

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/PF/19/2980

8 Broadlie Court, Neilston, East Renfrewshire, G78 3DT (“the Property”)

The Parties: -

Marie McBride, 8 Broadlie Court, Neilston, East Renfrewshire, G78 3DT (“the Homeowner”)

Levern Property Services Limited, 60 – 70 Main Street, Barrhead, Glasgow G78 1SB (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Andrew Murray (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 16 March 2020.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it but stipulating that the period allowed for payment of the compensation in terms of Part 1 of the PFEO should be 2 months rather than 28 days.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 16 March 2020, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £150 for her time, effort and inconvenience, within 28 days of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to review and revise their written statement of services to include information about how contractors are appointed and all options available to homeowners in connection with the instruction of contractors to carry out maintenance and repairs, within 3 months of intimation of the PFEO.

The Tribunal indicated that prior to making a PFEO, it would provide the parties with the opportunity to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 17 March 2020. On 21 March 2020, the Homeowner sent an email to the Tribunal regarding the proposed PFEO. She stated, "At the hearing, that was the first I'd known that LPS hadn't contacted any owners re the fence, they'd assured use at the November annual meeting they would contact the owners we couldn't. LPS stated they were waiting on the outcome of the hearing. However, they didn't inform myself of that or anyone else who was at that meeting, delaying the repair of the fence by another 4 months. I feel this is another way LPS are lacking honesty and transparency". In a series of emails between 1 and 9 April 2020 the Property Factor stated that they "accepted the findings of the tribunal and have attempted to settle the compensation sum with the other party last week". This had been unsuccessful, as the Homeowner had refused to provide her bank details for the transfer of funds to be arranged. The Homeowner had indicated that she wanted payment by cheque. The Property Factor stated that a cheque could not be sent while staff were working remotely, during the coronavirus lockdown. The Property Factor asked for an extension of time of 2 months beyond the 4 weeks stipulated in the proposed PFEO. Alternatively, they asked if the compensation could be paid by a credit being applied to the Homeowner's account. They submitted copies of emails between the Property Factor and the Homeowner in support of the request

The Tribunal notes that the Homeowner's email relates to evidence given at the hearing and considered by the Tribunal before a decision was made. The Tribunal had noted, in the decision of 16 March 2020, that the Property Factor provided no satisfactory reason for failing to contact the homeowners in the development, after they had agreed to do so in November 2019. However, as the Homeowner stated, she had been unaware of this failure and it did not form part of the application before the Tribunal. The Tribunal is not persuaded that the Homeowner's comments should affect the terms of the PFEO to be issued.

The Tribunal notes that the proposed PFEO was issued to parties shortly before the Government lockdown was imposed. The Property Factor indicates that they have already endeavoured to pay the compensation proposed, but have been unable to do so due to practical difficulties caused by staff working remotely and the office being closed. The Homeowner has not lodged any written representations with the Tribunal regarding the matter but did respond to the Property Factor's email to her regarding the matter. Her response confirms that she is not willing to provide her bank account details. The Tribunal is satisfied that the Homeowner is entitled to refuse to provide

these details and seek payment by another method. However, the Tribunal is also satisfied that this will mean an unavoidable delay in payment being made and that a longer period for settlement of the compensation should be provided. The Tribunal is not persuaded that the compensation should be paid by a credit being applied to the Homeowner's factoring account.

The Tribunal is satisfied that the Property Factor has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with Section 2.1 of the Code of Conduct for Property Factors. It has also failed to carry out its property factors duties in terms of Section 17(5) of the Act in that it failed to advise the Homeowner that additional estimates for a fence repair could be obtained, should the Homeowner request same, and failed to provide information on how contractors are appointed.

The Tribunal determines that a PFEO should be issued in similar terms to the proposed PFEO but that an additional 4 weeks should be stipulated for payment of the compensation to be paid in part 1 of the PFEO

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £150 for her time, effort and inconvenience, within 2 months of intimation of the PFEO.
- (2) The Tribunal order the Property Factor to review and revise their written statement of services to include information about how contractors are appointed and all options available to homeowners in connection with the instruction of contractors to carry out maintenance and repairs, within 3 months of intimation of the PFEO.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A homeowner or property factor aggrieved by a 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.

Josephine Bonnar, Legal Member:
14 April 2020