

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/20/0209

Flat 3, Downie Drive, Larkhall, ML9 2LJ (“the Property”)

The Parties:-

Mr Henry Semple, 11 John Place, Heidelberg, Ontario, Canada (“the Homeowner”)

Miller Property Management, Suite 2.2, Waverley House, Caird Park, Hamilton, ML3 0QA (“the Factor”)

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it. The decision of the Tribunal is unanimous

Reasons for Decision

1. In the Tribunal’s decision of 22nd October 2020, it proposed to make a PFEO as follows:

“The Property Factor is required to:

- (i) Pay to the Homeowner within 21 days of intimation to them of the PFEO the sum of £100 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Factor’s failure to comply with the Code of Conduct for Property Factors; and
- (ii) Issue a written apology to the Homeowner within 21 days of intimation to them of the PFEO for the failure to comply with the Code of Conduct for Property Factors.

A copy of the letter of apology must be provided to the First-tier Tribunal for Scotland (Housing and Property Chamber). ”

2. The Tribunal indicated that, prior to making a PFEO, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act. The decision was issued on 27th October 2020.
3. The Homeowner did not make any representations on the terms of the proposed PFEO.
4. By request received on 12th November 2020, the Factor requested a review of the decision.
5. An amended decision dated 30th November 2020 was issued. The prospective PFEO was not amended. The Tribunal's amended decision was intimated to the parties on 3rd December 2020.
6. The Tribunal has now confirmed its decision made in terms of Section 19(1)(a) of the Act. The Tribunal agreed that it would be appropriate to make a PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

The Property Factor is required to:

1. Pay to the Homeowner within 21 days of intimation to them of the PFEO the sum of £100 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Factor's failure to comply with the Code of Conduct for Property Factors; and
2. Issue a written apology to the Homeowner within 21 days of intimation to them of the PFEO for the failure to comply with the Code of Conduct for Property Factors.

A copy of the letter of apology must be provided to the First-tier Tribunal for Scotland (Housing and Property Chamber).

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.

M. Forbes
Legal Member

14th January 2021