

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as "the tribunal")

Issued under Section 19 of the Property Factors (Scotland) Act 2011 ("the Act")

**Case Reference Number: HOHP/PF/16/0169**

**Re: 90G Glenhove Road, Cumbernauld G67 2LA (the property)**

#### The Parties:

**Mr Felipe Dacunha, 59 Kayes Road, Mansfield, Notts NG19 6JP (the homeowner)**

**Sanctuary Scotland Housing Association Limited, Sanctuary House, 7 Freeland Drive, Glasgow G53 6PG (the property factor)**

**Tribunal members: Sarah O'Neill (Chairing member), Susan Napier (Ordinary member)**

1. In its decision dated 9 May 2017 and issued on 30 May 2017 ("the decision"), the tribunal determined that the property factor had failed to comply with its duties as a property factor under section 14 of the Property Factors (Scotland) Act 2011 ("the Act") in respect of section 7.1 of the code of conduct for property factors. The reasons for the tribunal's determination are set out in full in the decision.
2. In terms of section 19 (2) of the Act, the tribunal issued a Notice of Proposal to make a Property Factor Enforcement Order (PFO) on 30 May 2017. This stated:
  1. *Within 28 days of the communication to the property factor of this Property Factor Enforcement Order, the property factor must:*
    - a. *Issue a formal written apology to the homeowner in respect of the property factor's failure to comply with its duties under section 7.1 of the code of conduct for property factors.*

- b. *Make payment to the homeowner of the sum of £250 in recognition of the stress and inconvenience caused to him by the property factor's failure to comply with its duties under section 7.1 of the code of conduct.*
  - c. *Provide documentary evidence to the tribunal of its compliance with the above by sending such evidence to the office of the First-tier Tribunal for Scotland (Housing and Property Chamber) by recorded delivery post.*
- 3. The Notice of Proposal gave notice to both parties that any written representations they wished to make on the terms of the proposed PFEO should be made within 14 days of the date of the decision. No written representations were received from either party within the stated timescale.
- 4. On 19 June 2017, a letter was received from the property factor, enclosing a letter of the same date from the property factor, addressed to the homeowner, and apologising for its failure to log his concerns as a complaint, and stating that a cheque for £250 was enclosed in recognition of the stress and inconvenience caused.
- 5. On 7 July 2017, the tribunal wrote to the homeowner by post at the contact address which he had provided on his application, asking him to confirm whether he had received the letter and the cheque. No response was received to that letter.
- 6. The homeowner had not provided the tribunal with an email address or a telephone number, so a further letter was sent to him by post on 24 July 2017, asking him to confirm that he had received the letter of apology and the cheque for £250 from the property factor. The letter stated that the tribunal was considering whether to issue a PFEO, and wished to confirm with him whether the actions set out in the proposed PFEO had been carried out by the property factor, before making this decision. He was asked to reply by 7 August 2017. No response was received from the homeowner by that date.
- 7. Having written to the homeowner twice and having received no response, the tribunal then considered whether to issue a PFEO. It appeared to the tribunal that the contents of the property factor's letter of 19 June suggested that the property factor had treated the Notice of Proposal as the PFEO itself, and had taken steps to comply with this.
- 8. Although no response had been received from the homeowner, the tribunal noted that 1) he had not raised any objections to the terms of the proposed PFEO and 2) while he had not confirmed that he had received the letter of 19 June 2017, together with the cheque for £250, neither had he indicated that he had not received these.

9. Therefore, in the circumstances outlined above, and bearing in mind the tribunal's overriding objective in terms of regulation 3 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, the tribunal in its discretion decides not to make a PFEO. The tribunal determines that, on the balance of probabilities, the terms of the proposed PFEO have been complied with, and no further remedy is appropriate or necessary under the Act.

#### **Right of Appeal**

10. 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.

**S O'Neill**

Chairing member ..... Date..... 9/9/17.