

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) to issue a final Property Factor Enforcement Order, as varied, in terms of sections 21 and 23 of the Property Factors (Scotland) Act 2011 ("the Act") issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the regulations")

Chamber Ref: FTS/HPC/PF/19/0987

Property: Flat 28, The Fairways, 823 Clarkston Road, Glasgow, G44 3UZ ("the property")

The Parties:-

Mrs Kathleen Stalker, Flat 28, The Fairways, 823 Clarkston Road, Glasgow, G44 3UZ ("the homeowner") represented by

Moira Stalker, 3 Midlothian Drive, Shawlands, Glasgow, G41 3RE.

McCarthy and Stone Management Services, 4th Floor, 100 Holdenhurst Road, Bournemouth, BH8 8AQ ("the property factor")

The Tribunal members:

Simone Sweeney (legal chairing member) and Elizabeth Dickson (ordinary housing member)

Decision of the Tribunal Chamber

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the property factor has not complied with the full terms of the Proposed Property Factor Enforcement Order ("proposed PFEO") of 13th August 2019.
2. The Tribunal determined that it is necessary to issue a final Property Factor Enforcement Order ("PFEO") as amended.
3. The decision of the Tribunal is unanimous.

Background

4. Reference is made to the decision of the Tribunal of 13th August 2019 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 and a failure to comply with section 2.5 of the Code of Conduct.

5. As required by section 19(2) of the Act, the Tribunal issued a notice of a proposed PFEO accompanied with a written decision.
6. The proposed PFEO required that:

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

- (i) *Issue to the homeowner a written apology for its failures and for the actions and inactions of Carol Elliott which gave rise to the original complaint and for which Carol Elliott has already provided an oral apology.*
- (ii) *Facilitate and meet the cost of mediation for parties to attempt to improve relations going forward.*
- (iii) *Extend the offer of mediation to the homeowner.*
- (iv) *Pay to the homeowner compensation in the sum of £150."*

7. The proposed PFEO was issued to parties on or around 15th August 2019 by email.
8. Parties were invited to submit to the Tribunal any representations they might have to the terms of the PFEO within 14 days.
9. No such representations or communications were received from the property factor.
10. The Tribunal's administration received an email from the homeowner's representative, Moira Stalker, on 13th September 2019 indicating that the property factor had failed to comply with the order of 13th August 2019. The email provided,

"...29 days have now passed since the decision and to date my mother has received no written apology from McCarthy and Stone or payment of compensation.

We have received offer of mediation but only following an email exchange between the property factors, myself and Mrs Bader which I will forward under separate email."

11. A second email was submitted from Moira Stalker on 13th September 2019. Attached to this was an email exchange between her and the property factor's Head of Human Resources, Dominic Marsden.
12. In his email to Moira Stalker of 28th August 2019, Dominic Marsden stated,

"Please be assured that lessons have been learned and that we would like to draw a line under it all...I have spoken with Mark Riddington, and we both agreed that we would like to extend the offer of mediation to both of your mothers and we feel that it would be beneficial if you accompany them on the day."

13. The Tribunal is satisfied that this email shows that the property factor has extended to the homeowner the offer of mediation as required by part (iii) of the Proposed PFEO.
14. No evidence has been produced and made available to the Tribunal by either party to indicate that the property factor has satisfied the remaining parts of the proposed order. There is no evidence before the Tribunal that the property factor has satisfied all requirements of the proposed PFEO.
15. Accordingly the Tribunal varies the proposed PFEO by removing part (iii) but all remaining parts of the order remain in place.

Reasons for decision

16. The date for compliance having passed and there being no evidence produced to show that the terms of the proposed PFEO have been met in full by the property factor, the Tribunal determines that it is necessary for a final PFEO, as varied, be issued in terms of section 19 (3) of the Act.

Appeals

17. 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 within 30 days of the date the decision was sent to them.

Simone Sweeney, Legal member, 18th September 2019

