

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) not to issue a final Property Factor Enforcement Notice in terms of section 19 of the Property Factors (Scotland) Act 2011 (“the Act”) issued under the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2016 (“the regulations”)

Chamber Ref: FTS/HPC/PF/18/2450

Property at 159 The Auld Road, Cumbernauld, Glasgow G67 2RG (“the Property”)

The Parties: -

Mrs Pauline Scott, 159 The Auld Road, Cumbernauld, Glasgow G67 2RG (“the homeowner”)

Sanctuary Scotland, Floor 8, Fleming House, 2 Tryst Road, Cumbernauld, Glasgow, G67 1JW (“the property factor”)

Tribunal Members: -

Simone Sweeney (Legal Member) Sara Hesp (Ordinary Surveyor Member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the property factor has complied with the terms of the Proposed Property Factor Enforcement Order of 19th June 2018.
2. The tribunal does not consider it necessary to issue a final Property Factor Enforcement Order (“PFEO”) in this matter.
3. The decision of the tribunal is unanimous.

Background

4. Reference is made to the decision of the tribunal of 13th January 2019 in which the tribunal determined that the property factor has breached duties in terms of Section 17 (1) of the 2011 Act in that there has been a failure to comply with the property factors' duties as required by section 14(5) of that Act.

5. As required by section 19(2) of the Act, the tribunal issued a notice of a proposed PFEO accompanied with a written decision. The proposed PFEO was issued to parties on or around 14th January 2019. Parties were invited to submit to the tribunal any representations they might have to the terms of the PFEO.

6. The proposed PFEO required that:

"Within 28 days of the communication of the PFEO to the property factor, the property factor must:

(i) Pay compensation to the homeowner in the sum of £200 (Two hundred pounds) in respect of the time and inconvenience occasioned by the property factor's failure to comply with their duty under the Code and the Act

7. By email of 4th February 2019, the property factor wrote to the tribunal confirming that they had issued a cheque to the homeowner. The email, from Maureen Law Factoring manager, read,

"Please find attached, a copy of the letter and compensation cheque for the value of £200.00 that has been issued by first class post to Mrs P Scott today. Please accept this as confirmation of our compliance with the proposed PFEO ."

8. The tribunal requested that enquiries were made with the homeowner as to whether or not she had received the cheque. By email of 13th February 2019 the homeowner confirmed that the money was received. The email read,

"I can confirm that my cheque cleared today."

9. The tribunal is satisfied that the content of the emails dated, 4th and 13th February 2019 confirm that the property factor has met the requirements of the proposed PFEO.

Reasons for decision

10. The property factor has provided the tribunal with copy evidence of a cheque for £200 made payable to the homeowner. The homeowner has confirmed safe receipt of the cheque. This satisfies the terms of the proposed PFEO. The tribunal determines that the property factor has complied with the order and do not consider it necessary for a final PFEO to be issued. In the absence of same, no certificate of compliance is appropriate and there is no requirement for any further action on the part of the property factor.

Appeal

11. 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 within 30 days of the date the decision was sent to them.

Simone Sweeney, Legal chairing member, 14th February 2019