

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Compliance Decision:

Property Factors (Scotland) Act 2011, Section 19

The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“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)

Decision of the Chamber

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Factor has complied in full with the terms of the Property Factor Enforcement Order (“PFEO”) dated 9 May 2019 and therefore no further action on the part of the Factor is required.

Reasons for Decision

1. By decision dated 17 April 2019, 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. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEO. It did so on the same date as the said decision and invited representations thereon within 14 days of the Notice being received by the parties. It issued a final Property Factor Enforcement Notice on 10 May 2019.

3. The PFEO so issued required the Factor to carry out the following within 28 days of the Notice:
 - (i) Pay compensation to the Homeowner in the sum of £750 (Seven Hundred and Fifty Pounds) in respect of the time and inconvenience occasioned by the Factor's failure to comply with its factor duties, and
 - (ii) Provide documentary evidence of compliance to the Tribunal with the above Order within 7 days of having done so.
4. It was further recommended that the Factor amend its Written Statement of Service at pages 14 and 15 thereof to make clear the Complaint Handling Procedure in relation to complaints against contractors as discussed in the said decision.
5. On 13 May 2019, the Factor wrote to the Tribunal informing it that it had paid the sum of £750 to the Homeowner in fulfilment of requirement (i) of the PFEO and provided a copy of the covering letter sent to him enclosing a cheque in the said amount. On 20 May 2019, the Homeowner confirmed that the said sum had been received but noted that the factor had yet to change the terms of its Written Statement of Service as recommended by the Tribunal.
6. The Tribunal noted that the change to the Written Statement of Service was a recommendation only and therefore did not form part of the final PFEO. Accordingly, it was satisfied that the PFEO had been complied with in full. It does, however, expect the Factor to amend its Written Statement of Services in due course in accordance with the recommendation contained within the said decision.

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.

Signed: M O'Carroll
Chairman

Date: 21 May 2019