



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 (“the Act”)

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

Chamber Ref: FTS/HPC/PF/23/1912

Re: Property at 204 Rosemount Place Aberdeen AB25 2XQ (“the Property”)

Parties:

Hydro-Data Limited (Company number SC097776) Unit 3 Barry Business Centre, Main Street, Barry, Carnoustie, Angus, Scotland, DD7 7RP (represented by Mr Richard Rogers) (“the Applicant”)

Newton Property Management Limited, 87 Port Dundas Road, Glasgow G4 0HF (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member)

Melanie Booth (Ordinary (Surveyor) Member)

Background

1. The tribunal issued its decision dated 8 January 2024 and indicated it proposed to make a property factor enforcement order (PFEO). Reference is made to the terms of that decision.
2. The tribunal invited parties to make representations in respect of the proposed PFEO in terms of the relevant provisions of section 19 of the Property Factors (Scotland) Act 2011

3. The respondent sent an email containing a letter dated 9 February 2024. In that letter the respondent indicated that "*it appears to be the claimants' words against ours with regards to them claiming not to have received our initial letter following enquiry. Other owners in the block received our communications. You can see from the evidence that we have provided that we did endeavour to contact the owner. The only letter we do not have on file (as the claimant was not our customer at this point) was the initial one sent to proprietors. Our Business Development Team always send these initial letters, there would be no reason for us not to follow this process in this instance. Especially as we had been contacted by an owner looking to obtain our services. All customers receive a copy of our Written Statement of Service in February each year. This was sent to the claimant with the 2023 February invoice (along with updated insurance documents). At no point before the case management discussion did the claimant raise this with our office. Should we have received this request, then we would have willingly provided another copy.*"
4. The tribunal has considered the terms of the letter from the respondent and the various points raised therein.
5. In its original decision, the tribunal noted (at paragraph 18) that the respondent conceded that they had not retained copies of the letters that they say were sent to the applicant. This failure to maintain appropriate records was one of the reasons which allowed the tribunal to conclude that the respondent had breached Overarching Standard of Practice ("OSP") 9. The tribunal would expect a property factor to have appropriate systems in place to retain copies of all correspondence sent to homeowners. It is not enough for a property factor to say that "they always send these initial letters". The property factor should have appropriate case management systems in place to retain copies of correspondence with homeowners and should be able to produce them on request to the tribunal. In this case, the respondent was unable to produce the letters they say were sent and the tribunal has thus preferred to accept the applicant's position that these letters were not received.
6. It is noted that the property factors indicate that they have sent a copy of their Written Statement of Service in February 2023. Again, there is no evidence confirming that this document was sent, and the proposed order simply requires another copy to be sent to the applicant.

7. On that basis the tribunal therefore determines to make a property factor enforcement order (PFEO) in terms of section 19 of the 2011 Act in the terms previously proposed in its original decision dated 8 January 2024.

8. 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:-

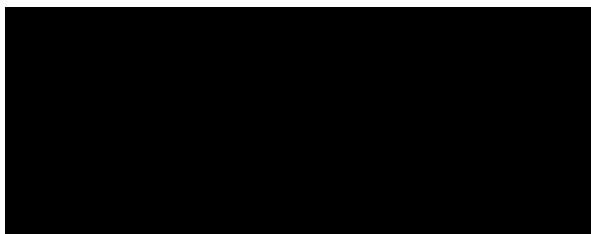
i. ***Pay to the Applicant the sum of FIVE HUNDRED POUNDS (£500.00);***

ii. ***provide a copy of its Written Statement of Services to the applicant within a period of fourteen day of the issue of this order;***

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

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.



08 March 2024

Legal Member

Date