

Housing and Property Chamber

First-tier Tribunal for Scotland



Property Factor Enforcement Order (“PFEO”): Section 19 (3) of the Property Factors (Scotland) Act 2011 (“the 2011 Act”)

Chamber References: HPC/PF/21/2439, HPC/PF/21/262,
HPC/PF/21/2513, HPC/PF/21/2438,
HPC/PF/21/2380 and HPC/PF/21/2368

Re: Properties at 40 Cranworth Street, Hillhead, Glasgow, G12 8AG (“the Properties”)

Parties:

Ms Kirsty Scott (2439), Mrs India Fullarton (2627), Mrs Fiona Mann (2513), Ms Pasquale Cerullo (2438), Mrs Ping-Tai Wong (2380) and Mr Alan Ker (2368) (“the Applicants”)

Lomond Property Factors Limited, The Gowk, Gartocharn, Dunbartonshire, G83 8ND (“the Respondent”)

Tribunal Members:

Martin McAllister, solicitor, (Legal Member) and Robert Buchan, chartered surveyor, (Ordinary Member) (“the tribunal”)

This document should be read in conjunction with the decision of the Tribunal dated 19th October 2022 (as amended after review in terms of Section 44 (1) (c) of the Tribunals (Scotland) Act 2014).

Decision

The tribunal decided to make a PFEO in the terms originally proposed by it.

Reasons

1. In the decision of 19th October 2022, the tribunal proposed to make a PFEO as follows: ***“The property factor will make a payment of £500 to each***

Applicant by way of compensation for breaches of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors within twenty eight days of service of the property factor enforcement order".

2. The tribunal indicated that prior to making a property factor enforcement order, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the 2011 Act.
3. The Respondent made an application for review of the decision in terms of section 43 (2) (b) of the Tribunals (Scotland) Act 2014.
4. The Applicants submitted representations in response to the application for review and the Respondent submitted further representations.
5. The tribunal determined not to set aside its decision of 19th October 2022 but to correct typographical errors contained in the decision.
6. The tribunal considered it reasonable for it to consider that the application for review and the subsequent representations comprise representations in terms of section 19 (2) (b) of the 2011 Act.
7. The Respondent submitted that it should not be required to pay compensation of £500 to each Applicant and that any increases in costs to the refurbishment were not as a consequence of any failings of it.
8. The Applicants, in their representations did not address the level of compensation but reinforced that the homeowners had concerns about the manner in which the project for refurbishment was procured and managed and that they assume that the compensation was to reflect the concerns which they had.
9. The tribunal considered the representations. It had found that the Respondent had failed to comply with the Code of Conduct and was satisfied that an award of compensation should be paid.
10. It is a matter for the discretion of the tribunal with regard to the level of any compensation which it requires a property factor to pay as a consequence of a PFEO. Having considered matters, the tribunal found that the level of compensation was appropriate and proportionate.

Decision

The tribunal determined to make the PFEO in the terms which it had set out in the proposed PFEO.

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.

Martin J. McAllister, Legal Member
13th December 2022