

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)
("the tribunal")

DECISION: Property Factors (Scotland) Act 2011 ("the 2011 Act"), Section 19(3)

Chamber Ref: FTS/HPC/LM/19/1850

Common Ground, Belvedere Village, Parkhead, Glasgow, G31 4QD
("The Property")

The Parties:-

Mr Lewis Cole, 65 Springbank Gardens, Parkhead, Glasgow, G31 4QD
("the Applicant")

SG Property Management Limited, 272 Bath Street, Glasgow, G2 4JR
("the Respondent")

Tribunal Members:

Susanne L M Tanner QC (Legal Member)

Mary Lyden (Ordinary Member)

DECISION

- 1. The tribunal made a Property Factor Enforcement Order.**
- 2. The decision of the tribunal is unanimous.**

STATEMENT OF REASONS

- 1. In this decision the tribunal refers to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; the First-tier Tribunal for Scotland Housing and the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 as "the 2017 Rules".**
- 2. On 14 January 2020 the tribunal made a decision in terms of Section 19(1) of the 2011 Act that the Respondent had failed to carry out its property factor's duties and had failed to comply with Code of Conduct for Property Factors, Sections 1.1a and 2.4.**

3. Section 19 of the 2011 Act provides as follows:

“... (2) In any case where the First-tier tribunal proposes to make a property factor enforcement order, it must before doing so-

(a) give notice of the proposal to the property factor, and

(b) allow parties an opportunity to make representations to it.

(3) If the First-tier tribunal is satisfied, after taking account of any (representations made under subsection (2)(b), that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order. ...”

4. On 17 January 2020, the tribunal’s decision and proposed PFEO were issued to both parties via recorded delivery and email. Parties were given notice that they should ensure that any written representations which they wished to make under section 19(2)(b) reached the tribunal by no later than 14 days after the date that the decision and the proposed PFEO was sent to them by the tribunal. Parties were advised that if no representations were received within that timescale, then the tribunal would be likely to proceed to make a PFEO without seeking further representations from the parties.
5. On 29 January 2020, the Respondent contacted the tribunal’s administration to enquire as to whether the required meeting of proprietors (which was in one of the orders in the proposed PFEO) could be arranged to take place 32 days after the proposed PFEO was issued.
6. On 30 January 2020, the tribunal’s administration replied to the Respondent to state as follows: *“The proposed PFEO of 14 January 2020 which was sent with the decision is not the final PFEO, which will be issued after the tribunal takes into account any representations made by parties in the return period. Therefore there is no immediate need for you to convene a meeting of proprietors (although you may do so) as there will be another 30 days after the PFEO is issued once the period for responses has passed. The tribunal will also take into account your submissions about the length of time required and may provide a longer time period in the final PFEO; and/or you can apply to vary the time period in the final PFEO after it has been issued.”*
7. On 31 January 2020, the Respondent acknowledged receipt of the tribunal’s response and stated that it was the Respondent’s intention to give due consideration to the terms of the proposed PFEO and respond within the stipulated time period (although incorrectly stated this period to be 30 days).

8. The Respondent did not submit any further representations in relation to the proposed PFEO within the stipulated time period (or within the period of 30 days from intimation of the PFEO).
9. The Applicant did not make any written representations in relation to the terms of the proposed PFEO within the stipulated time period.
10. There being no representations to take into account, the tribunal is satisfied that the Respondent has failed to carry out its property factor's duties and to ensure compliance with the Code, therefore the tribunal must make a PFEO in terms of Section 19(3) of the 2011 Act. A PFEO is attached to this Decision and should be read in conjunction with it.

Appeals

- 11. 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.**

Susanne L M Tanner QC
Legal Member and Chair

18 February 2020