

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision not to make a Property Factor Enforcement Order (PFEO) following a Decision under Section 17 of the Act.

Reference number: FTS/HPC/PF/22/1934

Re: Property at 4/29, Constitution Street, Edinburgh EH6 7BT ("the Property")

The Parties:

Mr. Paul Carmichael residing at the Property ("the Homeowner")

Ross and Liddell Limited, 6, Clifton Terrace, Edinburgh, EH12 5DR ("the Property Factor") per their agents, Raeside Chisholm Solicitors Limited, Tontine House, 8, Gordon Street Glasgow G1 3PL ("the Property Factor's Agents")

Tribunal Members

Karen Moore (Chairperson) and Ahsan Khan (Ordinary Member)

Decision

For the reasons set out below, Tribunal did not make a PFEO

Background

1. Having determined by Decision dated 30 January 2023 that the Property Factor had failed to comply with the Section 14 duty and its Property Factor's Duties in terms of the Act, and having determined to issue a Property Factor Enforcement Order ("PFEO"), the Tribunal gave Notice in accordance with Section 19(2)(a) of the Act that the Tribunal proposed the following PFEO and invited the Parties to make representations no later than 15 February 2023:-
No later than [3 weeks from date of PFEO] the Property Factor must at its own cost and expense:
 1. *Provide the Homeowner and the Tribunal with accurate arithmetic calculations of (i) each of the insurance premia which they have been charged to him during his*

ownership of the Property and (ii) each of the insurance premia which should have been charged to him during his ownership of the Property in terms of the title deeds;

2. *Provide the Homeowner and the Tribunal with the formulae on which the above arithmetic calculations are based;*
 3. *Compensate the Homeowner in the sum of £500.00 for the inconvenience caused to him by the Property Factor's actions and*
 4. *Reimburse the Homeowner in respect of any overcharged premia paid by him.*
2. By emails sent to the Tribunal in April 2023, the Property Factor demonstrated to the Tribunal that the Proposed PFEO had been complied with in respect of Part 3, the compensation element and had complied with Parts 1 and 2 of the Proposed PFEO by providing fresh calculations of the way in which the insurance premia had been apportioned and charged and had complied with Part 4 of the Proposed PFEO by refunding the excess sum charged to the Homeowner.
3. The Homeowner, by email dated 19 April 2023, the Homeowner disputed the Property Factor's calculations in respect of Parts 1 and 2 of the Proposed PFEO and disputed the sum due to him in respect of Part 4 of the Proposed PFEO.
4. The Property Factor's Agents, by email dated 19 May 2023, responded that the Property Factor's calculation formulae as set out in their representations to the Proposed PFEO are correct, but the excess sum refunded to the Homeowner was incorrect and that a further sum of £8.18 fell to be paid to him.

Decision on Proposed Property Factor Enforcement Order

5. The Tribunal had regard to the written representations made by both Parties in respect of the Proposed PFEO.
6. The Tribunal was satisfied that Part 3 of the of the Proposed PFEO was complied with by the Property Factor making payment of £500.00 in compensation to the Homeowner and was satisfied that Part 4 of the Proposed PFEO was complied with by the Property Factor refunding the excess sum to the Homeowner.
7. The Tribunal then had regard to the Parties' representations in respect of Parts 1 and 2 of the Proposed PFEO and their explanations of the calculations. The Tribunal agrees with the Property Factor's Agents email of 19 May 2023 that the calculations have now been corrected and the formulae have been provided to the Homeowner.
8. Accordingly, there is no need for the Tribunal to make a PFEO.

Appeal

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.

Karen Moore

Chairperson

5 June 2023.