

Housing and Property Chamber

First-tier Tribunal for Scotland



FIRST-TIER TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY CHAMBER)

STATEMENT OF DECISION: in terms of Section 23 of the Property Factors (Scotland) Act 2011 ("the Act")

Chamber Ref: FTS/HPC/PF/21/1377

Reference numbers:

FTS/HPC/PF/22/0234

FTS/HPC/PF/22/0793

FTS/HPC/PF/22/0795

Re: Property at 3 Queens Court, Perth, PH2 0ES ("the Property")

The Parties:

Mrs. Kathleen Pringle residing at the Property ("the Homeowner") per her representative, Mr William Pringle also residing at the Property ("the Homeowner's Representative")

Abbey Forth Property Management Limited having an office sometime at Balcairn, Viewfield Terrace, Dunfermline KY12 7HY and now Laich House, 5, Castle Court, Carnegie Campus, Dunfermline KY11 8PB ("the Property Factor")

Tribunal Members

Karen Moore (Chairperson) and Kingsley Bruce (Ordinary Member)

Decision

The Tribunal determines that the Property Factor has failed to comply with the Property Factor Enforcement Order imposed by it in respect of the Property and dated 4 August 2022 ("PFOE").

The Tribunal determines to serve notice of that failure on the Scottish Ministers in terms of Section 23(2) of the Act.

The Tribunal intends to issue an Order for Payment of the sum of £750.00 against the Factor, gives notice to the Parties of this intention and directs the Parties to make written representations in terms of Rule 16 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") within 14 days of the date hereof.

Background

1. By three separate applications all received on 16 March 2022 ("the Applications") the Homeowner's Representative on behalf of the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with the Codes of Conduct for Property Factors and had failed to comply with the Property Factor's Duties.
2. The Applications were accepted by the Chamber and referred to the Tribunal. A case management discussion (CMD) took place on 9 June 2022 at 10.00, the outcome of which was that the Tribunal made the following Decision:

"The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor :-

- (i) *has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2011 ("the 2011 Code") at Section 1 at 1.1;*
Section 2 at 2.3, 2.4 and 2.5;
Section 3 at 3.2, 3.5a and 3.6;
Section 6 at 6.6;
Section 7 at 7.1;
 - (ii) *has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct 2021 ("the 2021 Code") at Section OSP at OSP3, OSP10 and OSP11;*
Section1 at 1.1 and 1.G(21);
Section 2 at 2.4, and 2.7;
Section 3 at 3.7;
Section 6 at 6.9 and
Section 7 at 7.1 and
 - (iii) *has failed to comply with the Property Factor's Duties."*
3. The Tribunal issued its written Decision dated 4 July 2022 following which the Homeowner's Representative, by email, pointed out an error in the written Decision as it refers at several points to the Property Factor having provided a Written Statement of Services (WSS) to the Homeowner in September 2020. The Homeowner's Representative email of 8 July 2022 was, in effect, an application for review in terms of Rule 39 but did not fully comply with Rule 39 (2) as it was not copied to the Property Factor. Therefore, the Tribunal, being of the view that there

is merit in the Homeowner's Representative email, and in the interests of justice, reviewed its Decision. The

4. The Tribunal, having found that the Property Factor had failed to comply with the Codes and the Property Factor Duties, proposed a Property Factor Enforcement Order ("PFEO"). The proposed PFEO was intimated to the Factor who made no comment or response. Therefore, on 4 August 2022 the Tribunal made the PFEO as follows:-

"No later than 26 August 2022 the Property Factor must at its own cost and expense:

1. *Provide the Homeowner and the Tribunal with the following documents and information:*
 - i) *The draft Minutes of owners' meeting of 6 April 2021;*
 - ii) *All information, correspondence and documentation in respect of the work carried to the gate and the tree felling which work was contemplated or instructed in 2021;*
 - iii) *All information, correspondence and documentation in respect of the reserve funds/levy of £1,000 per property, including the total of the fund and the expenditure from it, redacted, if necessary, in respect of personal data;*
 - iv) *All information, correspondence and documentation in respect of the bank accounts or trading accounts which held funds for the Homeowner;*
 - v) *Detailed explanations of the factoring quarterly statement issued in September 2021 and the final invoice issued in November 2021 to include a breakdown of the sums brought forward;*
 - vi) *All information, correspondence and documentation relating to the transfer of business to James Gibb Limited, redacted, if necessary, in respect of personal data and commercially sensitive information not related to the Homeowner or the Queens Court development of which the Property forms part;*
 - vii) *Compensate the Homeowner in the sum of £500.00 for the distress, inconvenience and stress caused to her by the Property Factor's actions and*
 - viii) *Reimburse the Homeowner the sum of £250.00 being the sum paid by the Homeowner towards the project levy or reserve fund."*
5. The PFEO was intimated to the Factor by recorded delivery mail.

Compliance with PFEO

6. Following a PFEO compliance check, the Homeowner's Representative advised the Tribunal that the Property Factor had not complied with the PFEO. No information or representations about compliance have been received from the Property Factor and no excuse or reason for the failure has been presented.
7. Section 23(1) of the Act states: "*It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a property factor enforcement order made by the First-tier Tribunal*". The Tribunal, accordingly, determines that the Property Factor has failed to comply with the PFEO and that there is no reasonable excuse for the failure.

8. Section 23(2) of the Act states "*Where the First-tier Tribunal decides that a property factor has failed to comply with the property factor enforcement order, the First-tier Tribunal must serve notice of the failure on the Scottish Ministers.*" The Tribunal, accordingly, serves notice on the Scottish Ministers.

Payment Order

9. Section 20 of the Act states: "*A property factor enforcement order is an order requiring the property factor to...(b)where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable.*"
10. The Tribunal considered it reasonable in the PFEO to order the Property Factor to make payment to the Homeowner of £750.00, which payment the Property Factor has failed to make. Accordingly, the Tribunal proposes to issue an Order for Payment of this sum against the Property Factor and in favour of the Homeowner. Before doing so, the Tribunal gives the Parties notice of its intention and, in terms of Rule 16 of the Rules, directs the Parties to make written representations within 14 days of the date hereof for its consideration.

Appeal

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.

Karen Moore



Chairperson

7 October 2022