

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 23(1) of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 17 (4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference number:
FTS/HPC/FTS/23/1594

Re: Flat at 2/1, 70, Millbrae Road, Glasgow, G42 9UG (“the Property”)

The Parties:

Ms. Jane Moir residing at the Property (“the Homeowner”)

W.M. Cumming, Turner and Watt, having a place of business at 40, Carlton Place, Glasgow G5 9TS (“the Property Factor”)

Tribunal Members

Karen Moore (Chairperson) Leslie Forrest (Ordinary and Housing Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to comply with the Property Factor Enforcement Order (PFEO) dated 1 December 2023.

Background

1. By application received between 18 May 2023 and 31 July 2023 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the Code of Conduct for Property Factors 2021 (“the 2021 Code”) and had failed to comply with the Property Factor Duties.

2. A legal member of the Chamber with delegated powers of the Chamber President accepted the Applications and a Case Management Discussion (CMD) was fixed for 30 October 2023 at 10.00 by telephone conference call. Prior to the CMD, detailed written submissions were submitted by both Parties. The Property Factor accepted the complaints raised by the Homeowner.

CMD

3. The CMD took place on 30 October 2023 at 10.00 by telephone conference call. The Homeowner, Ms. Moir, was present and was not represented. The Property Factor was not present and was not represented. As the Property Factor did not oppose the Application, there was no requirement on the Tribunal to hold a Hearing of evidence and so the Tribunal dealt with the Application at the CMD.
4. The outcome of the CMD was that the Tribunal found that the Property Factor failed to comply with the 2021 Code and with the Property Factor Duties.

PFEO

5. Following notification in terms of Section 19 of the Act, the Tribunal imposed the following PFEO: *"No later than 29 December 2023, the Property Factor must at its own cost and expense*
 1. *Repair the chimney at the rear far left hand side of the tenement of which the Property forms part to ensure that it is properly rendered and fully sealed and that it does not allow water ingress to the Property or the said tenement;*
 2. *Repair the remainder of the chimneys of the said tenement to ensure that they are properly rendered and do not allow water ingress to the Property or the said tenement;*
 3. *Refund to the Homeowner or write off the management fees for the previous eighteen months, being a total of six quarterly charges totalling £210.00 together with all financial penalties associated with those charges;*
 4. *Pay the Homeowner by a direct payment and not by a credit to the common charges account, the sum of £1,055.00 being the cost of the repair arranged and paid for by her and her share of the £750.00 guttering and chimney work carried out in May 2022;*
 5. *Evidence to the Tribunal that items 1-4 above have been carried out."*
6. By email dated 8 January 2024, Ms. Moir advised the Tribunal that the Property Factor had not complied with the PFEO to any extent. By further email dated 31 January 2024, Ms. Moir advised the Tribunal that *'While the property factor has now carried out items 3&4 of the PFEO (provided me with an updated account statement and transferred the sum agreed) they have still taken no action on items 1&2 which relate to undertaking repairs to the chimneys of the building which formed the core of my complaint against them'*.
7. The Property Factor made no contact with the Tribunal.

Hearing on compliance with the PFEO

8. The Tribunal fixed a Hearing by telephone on 28 May 2024 at 10.00 by telephone conference call. The Homeowner, Ms. Moir, was present and was not represented. The Property Factor was not present and was not represented. The Property Factor did not submit written representations.
9. Ms. Moir confirmed to the Tribunal that the Property Factor had complied with Parts 3 and 4 of the PFEO at the beginning of January 2024. She advised that the Property Factor had begun the chimney repairs required by Parts 1 and 2 of the PFEO in February 2024 and that the Part 1 of the PFEO appeared to have been carried out, as there has been no more water ingress. Ms. Moir advised that scaffolding had been erected at the Property around two and a half months ago but work had not been carried out in respect of Part 2 of the PFEO. Ms. Moir advised that the Property Factor continues to fail to reply to emails and provides no communication in respect of the works planned at the Property. Ms. Moir advised that her extreme frustration with the Property Factor has led her to lose confidence in the Property Factor's ability to maintain the building and that she has decided to sell her flat.

Issues for Tribunal

10. As the Property Factor did not oppose the Application, the issue for the Tribunal was sufficiency of evidence and information to make a decision in terms of Sections 21 and 23 of the Act. The Tribunal was satisfied that it had sufficient information and evidence to make a decision.

Findings in Fact.

11. The Tribunal had regard to all of the information before it in establishing the facts of the matter and that on the balance of probabilities.
12. The Tribunal again found Ms. Moir to be truthful, straightforward and measured in her submissions and found that she did not attempt to exaggerate the complaints.
13. The Tribunal found the following facts established:
 - i) The has complied with Parts 3 and 4 of the PFEO;
 - ii) The Property Factor has complied with Part 1 of the PFEO to the extent that work has been carried out which appears to have resolved the water ingress issue;
 - iii) The Property Factor has not complied with Parts 2 and 5 of the PFEO;
 - iv) The Property Factor has not evidenced that the works carried out in respect of Part 1 of the PFEO have been carried out at its own cost and expense;
 - v) The Property Factor has not confirmed or evidenced that the works required by Part 2 of the PFEO are being carried out or will be carried out and, if so, will be carried out at its own cost and expense and
 - vi) The Homeowner continues to suffer unnecessary frustration, financial loss and inconvenience due to the Property Factor's failures.

Decision of the Tribunal with reasons

14. From the Tribunal's Findings in Fact, the Tribunal had no hesitation in finding that the Property Factor failed to comply in full with the PFEO.
15. The Tribunal then had regard to the courses of action open to it in terms of the Act, namely Section 21 which states *"Where the First-tier Tribunal has made a property factor enforcement order it 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 Section 23 which states: *"(1) It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a property factor enforcement order made by the First-tier Tribunal"*
16. The Tribunal's view remains as set in paragraph 14 of its original Decision: that the Property Factor's conduct and treatment of the Homeowner is totally unprofessional in all respects. The Tribunal considers that the Property Factor has shown a complete and callous disregard for their statutory duties, their customers and for the Tribunal itself.
17. With regard to Section 21 of the Act, the Tribunal sees no value or reason in varying the PFEO to allow the Property Factor further time to comply. The Tribunal considers that the action required by the PFEO is still necessary and so there is no reason to revoke it. Therefore, with regard to Section 23, the Tribunal decides that the Property Factor has failed to comply with the PFEO.
18. The decision is unanimous.

Appeal

In terms of section 46 of the Tribunals (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.

Signed

Karen Moore, Chairperson

28 May 2024

