tribunal determined that the property factor has breached duties in terms of Section 17 (5) of the 2011 Act in that there has been a failure to comply with the property factors' duties as required by section 14(5) of that Act.
As required by section 19(2) of the Act, the tribunal issued a notice of a final PFEO accompanied with a written decision.
5. The PFEO required that:

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

(i) Pay compensation to the Homeowners in the sum of £500 (Five hundred pounds) in respect of the time, distress and inconvenience occasioned by the factor's failure to comply with their duty under the Code."

6. The decision and proposed PFEO were intimated to parties on or around 24th July 2018.
7. The tribunal was provided with a copy email from the homeowners to the property factor dated 16th August 2018. The copy email was produced by the property factors. The email from the homeowners provided their bank details to the property factor. The homeowners stated in their email:
"We would be grateful if you would transfer the 500 pounds to the following a/c..."
8. In addition the tribunal was provided with an email dated 20th August 2018 from the property factor which provided:
"On receipt of the response from Dr Lynas and Dr Ferri (below), we transferred the sum of £500 in settlement of the PFEO order on Friday 17th August 2018 by BACS transfer."
9. There followed appeal proceedings by the homeowners. Reference is made to the decision of the Upper Tribunal for Scotland of 23rd November 2018 (Chamber reference: UTS/AP/18/0022) in which the homeowners' appeal was refused.

10. Following the decision of the Upper Tribunal for Scotland of 23rd November 2018 the tribunal sought confirmation from the homeowners' solicitor that the homeowners had received the sum of £500 from the property factors. No response was forthcoming from the homeowners' solicitor.

Reasons for decision

11. The tribunal accepts the terms of the email from the property factor dated 20th August 2018. The property factors submit that they transferred the funds into the account provided by the homeowners. There is no evidence before the tribunal that homeowners have never received the funds. In the absence of same the tribunal is satisfied that the property factor has paid to the homeowners the sum of £500. In so doing, the tribunal is satisfied that the property factor has met the terms of the PFEO and that the relevant certificate of compliance should be issued.

Appeals

12. 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.

S Sweeney

Simone Sweeney, Legal Chairing Member, 4th February 2019