

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued following a Review being undertaken under Rule 39 of the First-tier Tribunal for Scotland (Housing Property Chamber) Rules Procedure 2017/consideration of the parties submissions on the proposed PFEO

Case reference: FTS/HPC/PF/19/2260

Re:- 100 Rockbank Crescent, Glenboig, North Lanarkshire ML5 2TA

The Parties:-

Mr John Wallace, 100 Rockbank Crescent, Glenboig, North Lanarkshire ML5 2TA ('the homeowner');

and

Newton Property Management, 87 Port Dundas Road, Glasgow G4 0HF ('the respondent')

Tribunal Members:

Richard Mill (legal member) and Mary Lyden (ordinary member)

1. The Tribunal by way of decision dated 15 November 2019 found that the respondent had breached the Code of Conduct for Property Factors and proposed a Property Factor Enforcement Order ("PFEO").
2. Parties were invited to make such representations that they wished upon the Proposed Property Factor Enforcement Order. Lengthy representations from both parties were received. The respondent emailed on 29 November 2019 attaching a letter dated 28 November 2019 with various further submissions. The homeowner emailed on 3 December 2019 attaching a letter dated 2 December 2019 again with various further submissions.
3. The Tribunal considered the further submissions of both parties. The decision results in mixed success for the parties. Each party was unhappy with the decision of the Tribunal. The Tribunal found that the further submissions were simply an attempt by both parties to seek to reopen the entire dispute between them. The opportunity afforded to parties to comment upon a proposed PFEO under s19(2) of the Act is not for such a purpose. The Tribunal however, in the interests of justice, treated the further submissions by both parties as applications for a review under Rule 39 of the First-Tier

Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules).

4. The Tribunal assigned a further hearing date for conducting the review under Rule 39 and for the purposes of considering any further submissions on the proposed Property Factor Enforcement Order. The hearing was assigned to take place on 19 February 2020. The homeowner subsequently made application to discharge this date on the basis that he was on holiday. Following receipt of further information vouching the fact that he was on holiday with his family in Tenerife, said date was discharged and a fresh hearing date fixed on 5 March 2020.
5. In addition to the correspondence received from each party referred to in paragraph 2 of this decision, further subsequent representations were made by both which primarily related to communications being exchanged between themselves. The Tribunal had regard to all further correspondence received by both parties.
6. The homeowner failed to attend the hearing on 5 March 2020. He had previously failed to attend the earlier principal hearing on 13 November 2019 again with no notice. The Tribunal was satisfied that the homeowner was well aware of the hearing on 5 March 2020. He had taken no steps to advise the Tribunal of any difficulty with attending on 5 March 2020. The Tribunal systems were checked for all correspondence by e mail and letter and telephone logs. The Tribunal considered the Rules and the overriding objectives stipulated in Rule 2. It would not have been in the interests of justice to delay matters further. The Tribunal proceeded in the absence of the homeowner.
7. The respondent was represented by Mr Martin Henderson, Executive Director, and Mrs Alannah Higgins, Recovery Manager. They both confirmed on behalf of the respondent's organisation that the Tribunal's earlier findings and reasons following the principal hearing on 13 November 2019 contained within the Tribunal's decision of 15 November 2019 was **not** the subject of challenge nor criticism. Their wish was only to comment and make further relevant submissions upon the terms of the Tribunal's earlier proposed PFEO. It was suggested that given the homeowner's lack of willingness to make payment towards common charges to date that the order requiring them to make a credit to the homeowner's account in the sum of £850.00 should only happen once the homeowner had otherwise cleared the balance on his own account. As at 7 January 2020 the balance on his account stood at £1,364.76. Following the £850.00 credit the balance would be £514.76.
8. In the absence of the homeowner and in the absence of any further relevant submissions being made by him, the Tribunal found that all his correspondence following the Tribunal's earlier decision of 15 November 2019 provided no basis for the Tribunal to review their earlier findings and reasons. His actions appeared to be nothing other than dilatory.

9. The Tribunal adjourned the hearing for a period to consider the respondent's further submissions. The Tribunal considered the lawfulness of making a PFEO requiring the respondent to take the steps as earlier proposed but on a conditional basis, namely that the homeowner firstly makes payment of the other outstanding charges on his account. The proposal seemed to the Tribunal to be a reasonable one given the homeowner's poor approach to the payment of his common charges account to date despite his legitimate grievances as established by the Tribunal. The Tribunal also had regard to recent communications between the parties in which the homeowner makes an explicit statement to the effect that he will "absolutely" make payment of the outstanding charges which the Tribunal considers lawfully due. There is no prejudice to the homeowner by framing the PFEO in the manner proposed by and on behalf of the respondent.
10. The Tribunal also had regard to the specific provisions of Section 20 of the Property Factors (Scotland) Act 2001. There is nothing stipulated in the legislation which prohibits such conditional order being made by the Tribunal.
11. The Tribunal reconvened with the representatives of the respondent present and delivered their decision to issue the PFEO in the amended terms as proposed. A PFEO is issued simultaneously herewith. Further discussion with the respondent's representatives made it clear that the homeowner's failure within a reasonable period of perhaps 28 days to make payment of the outstanding balance in the sum of £514.76 will lead them to raise fresh recovery proceedings in the Sheriff Court for the outstanding balance in which they will, of course, seek expenses. That would appear to be entirely reasonable and the homeowner should take note of the respondent's intention to do so. The Tribunal would expect that its decisions would be lodged by the respondent along with such recovery action in the Sheriff Court and that such proceedings would be expedited given the lengthy history of the homeowner's no payment to date.

Richard Mill

Legal Member

Date : 5 March 2020