

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision Property Factors (Scotland) Act 2011: Section 19.

**17 Lugar Street, Coatbridge, Lanarkshire, ML5 3JS
(The Property)**

Case Reference FTS/HPC/PF/20/0202

Mrs Kathryn Miller, 11 Street Farm Close, Harthill, Sheffield, S26 7UH ("The Applicant")

Mr James Miller, 11 Street Farm Close, Harthill, Sheffield, S26 7UH ("the Applicant's Representative")

Speirs Gumley Property Management, Red Tree Magenta, 270 Glasgow Road, Rutherglen, G73 1UZ ("The Respondents")

Tribunal Members: Martin J. McAllister (Legal Member) and Mike Links (Ordinary Member).

1. Background

This is an application by the Homeowner regarding alleged failures of the Property Factor to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors and the property factor's duties. The application is dated 20th January 2020 and was accepted for determination on 7th February 2020 and subsequently passed to members of the Tribunal. A Hearing was fixed for 7th April 2020 and had to be postponed because of the public health crisis. The Chamber President adjourned that Hearing on an administrative basis. Prior to another Hearing being fixed, the members of the Tribunal to whom the case had been assigned, considered matters and identified the case as being one which could be determined under Rule 18 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

On 25th September 2020, the Tribunal issued a Decision and a proposed property factor enforcement order.

2. Proposed Property Enforcement Order

The Property Factor is to pay compensation of £100 to the applicant within twenty - eight days of service of the Property Factor Enforcement Order.

3. Representations

The terms of the proposed factor enforcement order were intimated to the parties who were invited to make representations.

Neither party made representations on the terms of the proposed property factor enforcement order.

On 2nd October 2020, the Respondent submitted a copy of a letter dated 30th September 2020 which it had sent to the Applicant enclosing a cheque for £100.

4. Determination on the making of a property factor enforcement order.

Section 19 (3) of the Property Factors (Scotland) Act 2011 states:

“If the 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 Tribunal must make a property factor enforcement order.”

The tribunal determined that it was appropriate to make a property factor enforcement order in terms of the proposed property factor enforcement order.

5. Compliance with the property factor enforcement order.

The tribunal accepted the terms of the property factor’s letter of 30th September 2020 that a payment of £100 had been made to the Applicant by the Respondent. It determined that it should issue a certificate of compliance.

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.

Martin J. McAllister, Legal Member
of the First-tier Tribunal for Scotland
19th November 2020