

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

### **Property Factor Enforcement Order made in respect of an application under Section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016**

**Chamber Ref:** HOHP/PF/16/0130

The Parties:-

Mrs Gillian Munro residing at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA ("the homeowner")

And

Apex Property Factor Limited, having a place of business at 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the property factor")

The Property:-

Subjects at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA

#### **Tribunal Members**

**Mr James Bauld (Legal Member)**

**Mr Mike Links, Surveyor (Ordinary Member)**

This document should be read in conjunction with the Tribunal's decision under section 19(1)(a) of the Act on the same date.

The Tribunal makes the following Property Factor Enforcement Order

1. The property factor is required
  - to provide a list of all monies paid in advance in respect of mandated maintenance accounts by the homeowner in respect of works which have not been carried out,
  - obtain her agreement that this list accurately reflects all monies paid by her in respect of such matters and then
  - make payment of these amounts to the homeowner within six weeks of the date of this order
2. The property factor is required
  - to recalculate all invoices in respect of factoring charges and common charges which have been remitted to the homeowner and to adjust all invoices to reflect the correct share of common charges to 1/61<sup>st</sup> rather than 1/45<sup>th</sup>.
  - provide copies of all such adjusted invoices to the homeowner
  - to obtain agreement with the homeowner that these invoices accurately reflect the correct amounts which should have been charged
  - agree a figure which reflects the difference between the amount actually paid and the amount correctly due and

- make payment to the homeowner of that amount within six weeks of the date of this order.

In the event that agreement on the sums to be paid cannot be agreed the Tribunal will determine the appropriate amounts and will make a further order as required

The property factor is also directed to ensure that all future accounts remitted to the homeowner reflect the correct share of common charges allocated to the homeowner's property

#### **Review of Tribunal's Decision**

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.

**Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence.**

# J Bauld

James Bauld, Chairperson

21 June 2017

Date

# K Donnelly

KIRSTIE DONNELLY

TRAINEE SOLICITOR.

Witness

Full name

Designation

7 West George Street,  
Glasgow,  
G2 1BA

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION** in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

**Chamber Ref:** HOHP/PF/16/0130

#### The Parties:-

Mrs Gillian Munro residing at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA ("the Homeowner")

And

Apex Property Factor Limited, having a place of business at 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the Property Factor")

#### The Property:-

Subjects at Flat 1/1, 24A Inchinnan Court, Paisley, PA3 2RA

#### Tribunal Members

Mr James Bauld (Legal Member)

Mr Mike Links, Surveyor (Ordinary Member)

#### Decision

The Tribunal determined that a Property Factor Enforcement Order should be made.

#### Reasons for Decision

The Tribunal issued a decision dated 4<sup>th</sup> May 2017 following upon a hearing which took place on 23<sup>rd</sup> March 2017. In that decision the Tribunal determined that the property factor had failed to comply with certain duties arising from the Property Factors Code of Conduct ("the Code"). The Tribunal provided the parties with a copy of a proposed Property Factor Enforcement Order ("PFEFO"). The Tribunal invited parties to make further representations to the Tribunal in terms of the relevant provisions of the Property Factors (Scotland) Act 2011. The decision was issued to the parties by letters issued from the Tribunal office. The Tribunal have subsequently received two letters from the Property Factor. The Tribunal have received no further representations from the Homeowner.

The first letter received from the Property Factor was dated 18<sup>th</sup> May 2017. In that letter the Property Factor indicated that they had received the decision of the Tribunal and that they were preparing a detailed response which would follow shortly. In the letter of 18<sup>th</sup> May, the Property Factor indicate they wish to address paragraph 35 of the Tribunal's decision. They indicate that it was not their intention to be disrespectful to the Tribunal as indicated in that paragraph of the decision. The Tribunal note the Property Factor's comments and note their intention. The Property Factor inquired whether their non-attendance had affected the Tribunal's decision. The Tribunal confirms that the

Property Factor's non-attendance at the hearing on 23<sup>rd</sup> March did not affect the decision of the Tribunal. The Tribunal took into account all relevant information which had been provided to it by the Homeowner and also all relevant papers and documents which had been properly lodged in advance by the Property Factor. Indeed the Tribunal's decision clearly shows that they took into account all relevant information provided by both parties and they did not find every alleged breach of the Code to be proved.

The Tribunal notes the remaining terms of the letter of 18<sup>th</sup> May and would indicate that although an oral hearing can be dispensed with if the parties agree in writing no such agreement had been reached in this case. Accordingly the oral hearing required to proceed. The Tribunal however notes again that the Property Factor in this letter indicates that they believe that the allegations made to the Tribunal were "mainly spurious claims". Given the findings of the Tribunal in its decision, it is clear that the allegations made by the Homeowner were not spurious. They were allegations of serious breaches of the Code of Conduct and were treated in that manner by the Tribunal. Accordingly the Tribunal does not intend to remove the paragraph 35 in its original decision headed "Concluding Comments".

The Property Factor then sent a second letter to the Tribunal office. This letter is dated 22<sup>nd</sup> May 2017.

This letter indicates that the property factor is enclosing "our written representations to appeal the decision". The Tribunal has taken the view that this letter and the letter 18<sup>th</sup> May constitute written representations by the Property Factor and are not intended to be a formal appeal against the decision of the Tribunal in terms of Section 46 of the Tribunal (Scotland) Act 2014. The Tribunal notes that neither of the letters set out any point of law upon which any formal appeal would be required to be based. The letters simply seem to ask the Tribunal to review the factual findings made by the Tribunal in its original decision. The Tribunal would reiterate that should the Property Factor wish to lodge a formal appeal against this decision then details of how to do so are attached to this decision.

The Tribunal has considered the written representations contained in the letter of 22<sup>nd</sup> May 2017. Again, the Property Factor indicates their belief that there is "no substance to the Homeowner's complaints". The Tribunal again reiterate that they do not accept this position to be remotely correct. The Homeowner's complaints led to the Tribunal finding that there had been several breaches of the Code of Conduct. There was significant substance to many of the complaints made by the Homeowner.

The letter then addresses two particular issues which were raised in the hearing.

The first is the issue of the "mandated works". In the initial decision, the Tribunal has determined that the Homeowner has made advance payments in respect of proposed or planned works which have never actually been completed. Indeed, they have never been started. Accordingly, the Tribunal has proposed an order that the costs involved in these works should be calculated and should be refunded to the Homeowner on the basis that there are no current plans to carry out these works. In their letter of 22<sup>nd</sup> May, the Property Factor indicate they can only carry out these works when all Homeowners have paid. They indicate that an average 60-70% of Homeowners are contributing. Accordingly it seems unlikely that the Property Factor is ever going to receive the required monies to carry out these works and the Tribunal's order that these funds should be returned to the Homeowner seems to be entirely appropriate. The Property Factor provides no indication of any steps they are taking to obtain payments from those Homeowners who have not made those contributions nor any indication of a timescale when they would expect to be able to commence these works. It is unreasonable that a Homeowner who has promptly paid funds in anticipation of works being done should have their money sitting for substantial periods of time without these works even being commenced.

The second issue raised by the Property Factor is in connection with the allocation of costs in respect of the common charges. The Property Factors indicate that all owners within the development are entitled to pay a 1/45<sup>th</sup> share of the proportional costs. They say this is based on a total number of flats in the block. They accept that the Title Deeds state that each owner of a flat should be charged a 1/61<sup>st</sup> share of these costs as they should also be allocated to the owners of 15 garages and store. They indicate that if they were to charge all owners of the flats the correct 1/61<sup>st</sup> share, they would be

unable to obtain payments from the owners of the garages and store and thus would require to reallocate those charged between the 45 flat owners. The Property Factor provides no evidence for this assertion. The Property Factor provides no evidence that they have attempted to ascertain the identity of the owners of the 15 garages and store. The Tribunal strongly suspect that the 15 garages and store will be owned by some of the owners of the 45 flats. Accordingly, those owners of a flat who also own a garage or store should be paying 2/61<sup>st</sup> of the total common charges not 1/45<sup>th</sup>. The Property Factor has no basis in fact or in law to charge 1/45<sup>th</sup> per flat. The comments made by the Property Factor in their representations are accordingly rejected by the Tribunal. The Tribunal would also point out that a failure to take reasonable steps to recover unpaid charges from any Homeowner who has not paid their share of costs prior to charging remaining Homeowners would also constitute a breach of the Code of Conduct and would in particular refer to Section 4.7.

Accordingly, the Tribunal have carefully considered the representations made by the Property Factor in their two letters. The Tribunal does not accept the matters raised in the representations and has determined that it will not amend the initial decision.

The Tribunal accordingly determined that they should issue a Property Factor Enforcement Order in the same terms as the initial Order proposed. The Property Factor Enforcement Order is set out in a separate document to this decision. The decision of this Tribunal is unanimous.

### **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.

# J Bauld

James Bauld, Chairperson

Date

21 June 2017

# K Donnelly

Witness

KESTIE DONNELLY

Full name

TRAINEE SOLICITOR

Designation

7 West George Street,  
Glasgow,  
G2 1BA