

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

Proposed Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/Property Factors /22/2635

The Parties:-

Emily Raine, B/1, 46 Bentinck Street, Glasgow, G3 7TT (“the Homeowner”)

Hacking and Paterson, 1 Newton Terrace, Glasgow, G3 7PL (“the Property Factor”)

The Tribunal: -

Melanie Barbour (Legal Member)

Helen Barclay (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of the same date.

The First-tier Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”):

Within a period of two months from the date of the PFEO the Factor must:

1. Pay compensation to the Homeowner of £500.00.
2. The Property Factor shall: -
 - a. undertake an assessment of the appropriate maintenance share for each property within the tenement, which shall also include an assessment of the percentage liability for common insurance in accordance with the provision of the Tenement (Scotland) Act 2004; and
 - b. The Factor shall thereafter notify each homeowner of the outcome of that maintenance assessment and shall provide them with information about their

rights to appeal any determination to the sheriff court, failing which the Factor's determination shall be binding.

3. In the event that the re-assessed apportionment determines that the Homeowner's share is less than a 1/11th share, then the Factor shall reimburse the Homeowner additional costs that they paid for maintenance charges and common insurance; and these costs shall be backdated to the date when the Factors commenced their consultation on 8 July 2022.
4. Provide to the Tribunal written confirmation that item (1) has been completed.

Section 19 of the 2011 Act provides as follows:

"(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to it.

(3) If the First-tier 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 First-tier Tribunal must make a property factor enforcement order."

The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a PFEO has serious consequences and may constitute an offence.

Melanie Barbour

Legal Member and Chair

05 December 2023

Date