



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

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 19(1) of the Property Factors (Scotland) Act 2011 (“the Act”) and The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 in an application made under Section 17 of the Act.

Chamber Ref: FTS/HPC/PF/18/0769

91 Zena Street, Glasgow, G33 1HY (“The Property”)

The Parties:-

Mrs Anna Marie Campbell, 91 Zena Street, Glasgow, G33 1HY (“the Homeowner”)

The Wheatley Group, Yourplace Property Management, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the Property Factor”)

Tribunal Members:-

Ms Helen Forbes (Legal Member)
Ms Carol Jones (Ordinary Member)

Background

On 25th June 2018 the Tribunal determined that the Factor had failed to comply with their duties under Section 14 of the Act in that they had failed to comply with sections 2.1 and 6.9 of the Property Factors Code of Conduct (“the Code”).

The Statement of Decision containing the determination of the Tribunal stated that the Tribunal proposed making a Property Factor Enforcement Order (“PFEO”) in respect of the failure by the Factor to comply with their duties under Section 14 of the Act and the terms of the proposed PFEO were set out in a Notice under Section 19(2)(a) of the Act, issued with the Statement of Decision. The proposed PFEO would have required the Factor within four weeks of the date of issue of the PFEO to provide the Homeowner with an estimate of the cost of long-term option 2 in respect of the ongoing work to her roof; and pay the Homeowner from their own funds the sum of £500, to reflect the strain and anxiety experienced by the Homeowner, and the time and cost commitment the Homeowner has had to invest, due to the Factor’s lack of compliance with the Code. The Statement of Decision was issued to the parties on 11th July 2018.

On 13th July 2018, the Homeowner informed the Tribunal that she would not be seeking a review of, or permission to appeal, the decision; however, she asked that the Tribunal consider changing the wording of the third paragraph of paragraph 19 of

their decision, as she felt that her comments on the particular point had not been accurately reflected in the decision.

On 25th July 2018, the Factor informed the Tribunal that the actions required by the proposed PFEO had been complied with in full.

On 26th July 2018, the Homeowner confirmed that she had received the estimate required by the proposed PFEO and payment in the sum of £500 from the Factor.

Decision

1. The Tribunal considered the point made by the Homeowner concerning the third paragraph of paragraph 19. The Tribunal agreed that the paragraph in question did not accurately reflect the Homeowner's comments, and could be considered an omission in terms of Rule 36 of the Regulations. The Statement of Decision was, accordingly, corrected by substituting the following words for the third paragraph of paragraph 19: *"Responding to questions from Mr Adams as to whether she considered the roofing programme to be cyclical maintenance, the Homeowner said that the terminology used by the Factor for the programme was immaterial and it was up to the Factor to define the terms. The Homeowner referred to page 7 of the Written Statement under the heading 'Project Management of Complex Repairs and Cyclical Maintenance', and said she believed that these services should be effectively managed by the Factor as part of the core services provided. She also said she believed the cyclical repairs had been cancelled in 2009 and the roofing project had been cancelled in 2012 without consultation or consent, and this was the reason the roof is now in a poor state of repair. With regard to the recent works, there had been several visits to fix the problem and the work was still not up to standard. Periodic inspections were required."* A copy of the amended decision will be issued to parties.
2. As the terms of the proposed PFEO had been complied with before the Tribunal made a PFEO, the Tribunal determined that it was no longer necessary to make the Order. The Tribunal does not propose to make a Property Factor Enforcement Order.

The decision of the Tribunal is unanimous.

Right of 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.
H Forbes

Legal Member and Chairperson

1st August 2018