

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision with Reasons under section 23 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 26(3) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/23/1578

**Flat 1/1, 64 Kempock Street, Gourock, PA19 1ND
 (“the Property”)**

The Parties:-

**Mrs Elaine Cannon, Flat 1/1, 64 Kempock Street, Gourock, PA19 1ND
 (“the Homeowner”)**

**Cumming, Turner & Watt, 40 Carlton Place, Glasgow, G5 9TS
 (“the Factor”)**

Tribunal Members:

Alison Kelly (Legal Member)

Leslie Forrest (Ordinary Member)

Decision of the Tribunal with Reasons

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

Has failed to comply with the Property Factor Enforcement Order which was issued on 10th January 2024.

Background

1. On 10th January 2024 the Tribunal issued a Property Factor Enforcement Order as follows:

No later than 4 weeks from date of PFEO the Property Factor must at its own cost and expense

1. *Repair at their own expense, and without recourse to the homeowners or the local authority, the roof of the tenement of which the Property forms part to the extent that it no longer allows water ingress and the loose and broken tiles are repaired*
2. *Pay the Homeowner by a direct payment and not by a credit to the common charges account, the sum of £2000 as compensation for the stress and worry, and for the time and effort she has put in to trying to resolve the issue with the Respondent*
3. *Evidence to the Tribunal that items 1 and 2 above have been carried out.*

2. On 14th February 2024 the Tribunal sent emails to each party attaching an Order Compliance Check letter for their completion.
3. On 15th February 2024 the Homeowner responded by email as follows:

1. *Do you agree that the actions required in the PFEO have been completed?
YES NO X*

If not, please give details: • There has been one day's work carried out on the roof to date by the contractor who has advised this requires at least another 4 days in order to make the roof watertight and safe. There are a number of critical actions still to do. While aware the recent weather will have had an impact at times, there have also been numerous occasions when the weather would have allowed the contractors to be on the roof to complete the job. There has been no direct communication from CTW other than to answer a query of my own as to when the work would be starting. I feel again that I had to chase this up and have been liaising with the contractor directly at times (again taking on the role of the factor). • In respect of the compensation part of the order there has been no contact from CTW regarding this and no payment has been received.

2. *Do you want the tribunal to consider a variation or revocation of the PFEO?
YES X NO*

If yes, please give your reasons: • I would be agreeable to allowing a further 2 weeks for the work to be entirely completed as feel this is more than fair to extend given the weather situation, despite there being opportunities to complete already. However, given the continuing issues in the top 2 flats I don't think this should be extended further as the work needs to be completed asap for health and safety reasons and it continues to cause undue stress for all concerned. Supported by the Scottish Courts and Tribunals Service www.scotcourtribunals.gov.uk • I would like CTW to also pay the compensation part of the Order within this 2 week period.

4. The Property Factor did not reply.

5. On 18th March 2024 the Tribunal sent an email to the Applicant asking for an update.
6. On 19th March 2024 the Applicant provided a detailed response. She said that the roof work had not been completed and no payment had been received.
7. Section 23 of the Property Factors (Scotland) Act 2011 states:

Effect of failure to comply with property factor enforcement order

(1) 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 .

(2) 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.

(3) The First-tier Tribunal may not decide that a property factor has failed to comply with a property factor enforcement order—

(a) unless the period within which the order requires any work to be executed has ended, or

(b) if the First-tier Tribunal is satisfied, on the submission of the property factor or otherwise—

(i) that the property factor is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or

(ii) that any action required by the order is likely to endanger any person.

*(4) Where the First-tier Tribunal is prevented by reason only of subsection (3)(b) from deciding that a property factor has failed to comply with a property factor enforcement order, the First-tier Tribunal must serve notice on the Scottish Ministers stating that **it** considers the property factor to be unable to comply with the property factor enforcement order.*

8. The Tribunal considered the submissions of the Homeowner and the fact that the Property Factor had not responded and noted the following:
 - (a) The roof repairs have not been carried out as directed in part 1 of the PFEO, and accordingly the Property Factor has not complied with that part of the PFEO

- (b) The Homeowner has not received payment of the sum of £2000 as directed in part 2 of the PFEO and accordingly the Property Factor has not complied with that part of the PFEO
 - (c) The Property Factor has not lodged evidence as directed in part 3 of the PFEO and accordingly the Property Factor has not complied with that part of the PFEO
9. The Tribunal consider that the Property Factor has failed to comply with the Property Factor Enforcement Order.
10. The Tribunal's decision is unanimous.

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.

Alison J Kelly, Chairperson

28th March 2024