



Property Factor Enforcement Order (PFEO) under Property Factors (Scotland) Act 2011 Section 19 (3)

Chamber Ref: FTS/HPC/PF/18/3536

Re: 53B Drip Road, Stirling Bridge, Stirling, FK8 1RN ("the Property")

Parties:

Mr Thomas Rae, residing at 53B Drip Road, Stirling Bridge, Stirling, FK8 1RN ("the Homeowner & Applicant")

Newton Property Management Limited, 87 Port Dundas Road, Glasgow, G4 0HF ("the Property Factor & Respondent")

Tribunal Members:

**Jim Bauld (Chairing & Legal Member)
Carol Jones (Ordinary Member & Surveyor)**

This document should be read in conjunction with the First-tier Tribunal's decision of 15 October 2019.

Decision

1. 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

2. The Tribunal initially heard this case at a hearing which took place 15 October 2019. At that stage the chairing and legal member was Mrs Patricia Anne Pryce. Since the issue of the initial decision from the Tribunal Mrs Pryce has been appointed to the Shrieval Bench and accordingly has resigned from her position with the Tribunal. Accordingly, in terms of the relevant provisions of

the Tribunal's procedures, Mr James Bauld was appointed to replace Mrs Pryce as a chairing and legal member.

3. After the issue of the Tribunal's decision, parties were advised that the Tribunal proposed to make a PFEO and allowed parties a period of 14 days within which to make representations in respect of the proposed PFEO all as provided by section 19 (2) (b) of the 2011 Act. By letter dated 25 October 2019 the Property Factor's lodged written representations in respect of the proposed PFEO.
4. The written representations lodged by the Property Factor have been considered by the Tribunal. The Tribunal have noted that the Property Factor believes that the PFEO should not be issued and that the Tribunal should review its determination that the Property Factor is in breach of section 4.6 of the Code of Conduct for Property Factors.
5. The Tribunal has noted the terms of the representation from the Property Factor and in particular the position with regard to the interpretation of the word "could" where it appears in section 4.6 of the Code of Conduct. The Property Factor in their representations indicates that it should be for the Property Factor and the Factor alone to decide its policy as to when and at what point the debt recovery problems of other homeowners could have implication for others in a development.
6. The Tribunal have considered this representation from the Property Factors but do not accept it. The relevant provision of the Code indicates that a Property Factor (must keep homeowners informed of any debt recovery problems of other homeowners which could have implications for them).
7. In this particular case, the Property Factor accepted that one particular homeowner in the development owed approximately £5,500. Their position was that this only became a problem for the other homeowners when the Property Factor was removed from office, their position was that this debt only fell within the terms of that section of the Code after their removal from office.

Their position was that while they remained as Property Factor they would only advise other owners of potentially problematic debts where it impacted on their ability as the factor to fund the ongoing operation of services and where the debt might have had a detrimental effect on the management float.

8. The Tribunal does not agree with this interpretation. The section of the Code requires Property Factors to ensure that homeowners are kept informed of debts which “could” have implications for them. That requires Property Factors to bear in mind the potential future possibility that certain debts might have adverse impacts on other homeowners. In their representations, the Property Factor seems to believe that by providing general information to homeowners they would be breaching confidentiality, or would require to provide specific details of the homeowner or homeowners who were responsible for the debt. It does not require, as suggested in the representations, that a Property Factor would now require to publish details of all debts at every opportunity and at every value. It is a matter for the Property Factor to determine that, at a certain level, a debt may have implications for other homeowners. The Property Factor requires to consider what might happen should normal debt recovery procedures be unsuccessful. The Tribunal takes the view that a debt of over £5000 owed by one particular homeowner is clearly a debt which “could” have implications for others. There would be no guarantees that such debt would be recovered successfully from the defaulting owner. There is no specific requirement on the Property Factor to name the particular owner. The requirement of the Code is to keep other homeowners informed of such debts. That information could be provided on a regular and ammonised basis with appropriate information being given to homeowners with regard to the current stage of any ongoing debt recovery actions.
9. Accordingly the Tribunal upholds its decision that there was a breach of section 4.6 of the Code. The debt which existed here was one which “could” have had implications for homeowners such as the Applicant. Indeed it transpired that it did have implications as, as soon as the Property Factor was removed from office, they took steps to recover it from all the other

homeowners. Accordingly, the Tribunal having considered the representations of the Property Factor unanimously confirms its original decision of 15 October 2019 that a Property Factor Enforcement Order should be made and the terms of the order are noted below.

Property Factor Enforcement Order

10. The Tribunal makes the following Property Factor Enforcement Order:-

- a. Within 28 days of communication to the Respondent of the Property Factor Enforcement Order the Respondent must:-
 - i. Pay to the Applicant the sum of ONE HUNDRED POUNDS (£100.00);
 - ii. Provide documentary evidence to the Tribunal of the Respondent's compliance with the above Property Factory Enforcement Order by sending such evidence to the office of the First-tier Tribunal (Housing and Property Chamber) by recorded delivery post;

11. Under section 24 (1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with the Property Factory Enforcement Order commits an offence.

Right of Appeal

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.

Legal Member/Chair

Date

23 January 2020