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

Decision in terms of Section 23(1) of the Property Factors (Scotland) Act 2011

Chamber Ref : FTS/HPC/PF/18/2322

Flat 0/2, 70 Finlay Drive, Dennistoun, Glasgow, G31 2QX ("the Property")

The Parties:-

Miss Marion Litster and Mr William McLean, residing at the Property ("the Homeowners and Applicants")

Apex Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH ("the Factor and Respondent")

Tribunal Members:-

Patricia Anne Pryce	**-**	**Chairing and Legal Member**
Carol Jones	**-**	**Ordinary Member (Surveyor)**

This document should be read in conjunction with the First-tier Tribunal's previous Decisions in this matter but in particular with those Decisions of 28 February and 9 April, both 2019.

Decision

The Tribunal determines that the PFEO issued in this matter has not been complied with.

The decision of the Tribunal is unanimous.

Reasons for Decision

The Tribunal issued a proposed PFEO on 28 February 2019. It thereafter issued a PFEO on 9 April 2019.

The Tribunal gave consideration to the Applicants' response dated 3 June 2019 advising that the PFEO had not been complied with and that the Respondent had not

made contact with them. The Applicants had not received any compensation from the Respondent.

The Respondent has not contacted the Tribunal in respect of the PFEO. The Respondent has not replied to the Tribunal's letter requesting representations about compliance with the PFEO.

There is no evidence of any attempt at compliance with the PFEO by the Respondent. The Tribunal accepts the position as stated by the Applicants.

The Tribunal accordingly finds that the PFEO has not been complied with.

Effect of Decision

Notice of the failure to comply with the PFEO will be sent to Scottish Ministers in terms of Section 23 of the 2011 Act.

The Tribunal had noted in its decision on 9 April 2019 the following observations: *"The tribunal noted the final submissions by parties. It was of some concern to the tribunal that the Respondent had raised a debt recovery action against the Applicants without even attempting to address the concerns of the Applicants. The Applicants had made clear their areas of dispute. Despite this, the Respondent ignored the issues raised by the Applicants. The tribunal was extremely concerned that the Applicants and their fellow owners had been invoiced around £3,500 for a roof repair which had claimed to involve scaffolding. The Applicants were clear that no scaffolding was ever used and that the work involved only two hours of time. Despite raising their concerns with the Respondent, the Respondent simply ignored this and failed to investigate this or interrogate the invoice from the contractor in question. It is even more concerning that this sum of money is now included in a debt recovery action at the Sheriff Court. The tribunal had no hesitation in accepting the evidence of the Applicants. They gave their evidence in a straightforward way without embellishing. Indeed, they accepted when they were wrong, did not insist on irrelevant grounds and even accepted that they may owe the Respondent some money. In contrast, the tribunal was not persuaded by the argument of Mrs Bakshea that scaffolding had been erected. She was strong in this view, yet accepted that she had not personally attended to see it. Nor was the tribunal persuaded by the position of Mrs Bakshea that, if there was an entry in a timesheet, then the work must have been carried out by her employees. It was clear from the photographic evidence provided by the Applicants that the state of back court was poor, and any landscaping or litter picking which may have been undertaken was done so in a very poor manner, if at all. A time sheet entry is simply that: it does not prove that work was carried out in a proper fashion. The tribunal noted that the Applicants accepted that they had only paid £40 to account in respect of the invoices they had received from the Respondent. However, they had raised genuine queries and disputes which had remained unanswered. Rather than dealing with these appropriately, the Respondent chose to raise debt recovery action against the Applicants. The debt recovery action is, of course, a matter for the jurisdiction of the Sheriff Court.*

However, the tribunal is concerned that the sums sought in that action appear to comprise payments where the actual work carried out is in dispute. In addition, late payment fees have been added and, apparently, continued to be added. The tribunal considers that these late payment fees are inappropriate in the circumstances when the principal sums sought were queried at the earliest opportunity by the Applicants. These queries were never answered by the Respondent in a substantive way. It is also of concern that the Respondent appears to be seeking as part of the principal sum at court an amount which relates to expenses. As these matters have been raised at court, then it is properly a matter for that court to consider".

No doubt Scottish Ministers will give careful consideration to the conduct of the Respondent in these cases when considering the Respondent's ongoing registration as a property factor.

Appeals

A homeowner or property factor 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.

P Pryce

Legal Member and Chair

14 June 2019 Date