

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”); Property Factors (Scotland) Act 2011 (“the 2011 Act”) Tribunals (Scotland) Act 2014 (“the 2014 Act”)

Chamber Ref: FTS/HPC/PF/19/1099

**Flat 9, 50 East Fettes Avenue, Edinburgh, EH4 1RE
("the Property")**

The Parties:-

**Ms Nora Rundell, Flat 9, 50 East Fettes Avenue, Edinburgh EH4 1RE
("the Homeowner")**

**James Gibb Property Management Limited, 4 Atholl Place, Edinburgh EH3 8HT
("the Factor")**

Tribunal Members:

**Graham Harding (Legal Member)
Helen Barclay (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) in exercise of its jurisdiction in terms of rule 39(5) of the 2017 Rules considers that the application for review by the Factor should be upheld and the Tribunal’s decision dated 1 September amended accordingly.

Background

1. A hearing on the above application was held on 21 August 2019. The Tribunal found that the Factor had failed to carry out its property factors duties and had failed to comply with its duties under section 14(5) of the Code of Conduct for Property Factors in that it did not comply with sections 2.4 and 4.6 of the Code. The Tribunal therefore issued a proposed Property Factors Enforcement Order.
2. By email dated 19 September the Factor sought a review of the Tribunal’s decision. The application was timeous.

The Tribunal Decision

6. Section 4.6 of the Code as the Factor has pointed out in its application for review deals with debt recovery problems. The preamble to Section 4 of the Code states:

Non-payment by some homeowners can sometimes affect provision of services to the others, or can result in the other homeowners being liable to meet the non-paying homeowner's debts (if they are jointly liable for the debts of others in the group). For this reason it is important that homeowners are aware of the implications of late payment and property factors have clear procedures to deal with this situation and take action as early as possible to prevent non-payment from developing into a problem. It is a requirement of Section 1 (Written statement of services) that you inform homeowners of any late payment charges and that you have a debt recovery procedure which is available on request.

7. The Tribunal having considered matters further accepts that once the Factor has ceased to act in the role as Factor it can no longer perform a role in any debt recovery procedures. The Tribunal also accepts that the redistribution of debt on termination of the Factor's appointment falls into a different category from that of debt recovery. It therefore follows that the naming of the Homeowner on the final invoice would of itself not be a breach of Section 4.6 of the Code. The Tribunal is therefore prepared to amend its decision to remove the reference to the Factor being in breach of that section of the Code.
8. Although the Tribunal accept that the Factor has not breached Section 4.6 of the Code it remains of the view that the notice given to the Homeowner in its letter of 24 April was inadequate. It did not make it clear that the Homeowner's name would be disclosed to other Homeowners. It did not make it clear that the Factor considered that to do so would not be a breach of GDPR. To that extent therefore there was a failure on the part of the Factor in its duty to the Homeowner to keep her aware of the implications of non-payment.
9. The Tribunal accepts that there was a typographical error in the decision with regards to the Homeowner's application and mediation and this will be corrected.

Outcome

10. The Tribunal's decision of 1 September will be amended to reflect this decision
11. The Tribunal does not consider it necessary to amend the proposed PFEO.

12. It should be noted that in terms of section 43(4) of the Tribunals (Scotland) Act 2016, the exercise of the Tribunal's discretion whether a decision should be reviewed may not itself be reviewed or subject to appeal. The availability of an appeal otherwise remains unaffected.

Graham Harding
Legal Chairman

16 October 2019