



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

PROPERTY FACTOR ENFORCEMENT ORDER (“PFEO”): Property Factors (Scotland) Act 2011, section 19(3)

Case Reference Number: FTS/HPC/PF/17/0309

The Property:

Flat 2/1, 8 Whitehill Street, Glasgow, G31 2LJ

The Parties:-

Kevin Brown, Flat 3/2, 6 Bowmont Gardens, Glasgow G12 9LR

(“the Homeowner”)

and

Apex Property Factor, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH

(“the Factors”)

Tribunal Members:

Adrian Stalker (Chairman) and Robert Buchan (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision and Proposed Property Factor Enforcement Order, both of 12 February 2018

Decision

The Tribunal has decided that it should make a PFEO in the terms previously proposed. The decision of the Tribunal is unanimous.

Reasons for the Decision

Since the First-tier Tribunal's Decision and Proposed PFEO were issued to the parties, the Tribunal has received communications from both the Factors and the Homeowner. The Homeowner has not made representations taking issue with the terms of the Decision or the Proposed PFEO. He has sought clarification as to how matters will progress. The only communication received from the Factors was a letter dated 13 April 2018 (received 17 April 2018) which stated:

"We requested permission to appeal to the Upper Tribunal on 12 March 2018 and are still awaiting a decision."

The Tribunal has no record of ever receiving an application for permission to appeal from the Factors.

By letter dated 26 April 2018, the Tribunal responded to the Factors' letter as follows:

"Under regulation 37 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, a request for permission to appeal must be made by written application. The Tribunal has no record of receiving such an application from you.

The Tribunal has requested that you provide:

- (a) A copy of any written application for permission to appeal, made by you on or about 12 March;
- (b) Any evidence you have of this application being sent to the Tribunal.
- (c) Any evidence you have of the application being received by the Tribunal.

Please provide this information within 7 days of the date of this letter."

The Tribunal has received no response to that letter. Accordingly, the Tribunal has concluded that no representations have been received from the Factors in relation to the Decision or the Proposed PFEO, under section 19(2)(b) of the Act.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required, within 8 weeks, to take the following steps and produce confirmation that they have done so for consideration by, and to the satisfaction of, the Tribunal:-

1. To issue to the Homeowners at 8 Whitehill Street, Glasgow, on whose behalf they currently manage that property, an accurate and comprehensive Statement of Services, in writing, which complies with section 1 of the Code of Conduct for Property Factors, making reference where necessary to the relevant provisions within the Title Deeds for the Property which describe the Property Factor's responsibilities and duties, and setting out, in particular:

- a) The Factors' authority to Act;
- b) The services provided by the Factors;
- c) Their financial and charging arrangements;
- d) Their communication arrangements, including their in-house complaints procedure;
- e) A declaration of interests, if applicable;
- f) A statement of how to end the arrangement;

all in accordance with the detailed terms of section 1 of the Code.

2. To provide a copy of this decision to the other Homeowners at 8 Whitehill Street on whose behalf they currently manage that property, with a covering letter which contains the following statement:

"Reference is made to the attached decision of the First-tier tribunal for Scotland (Housing and Property Chamber) in respect of a complaint made by Kevin Brown, owner of Flat 2/1, 8 Whitehill Street, Glasgow. Your attention is drawn, in particular, to paragraphs 53 to 67, which concern the arrangements for insurance of 8 Whitehill Street.

The insurance previously arranged on your behalf by Apex Property Factor has not been arranged in accordance with the Title Deeds for 8 Whitehill Street, Glasgow, and does not cover the whole building of which your flat forms part. It covers only your flat and other flats in the building. There is no common insurance policy over the whole building comprising 2 and 8 Whitehill Street, Glasgow, in accordance with the Title Deeds. You may wish to consider the implications of this with the other Homeowners in the building and/or take advice as to how the insurance of the building should be arranged. Apart from the fact that it is a condition of the Title, a common insurance policy over a block in multiple ownership is normally preferred, because: (a) it ensures that the block is properly insured; (b) all of the owners are contributing to it; and (c) it is easier to ensure that the level of cover, including public liability is adequate. However, should you decide to proceed with an individual policy, it may be possible for you to arrange cheaper insurance of your own flat yourself, rather than doing so through the Factors. You should consider seeking advice from insurers, or brokers, as to the effect of taking out an individual policy (as

opposed to a common policy covering the whole building), in the event that the building is damaged.”

3. To provide the Homeowner with written confirmation of:

- a) any commission, administration fee, rebate or other payment or benefit the Factors have received from the company currently providing insurance cover and any financial or other interest that the Factors have with the insurance provider.**
- b) Any other charge made by the Factors for providing the insurance.**
- c) How and why the Factors appointed the current insurance provider, including any cases where the Factors decided not to obtain multiple quotes.**

4. Prepare a schedule of proposed staff training to ensure that all of the Factors' staff have detailed knowledge of the terms of the Code of Conduct and are fully aware of the Factors' obligations: -

- a) to comply with the Code of Conduct;**
- b) to comply with their duties as Property Factors particularly those duties in relation to arranging insurance;**
- c) to ensure adequate customer relations and to communicate effectively;**

including details of the provider of the training and timescales for the provision of delivery of the training.

5. To make a payment of £500 to the Homeowner, within two weeks of the date of this decision, by way of a personal payment and not by way of a credit to the Homeowner's account. Evidence of such payment should be provided to the Tribunal.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

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.

A Stalker

Legal Member and Chair

11 May 2018

Date