

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/PF/18/0157

Shop, 140 Gorgie Road, Edinburgh, EH11 2NS
(Title Number MID61796)
(“The Property”)

The Parties:-

Nadia Cusmano, 250 High Street, Prestonpans, EH32 9BD
(“the Homeowner”)

James Dromey, 250 High Street, Prestonpans, EH32 9BD
(“the Homeowner’s representative”)

James Gibb, 65 Greendyke Street, Glasgow, G1 5PX and 4 Atholl Place,
Edinburgh, EH3 8HT
(“the Property Factor”)

Tribunal Members:

Susanne L M Tanner QC (Legal Member)
Andrew Taylor (Ordinary Member)

DECISION

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

STATEMENT OF REASONS

2. 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 of Conduct"; the First-tier Tribunal for Scotland Housing and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, Schedule 1 as "the 2017 Rules".
3. On 24 December 2018, the tribunal made a decision in terms of Section 19(1) of the 2011 Act that the Property Factor had failed to comply with section 1 (preamble) of the Code of Conduct.
4. 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. ...”
5. On 31 December 2018, the tribunal gave notice of the proposed PFEO to the parties and parties were given notice that they should ensure that any written representations which they wished to make relative to the proposed PFEO under section 19(2)(b) of the 2011 Act 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.
6. Both parties made representations relative to the proposed order for payment of £150 within the stipulated timescale:
 - a. The Property Factor stated that it intended to make a payment of £150 to the Homeowner (rather than a credit payment on her factoring account) and requested that the Homeowner provide bank details for a BACS transfer or confirm an address for payment by cheque;
 - b. The Homeowner’s Representative responded stating that the Homeowner wished payment by cheque and provided an address to which the cheque should be sent; and

- c. The Property Factor thereafter confirmed that its accounts department had been instructed to issue a cheque to the Homeowner for the same.
 - d. There has been no further correspondence from the parties confirming either receipt of the cheque or cashing of the same.
7. The tribunal is satisfied that the Respondent has failed to ensure compliance with the Code of Conduct, in so far as it failed to comply with the preamble to Section 1, 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.
8. In terms of Section 21 of the 2011 Act, the tribunal may at any time
- (a) *vary the order in such manner as it considers reasonable, or*
 - (b) *where it considers that the action required by the order is no longer necessary, revoke it ...*
- and must vary the property factor enforcement order—*
- (a) *so as to extend, or further extend, the period within which any action required by the order must be executed, and*
 - (b) *in such other manner as it thinks fit.*
- where—*
- (a) *the First-tier Tribunal considers, on the submission of the property factor or otherwise, that any action required by a property factor enforcement order has not been, or will not be, executed during the period within which the order requires the work to be executed, and*
 - (b) *the First-tier Tribunal —*
 - (i) *considers that satisfactory progress has been made in executing the action required, or*
 - (ii) *has received a written undertaking from the property factor stating that the action required will be executed by a later date which the First-tier Tribunal considers satisfactory.*

9. 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.

S Tanner

Susanne L. M. Tanner Q.C.
Legal Member and Chairperson

10 February 2019