



Cover Sheet
Martin J. McAllister

Case Reference
FTS/HPC/PF/19/1233 and PF/19/1571

Documents Lodged:
pfeo

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFEQ”)

Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/19/1233 and FTS/HPC/PF/19/1571

7 York Street, Clydebank, G81 2PH (“The Property”)

The Parties:-

Mr David Hopkirk, 107 Attlee Avenue, Linnvale, Clydebank, G81 2SF
("the Homeowner")

**West Dunbartonshire Council,
16 Church Street, Dumbarton, G82 1QL**
("the Property Factor")

Tribunal Members:

Martin J. McAllister, Solicitor, (Legal Member)
Andrew McFarlane, Chartered Surveyor, (Ordinary Member)
(the “tribunal”)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 6th November 2019 and the proposed property factor enforcement order dated 4th November 2019 which were both served on the parties on or around 6th November 2019.

In this decision the Property Factors (Scotland) Act 2011 is referred to as “the 2011 Act” and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as “the Code.”

Decision

The tribunal has decided to make a property factor enforcement order (PFEQ) in terms of its Decision and Notice of Proposed PFEQ dated 6th and 4th November 2019.

The decision of the Tribunal is unanimous.

Reasons for Decision

1. In the tribunal's decision of 4th November 2019 it proposed to make a PFEO as follows:

The Property Factor is to pay the sum of £675 to the Homeowner within fourteen days of service upon it of the final Property Factor Enforcement Order.

2. The tribunal's decision was intimated to the parties on or about 6th November 2019. Representations on the proposed order under Section 19(2) (b) of the 2011 Act were received by the tribunal from both parties.
3. The representative of the Property Factor requested in an email of 6th November 2019 that the sum of compensation of £675 be offset against the costs of roof repairs and the invoice due to be paid by the Applicant. The representations stated that the Tribunal had made no finding that the repairs to the roof were unsatisfactory.
4. The Applicant opposed the proposal of the Property Factor that the compensation be offset and said in his email of 7th November that he is seeking legal advice on the legality and quality of the repair. In the email of 7th November and in another dated 12th November the Applicant stated that Mr Young, an employee of the Property Factor had given false information in evidence when he stated that other proprietors had not been sent invoices in respect of the roof repairs. The Applicant referred to a particular proprietor who had paid an invoice of £4,000 at the end of the previous tax year.
5. The members of the tribunal considered the representations and noted that neither party had submitted that a property factor enforcement order should not be made. The representations were both on the method of payment. The tribunal accepted the argument of the Property Factor that it had not made any finding with regard to the quality of the repairs carried out to replace the roof. It considered it entirely reasonable that the compensation should be off-set against any liability owed to the Property Factor by the Applicant.
6. The tribunal considered that, since consideration of the evidence had been concluded, it was not possible for it to address the issue raised by The Applicant in relation to Mr Young's evidence
7. The tribunal remained satisfied that the Property Factor had failed to comply with the property factor's duty and its duty under the Code. Accordingly under Section 19(3) of the 2011 Act the tribunal was required to make a PFEO.
8. The tribunal made the following PFEO:

The Property Factor is to pay compensation of £675 to the Homeowner and to credit this sum to any invoice to be raised by the Property Factor

which is sent to the Applicant for payment and to do so within twenty eight days of service upon it of the final property factor enforcement order.

Under Section 24(1) of the 2011 Act, a person who, without reasonable excuse, fails to comply with a property Failure 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.

 Martin J. McAllister, Legal Member and Chair

4th December 2019