



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

Decision on homeowner's application: Section 23(1) Property Factors (Scotland) Act 2011 ("the 2011 Act")

FTS/HPC/PF/21/2503

Flat 4, 182 Slateford Road, Edinburgh ("the property")

Parties:

Keith MacPherson, 80 Bishops Park, Mid Calder, ("The Homeowner")

Melville Property Ltd, 7 West Georgie Park, Edinburgh ("the Property Factor")

Tribunal Members:

Josephine Bonnar (Legal Member)

Mary Lyden (Ordinary Member)

DECISION

The Tribunal determined that the Property Factor has failed to comply with the Property Factor Enforcement Order ("PFEO") dated 23 August 2022.

The decision of the Tribunal is unanimous

Background

1. The Homeowner and six other Homeowners in the same development lodged applications with the Tribunal in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act.
2. A CMD took place by telephone conference call on 22 March 2022. The Homeowners were represented by Mr Murray. Mrs Lennie and Mr Moffat also participated. The Property Factor was represented by Mr Berry.
3. A hearing took place at George House on 29 June 2022 at 10am. The Homeowners were represented by Mr Murray. Mr Moffat and Mrs Lennie also gave evidence. The Property Factor did not attend and was not represented.
4. Following the hearing the Tribunal issued a decision with statement of reasons and a proposed PFEO. The parties were invited to make representations regarding the proposed PFEO but did not do so.

5. On 23 August 2022, the Tribunal determined that a PFEO should be issued in the same terms as the proposed order. The PFEO was issued to the parties and made the following provisions:

“

 - (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £1000 for his time, effort, and inconvenience,
 - (2) The Tribunal order the Property Factor to provide the Homeowner with a detailed financial breakdown of charges made, and a description of the activities and works carried out, for the periods 2020/21 and 2021/22. This must include the annual charge for each of the services provided and, where the service is provided by in-house staff, a breakdown of how the sum is calculated.
 - (3) The Tribunal order the Property Factor to provide the Homeowner with a copy of all invoices relating to services carried out at the development by contractors and copies of all electricity bills for communal electricity, for the periods 2020/21 and 2021/22.
 - (4) The Tribunal order the Property Factor to provide the Homeowner with full details of the services which were withdrawn on 1 August 2022 and a breakdown of how this withdrawal affected his monthly service charge.
 - (5) The Tribunal order the Property Factor to provide the Homeowner with evidence of a development bank account and payments to this account from the owner of the 19 town houses.”
6. On 26 September 2022, Mr Berry (a director of the Property Factor) submitted several documents in response to the PFEO. On 27 September 2022, he made a request for an extension of time to comply with the remainder of the PFEO. He stated that he has been retired for three years and is in ill health. The only other director, Mr Kennedy, had unexpectedly retired at the end of May 2022. Mr Berry also advised that he had been in hospital and was trying to contact Mr Kennedy, speak to the auditors, sell the company, and arrange for a new property factor to take over. He stated that he was seeking a further three months to comply with the PFEO. The Homeowners representative notified the Tribunal that the request was opposed because the homeowners had been willing to appoint the new factor for some time but had been prevented from doing so by Mr Berry. They were also concerned that they were paying factoring charges although no services were being provided. In response, Mr Berry stated that external contractors and his brother were managing the development on his behalf.
7. On 6 October 2022, the Tribunal determined that the Property Factor should be given additional time to comply with parts (2) to (5) of the PFEO. The Tribunal granted a variation of the PFEO, stipulating that the time limit for compliance with Parts (2) to (5) of the Order should be extended until 30

November 2022. No extension of time was granted in relation to part 1 of the PFEO.

8. On 29 November 2022, the Property Factor submitted a number of invoices from B&Q, APS Safety Systems Ltd, Property Maintenance, Graeme Ferguson Gardener, Flashpark, British Gas and the Builders Supply Company Ltd. He also provided a list of the invoices and the sums due in terms of these. On 8 December 2022, the Property Factor lodged a written submission. This stated that a new factor had been appointed and had taken over the management of the development on 1 November 2022 and that all information requested had now been provided. The submission also stated that there had been no complaints during the 15 years that the Property Factor had managed the development, that the Tribunal wanted to award each Applicant £1000, that 6 out of the 8 flat owners had never communicated with the Factor, that 19 out of 27 properties in the development had no complaints to make and that 2 proprietors were still in arrears. In a separate document, the Property Factor stated that the sum of £1000 was excessive.
9. On 15 December, Mr Murray lodged a brief response on behalf of all seven Homeowners. This stated that the Property Factor had only partially complied with the PFEO by submitting invoices.

Reasons for Decision

- 10. Section 23 of the 2011 Act states, “ (1) It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a property factor enforcement order made by the First-tier Tribunal. (3) The First tier Tribunal may nor decide that a property factor has failed to comply with a property factor enforcement order – (a) unless the period within which the order requires any work to be executed has ended...”**
11. The Tribunal considered the submissions from both parties, together with the documents and submissions lodged on 26 September 2022, and noted the following: -
 - (a) No evidence has been produced which establishes that the compensation ordered in terms of Part 1 of the PFEO has been paid. This was due to be paid to the Homeowner within 28 days of intimation of the PFEO. No extension of time was granted in relation to this part of the order. The Homeowner has indicated that only the part of the order which relates to the provision of invoices has been met. The Property Factor's only comment is that the compensation is excessive. In the circumstances, the Tribunal is satisfied that the Property Factor has failed to comply with Part 1 of the PFEO.

- (b) Part 2 of the PFEO requires the Property Factor to provide a detailed breakdown of the services provided and the annual charge for each service. This has not been provided. The Property Factor has submitted a large number of invoices for the relevant period. These provide some information about the contractors and the services provided. However, the Homeowners were never issued with monthly or quarterly invoices with details of these services. The Tribunal is satisfied that the Property Factor has not complied with Part 2 of the PFEO.
- (c) The Property Factor has submitted invoices for the relevant period on 26 September and 29 November 2022. These invoices are from contractors who have provided services at the development and include the electricity charges. The Tribunal is satisfied that the Property Factor has complied with Part 3 of the PFEO.
- (d) Part 4 of the PFEO required the Property Factor to provide the Homeowner with a list of the services which were withdrawn and details of how this affected their monthly factoring charge. No information has been submitted in relation to this part of the PFEO. The Tribunal is satisfied that the Property Factor has failed to comply with Part 4 of the PFEO.
- (e) On 26 September 2022, the Property Factor submitted a bank statement for an account with the Bank of Scotland in the name of Melville Property Ltd, for the period June 2020 to September 2022. This shows monthly payments from some of the Homeowners. It also shows a monthly standing order from Melville Property for the sum of £380, for the town houses. The Tribunal notes that the only payments made from the account are also to Melville Property, not to any of the contractors identified in the various invoices lodged. However, Part 5 of the PFEO only requires the provision of evidence that the bank account exists and that payments were made to the account in relation to the townhouses. The Tribunal is therefore satisfied that the Property Factor has complied with Part 5 of the PFEO.

12. The Tribunal is therefore satisfied that the Property Factor has only complied with Parts 3 and 5 of the PFEO and not complied with Parts 1, 2 and 4.

Decision

13. The Tribunal determines that the Property Factor has failed to comply with the PFEO dated 23 August 2022, as varied by the Tribunal on 6 October 2022.

Appeals

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.

Josephine Bonnar, Legal Member and Chair
8 January 2023