

Housing and Property Chamber
First-tier Tribunal for Scotland



Property Factor Enforcement Order: Property Factors (Scotland) Act 2011, section 19(2).

Chamber Ref: FTS/HPC/PF/18/0477

16 Netherkirkgate, Aberdeen AB10 1AU (“the property”)

The Parties:-

Mr Emilio Ayllon, residing at Flat 12, 34 Home Street, Edinburgh EH3 9LZ (“the homeowner”)

The Property Management Company (Aberdeen) Limited, incorporated under the Companies Act and having its registered office at PMC House, Little Square, Oldmeldrum, Aberdeenshire AB51 0AY, Company Number SC156893 (“the factors”)

Tribunal Members:

David M Preston, (Legal Member) and David Godfrey (Ordinary Member) (“the tribunal”)

WHEREAS in its Decision dated 17 September 2018 (“the Decision”) the tribunal determined that the factors had failed to comply with the Code of Conduct for Property Factors (“the Code”); and it determined to issue a Property Factor Enforcement Order (PFEO).

The required Notice of Proposed PFEO under section 19(2) of the Act was given to the parties on 19 September 2018 to allow them to make representations.

By letter dated 1 October 2018 the factor submitted a response which was considered by the tribunal. No response was received from the homeowner. Having taken account of the factors’ response the tribunal has determined to proceed to make this PFEO for the reasons outlined below:

Reasons:

1. In their letter of 1 October, the factors raised a number of points about the tribunal’s findings as set out in the Decision.

Paragraph 8:

2. They said that it was incorrect to state that work had been done by Proserv in 2015 which resolved the water ingress. They said that the work by Sangster & Annand was finally completed in 2016, which was what had stopped the issue.

3. Having reviewed the evidence we are satisfied that paragraph 8 of the Decision contains a typo in respect of the year. The correct date should read 2017. In reaching this decision the tribunal took account of the homeowner's evidence that he had been at the property in August 2017 during a period of heavy rain, when there was no water ingress. It was his evidence that the gutter repairs by Proserv on 9 August 2017 appeared to have resolved the problem. The tribunal also noted that the "Reactive Job Instruction" dated 31 March 2017 addressed to Proserv clearly shows that the work by Sangster & Annand in 2016 had not resolved the situation. A copy of the job instruction had been lodged by the factors in the productions which were not admitted by the tribunal at the hearing since the homeowner had not had an opportunity of studying them before the hearing, but as they are the factors' productions the tribunal is entitled to take them into account.

Paragraph 9:

4. The factors questioned the tribunal's findings with regard to their visits to the property.
5. The evidence of the parties was at variance and the paragraph reflects the tribunal's findings. It preferred the homeowner's evidence which it found to be consistent with the overall evidence regarding the visits to and inspections of the property.

Paragraph 19:

6. The factors stated that they had not inspected the property until after 2015 and could not therefore have reached a view that the problem related to the condition of the windows or that the problem was an issue with them.
7. The tribunal considers that the actual timing of the factors reaching their view is immaterial to the Decision. The position is that in any event, it was clear to the tribunal on the basis of the evidence before it that the factors had reached this view at some time between 2015 and 2017.

Paragraph 20:

8. The factors say that they did not hear from the homeowner again until March 2015 and had implied that the issue was no longer causing problems. They say that after it was drawn to their attention again in 2015, Sangster & Annand were instructed and they completed work in around 2016 and they did not hear again from the homeowner until 2017, from which they implied that the work had been successful.
9. The tribunal finds that the factors' version of events is not consistent with the evidence presented. The tribunal found that the homeowner had indicated to the factor several times in 2013/14 that the water penetration was persisting. In any event, as evidenced by the photographs produced by the homeowner, it should have been obvious to anybody carrying out routine inspections that water was cascading down the rear of the building. For it to be said that it had not been

raining at the time of inspections is unacceptable as any competent contractor should have revisited during heavy rain to check. In view of the continuing complaints from the homeowner it was the duty of the factors to ensure that inspections were conducted in adverse weather, whether by themselves or by contractors on their behalf.

Paragraph 21:

10. The factors deny that they had seen any videos taken after 2015.
11. The Decision states that the tribunal was satisfied that the factors had seen the videos taken on 7 July 2015. It does not suggest that they had seen the subsequent videos of 17 July 2017 until they were seen at the hearing.

Paragraph 23

12. The factors continue to maintain that they had instructed contractors each time the problem was advised to them.
13. The tribunal found that this was not the point at issue. It was the nature of the instructions which was important. The tribunal found that the instructions issued were inadequate to ensure that proper inspection of the problem, including the interior of the property, was carried out. The tribunal found that whatever the contractors were instructed to do, they continued to look at the gutter from street level which was clearly insufficient to identify and resolve the problem.

Paragraph 24:

14. The factors underlined that they had visited the property in 2015.
15. The final sentence of this paragraph states that “there was no evidence of any effort by the factors to visit the property either with or without the contractors *during adverse weather* to enable them to verify the position.” It also states that there was no evidence to suggest that the factors had shown the nature and extent of the problem to the contractors by use of the videos taken in July 2015.

Paragraph 38:

16. The factors suggested that this paragraph should be removed since, if the tribunal is not a place to discuss professional negligence it should not give advice on such a matter.
17. The issue of professional negligence was raised by the homeowner as outlined in paragraph 37 and it is therefore appropriate for the tribunal to explain that it is not the correct forum for dealing with such an issue.

PFEO

18. The tribunal has noted the views of the factors in relation to the terms of PFEO but the Decision reflects the evidence produced to the tribunal and its findings as a consequence thereof.

Accordingly the tribunal hereby makes the PFEO in the following terms:

Property Factor Enforcement Order:

Within one month from the date of service of the PFEO to follow hereon, the factors to:

1. Pay to the homeowner from their own funds a sum equivalent to the management fees charged by them between the period January 2013 to August 2017; and
2. Pay to the homeowner from their own funds the sum of £250 as compensation to him for the inconvenience occasioned by the application process.
3. Further revise the statement of their in-house complaints procedure to provide more information as to how they will handle complaints against contractors.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

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.

..... Chairman

24 October 2018