

Housing and Property Chamber

First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber
In an Application under section 17 of the Property Factors (Scotland) Act 2011**

by

Andrew and Catherine MacPhail, Flat 2/1, 1 Wallace Street, Dumbarton G82 1HH
("the Applicants")

Apex Property Factor Ltd, 46 Eastside, Kirkintilloch, East Dunbartonshire G66 1QH
("the Respondent")

Chamber Ref: FTS/HPC/PF/17/0232

Re: Flat 2/1, 1 Wallace Street, Dumbarton G82 1HH
("the Property")

Tribunal Members:

John McHugh (Chairman) and Andrew McFarlane (Ordinary (Surveyor) Member).

DECISION

The Tribunal decides to issue a Property Factor Enforcement Order.

The decision is unanimous.

REASONS FOR DECISION

In this decision we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act" and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code".

In our decision of 30 December 2017 we found that the Respondent had breached its property factors duties and its duties arising under the Code. We provided the parties with a copy of a proposed Property Factor Enforcement Order ("PFEO") for their comment. The proposed PFEO provided as follows:

"Within 31 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

1 Repay to the Applicants the sum of £1036.31.

2 Pay to the Applicants the sum of £500.

(For the avoidance of doubt the payments in 1 and 2 are to be made by cheque or bank transfer and not simply as credits to the Applicants' factoring account).

3 Confirm in writing to the office of the Tribunal that steps 1 and 2 above have been carried out."

There have been no representations from the parties on the terms of the proposed PFEO. A letter dated 20 February 2018 was received from the Applicants which made reference to their recent dealings with the Respondents but was not relevant to the terms of the PFEO.

In the circumstances, issuing the PFEO in identical terms to the proposed PFEO would appear to be required in terms of section 19(3) of the 2011 Act and we hereby do so.

APPEALS

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.

JOHN M MCHUGH

CHAIRMAN

DATE: 19 March 2018