

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 23(1)**

Chamber Ref: HPC/PF/21/1864

0/1 1840 Great Western Road, Anniesland, Glasgow, G13 2TN (" the Property")

The Parties:

Craig McNicol, 61 Langdale Road, Sale, M33 4FL ("the Applicant)

**Lowther Homes Ltd, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL
("the Respondent")**

Tribunal Members:

G McWilliams (Legal Member)

D Godfrey (Ordinary Member)

DECISION

The Tribunal determined that the Property Factor has failed to comply with the Property Factor Enforcement Order ("PFEO") dated 8 April 2022 as varied by the Tribunal on 24 January 2023 and further determined to serve notice on the Scottish Ministers in terms of Section 23(2) of the 2011 Act.

The decision of the Tribunal is unanimous.

Background

1. On 8 April 2022, the Tribunal issued a PFEO in the following terms: -
 - (i) The Respondent is to make a compensation payment to the Applicant, in the sum of £500, within 28 days of the date of issue of the PFEO; and
 - (ii) The Respondent is to provide the Applicant with a written report from a suitable specialist, within 42 days of the date of issue of the PFEO, which confirms:
 - (a) Full details of all works done at the property in July 2021, in respect of the rot outbreak there; and

- (b) Whether or not all of the rot which was discovered has been eradicated.
 - (c) The Respondent is to lodge a copy of the report, referred to above, with the Tribunal's office, also within 42 days of the date of issue of the PFEO.
2. The PFEO was issued to the parties on 11 April 2022.
 3. On 8 June 2022, the Applicant notified the Tribunal that he had not received any communication or payment from the Respondent. He stated that the Respondent had not complied with the PFEO. The Respondent did not respond to a request from the Tribunal to confirm whether they had complied with the PFEO.
 4. On 7 July 2022 the Tribunal determined that the Respondent had failed to comply with the PFEO. A written decision with statement of reasons was issued to the parties.
 5. The Respondent made a request for review of the decision on 28 July 2022. This was refused by the Tribunal on 2 September 2022.
 6. On 19 August 2022, the Applicant notified the Tribunal that he had received the compensation payment from the Respondent but not the report specified in part (ii) of the PFEO.
 7. On 7 December 2022, the Respondent's representative lodged written submissions and a report from AJ Balfour Associates LTD, Consulting Civil and Structural Engineers dated 4 August 2022 ("the Balfour report"). The submissions state that the Respondent has been unable to fully comply with the PFEO due to lack of access rights to flat 1/1. The report is based on an "initial visual inspection" of flats 0/1 and 1/1. It records that "remedial works" to "floor joists" at flat 1/1 "were reportedly carried out in the interim period between March 2020 and January 2022". These were carried out by the owner of flat 1/1's insurer. The engineer who carried out the inspection on 4 August 2022 reports that "no areas were opened for inspection and as such, the bathroom floor and the joists in flat 1/1 remain uninspected at this time". In relation to the previous works carried out, the engineer's assessment was based largely on photographs taken after the work was completed. The engineer provides some information about the repairs and notes that "no joists affected by rot were cut out in the photographs provided". He states that he was unable to see the remedial work itself and his comments were based only on the photographs. He makes recommendations for further remedial work and states. "In conjunction with this a timber rot survey should be completed to formally identify elements of rot in the existing floor joists". The representative stated that the report had been issued to the Applicant on 16 August 2022.
 8. On 8 December 2022, the Applicant sent an email to the Tribunal stating that the Respondent has acknowledged that they have failed to comply with the PFEO. He states that they have a report on the original remedial work but

have failed or refused to provide a copy of it to him. He added that he received the Balfour report on 31 August 2022, and not on 16 August 2022. Since then, there had been no contact from the Respondent. On 13 December 2022, the Applicant notified the Tribunal that he had spoken with the owner of flat 1/1 who said that they had not been contacted by the Respondent or received a copy of the report. They also said that they had not refused access.

9. Following receipt of a detailed submission from the Respondent on 16 January 2023, the Tribunal determined that the PFEO should be varied by extending the time for compliance with the order until 31 March 2023.
10. A compliance check was issued to the parties on 3 April 2023. The Applicant responded stating that the compensation had been paid “eventually” but otherwise that the Respondent had not complied with the PFEO as they had not provided a report on the work carried out in July 2021 or established the position regarding the rot. He had received an email from the Respondent regarding work which has just been completed which is the opposite of what was recommended in the Balfour report. The Respondent provided a response stating that rot works had been completed on 20 March 2023.
11. On 17 May 2023, in response to a request for an update, the Respondent’s representative advised that City Building attended at the property on 20 March 2023. They did not require access to flat 0/1. They lifted the bathroom floor in 1/1 and checked the joists and the previous repair. The work was satisfactory, the joists were chemically treated, and a new floor was fitted. A further inspection was arranged for 24 April 2023. The Applicant notified the Tribunal that the contractor returned on 24 April and removed his bathroom ceiling to do some further work. The caused mess and damage which was not repaired.
12. On 28 June 2023, the Respondent representative sent an email stating that the paintwork and plaster repairs had been carried out and the work was complete.
13. On 31 October 2023, in response to a further compliance check, the Respondent’s representative stated that the Respondent has complied with the PFEO. On 8 November 2023, the Applicant responded. He expressed dissatisfaction with the Tribunal process and did not clearly state whether the Respondent has complied or otherwise. He has failed to respond to further correspondence seeking clarification of his position.

Reasons for Decision

14. The Tribunal is satisfied that the Respondent has complied with Part 1 of the PFEO, although the payment was not made within the time specified in the order. The Applicant notified the Tribunal on 19 August 2022 that the

compensation had been paid.

15. The Tribunal is not satisfied that the Respondent has complied with Part 2 of the PFEO for the following reasons:-

- (a) The only expert/specialist report submitted by the Respondent was the Balfour report dated 4 August 2022.
- (b) The report was based on a limited, visual inspection of the property and some photographs taken after previous remedial work was carried out.
- (c) The report recommended further work to investigate what was previously carried out and to rectify defects in that work.
- (d) The report recommended that a timber rot survey be carried out. There is no evidence that this took place.
- (e) The report does not provide full details of the previous work that was carried out and does not establish whether the rot had been eradicated by the previous work.
- (f) Further work was instructed and carried out at the property on 20 March and 24 April 2023. The Respondent's solicitor has provided some information about the work but did not provide a report from the contractor or other evidence regarding it. From the information provided it also appears that the work is not what was recommended in the Balfour report.

16. The PFEO required the Respondent to provide a report which provided full details of the work carried out in 2021 and establish whether it had eradicated the rot. The Respondent has failed to do this and has therefore failed to comply with the PFEO.

Decision

17. The Tribunal determines that the Property Factor has failed to comply with the PFEO.

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.

Legal Member G McWilliams

Date 12th June 2024