



PROPERTY FACTOR ENFORCEMENT ORDER

Issued by the First-tier Tribunal for Scotland (Housing and Property Chamber)
Under section 17 of the Property Factors (Scotland) Act 2011

Chamber Ref:FTS/HPC/PF/22/0190

168 Inverewe Place, Dunfermline, Fife, KY11 8FW ('the Property')

The Parties:

Mrs Diane Jackson residing at Suite 117 GAB Elgin Avenue, Grand Cayman ('the Homeowner and Applicant')

James Gibb Property Management Limited, t/a James Gibb, Bellahouston Business Centre, 423 Paisley Road West, Glasgow, G51 1PZ ('the Factor and Respondent')

Committee members:

Jacqui Taylor (Chairperson) and Mike Scott (Ordinary Member).

NOTICE TO THE PARTIES

1. The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for Property Factors, in terms of the Property Factors (Scotland) Act 2011 ('the 2011 Act') determined that the Factor had failed to comply with sections 3.3, 4.3, 4.5, 4.8 and 7.2 of the Code of Conduct, all as stated in their decision dated 30th September 2022.

2. The Tribunal intimated to the parties, in terms of their said decision dated 30th September 2022, that they proposed to make a Property Factor Enforcement Order, requiring the Property Factor to pay the Applicant and Homeowner the sum of £266. The parties were given notice that they should ensure that any written representations they wish to make under section 19(2)(b) of the Act reach the Housing and Property Chamber's office by no later than 14 days after the date that the Decision and the notice of the proposed Property Factor Enforcement Order was intimated to them.

3. The Applicant and Homeowner's representative and the Property Factor's solicitor sent the Tribunal representations in relation to the Proposed Property Factor Enforcement Order.

The Applicant and Homeowner's representative explained as follows:

3.1 He did not accept that the Applicant was partly responsible for the delay in the Factor making contact with the Applicant.

3.2 He made further submissions to the Tribunal in relation to losses that she had incurred.

3.3 He requested that a revised Property Factor Enforcement Order be issued including the following:

3.3.1 The Property Factor should be directed to withdraw their Sheriff Court claim.

3.3.2 The Property Factor should be required to remove the Notice of Potential Liability that the Property Factor had registered over the Title of the Property.

3.3.3 The legal costs incurred by the Property Factor as a result of employing a solicitor to represent them should be borne by the Property Factor and not passed to the homeowners.

3.3.4 The sum payable to the Applicant should be increased to compensate her for the stress and anxiety she has suffered.

4. The Property Factor's solicitor provided representations which explained that she did not agree with the representations made by the Applicant and Homeowner's representative. She explained that he was making submissions that were not put to the Tribunal at the hearing and in any event they are largely irrelevant. In response to the amendments to the Property Factor Enforcement Order requested by the Applicant and Homeowner's representative she advised:

4.1 The Tribunal does not have authority nor jurisdiction to instruct the Property Factor to withdraw their sheriff court claim.

4.2 The Tribunal does not have the jurisdiction to order the Notice of Potential Liability to be removed.

4.3 The Tribunal does not have jurisdiction to direct that the legal costs incurred by the Property Factor as a result of employing a solicitor to represent them should be borne by the Property Factor and not passed to the homeowners.

4.4 The Homeowner suffered no prejudice or loss as a result of the breaches of the Code of Conduct.

5. The Tribunal considered the representations made, and found as follows:
 - 5.1. The Tribunal did not accept the assertion that the Applicant was not partly responsible for the delay in the Factor making contact with the Applicant.
 - 5.2 The Tribunal do not consider it to be necessary to amend the PFEO as requested by the Applicant and Homeowner's representative. They accepted the representations made by the Property Factor's solicitor.

6. Consequently, the Tribunal make the following Property Factor Enforcement Order:

'The Factor must pay the homeowner £266 for the inconvenience she had suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order. If the homeowner's account is in arrears the said sum may be credited to her account.'

Failure to comply with a PFEO may have serious consequences and constitute an offence.

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.

Signed

Chairperson Date: 7th December 2022