

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision issued under s19 of the Property Factors (Scotland) Act 2011

Chamber Ref: Reference number: FTS/HPC/LM/23/2469

Property: 1A Rothesay Terrace, Edinburgh, EH3 7RY (“The property”)

Parties:

Mr Kevin Doerr, residing at 1A Rothesay Terrace, Edinburgh, EH3 7RY (“the Applicant”)

and

James Gibb Property Management Ltd, a company incorporated under the companies Acts and having a place of business at 4 Atholl Crescent, Edinburgh, EH3 8HT (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Andrew Murray (Ordinary Member)

Because the property factor has now taken steps to remedy a failure to comply with the code of conduct as required by Section 14 of the Property Factors (Scotland) Act 2011 the tribunal unanimously decides that a Property Factor Enforcement Order (“PFEO”) is no longer necessary.

Reasons for decision

1 By application dated 21 July 2023, the applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of his complaint that the property factor has breached the code of conduct imposed by Section 14 of the 2011 Act.

2 The application stated that the applicant considered that the property factor failed to comply with Sections 5.3, 5.6 & 5.7 of the code of conduct for property factors effective from 16 August 2021.

3. On 3 November 2023 the First-tier Tribunal for Scotland (Housing and Property Chamber) decided that the property factor had breached the code of conduct for property factors. The tribunal notified parties of the terms of a proposed Property Factor Enforcement Order (“PFEO”) and invited representations from parties about the terms of the proposed PFEO.

4. On 27 November 2023 the respondent made further representations and produced a series of flowcharts and confirmation that an audit of their procedures had been carried out.

5. By email date 29 November 2023 the Applicant provided detailed comment on the respondent’s response to the proposed PFEO. The applicant believes the respondent has not quite done enough to address the proposed PFEO, but concluded his submission by saying

I do not find Mr Mayall’s response as reassuring as I had hoped it might be, and hope that he will provide further reassurances in response to the points I have raised above. However, I am happy to leave it to the Tribunal to judge whether to require further comment from Mr Mayall; I am very grateful for the time that the Tribunal has spent considering my application and I do not wish to take up further time of the Tribunal if it is the Tribunal’s judgement that the matter should be closed without further comment from Mr Mayall.

6. The Respondent’s response to the proposed PFEO is sufficient to address the application as it was laid before the tribunal. It is in both parties’ interests to resume a business relationship. Further enquiry might be an obstacle to a renewed business relationship. There is no longer a need for a PFEO.

7. Having considered both parties written representations the tribunal finds no need to issue a PFEO in the terms proposed in the decision dated 3 November 2023.

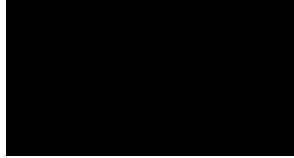
Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as

having effect from the day on which the appeal is abandoned or so determined.

Signed



8 February 2024