



Notice of Proposed Property Factor Enforcement Order (“PFEO”)

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

Property Factors (Scotland) Act 2011, Sections 17 and 19

The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017, as amended (“the 2017 Regulations”)

Chamber Ref: FTS/HPC/LM/18/3392

Hillpark Grove Development, Edinburgh, EH4 7AP
(“The Property”)

The Parties:-

Mr Aylmer Millen, residing at 5 Hillpark Grove, Edinburgh, EH4 7AP
(“the Homeowner”)

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD
(“the Factor”)

Tribunal Chamber Members

Maurice O’Carroll (Legal Member)
Kingsley Bruce (Ordinary Member)

This Notice should be read in conjunction with the decision of the Tribunal of even date under reference FTS/HPC/LM/18/3392

1. By decision of even date with this Notice, the Tribunal determined that the Factor had breached its duties in terms of s 17(1)(b) of the 2011 Act in that it had failed to comply with sections 2.5, 6.4, 6.9 and 7.2 of the Code of Conduct for Property Factors as required by s 14(5) of that Act. It also found that the Factor had failed in its property factor duties in terms of s 17(1)(a) of that Act as described in the said decision.
2. In accordance with s 19(3) of the 2011 Act, having been satisfied that the Factor has failed to carry out the property factor duties, the Tribunal must make a Property Factor Enforcement Order. Before making an Order, to comply with s 19(2) of the Act, the Tribunal before proposing an Order must give notice of the proposal to the factor and must allow the parties an opportunity to give representations to the Tribunal in relation to this Notice and **the proposed Order only.**

3. The intimation of this Notice of Property Factor Enforcement Order to the parties should be taken as notice for the purposes of section 19(2)(a) and the parties are hereby given notice that they should ensure that any written representations which they wish to make under s 19(2)(b) must reach the First-tier Tribunal for Scotland (Housing and Property Chamber) by no later than **14 days** after the date the decision and this Notice is intimated to them.
4. If no representations are received within that timescale, then the Tribunal will proceed to make a PFEO in the following terms without seeking further representations from the parties.
5. Therefore, the Tribunal proposes to make the following PFEO:

Within 28 days of the communication of the PFEO to the Factor, the Factor must:

- (i) Pay compensation to the Homeowner in the sum of £750 (Seven Hundred and Fifty Pounds) in respect of the time and inconvenience to the Homeowner occasioned by the Factor's failure to comply with its factor duties and duties under the Code.
 - (ii) Provide documentary evidence of compliance to the Tribunal with the above Order within 7 days of having done so.
6. It is further recommended that the Factor amends its Written Statement of Service at pages 14 and 15 thereof to make clear the Complaint Handling Procedure in relation to complaints against contractors.

Failure to comply with a PFEO has serious consequences and may constitute a criminal offence.

Appeals

7. 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 within 30 days of the date the decision was sent to them.

M O'Carroll

Signed: M O'Carroll
Chairman

Date: 17 April 2019