

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: HPC/LM/23/3665

1B Duff Street, Aberdeen (“the Property”)

Parties:

Eilidh Morisetti, 1B Duff Street, Aberdeen, (“the Applicant”)

First Port Property Services Ltd, Queensway House, 11 Queensway, New Milton, Hampshire (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

David Godfrey (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal's Decision of 17 August 2024.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal's decision of 17 August 2024, they proposed to make a PFEO in the following terms:-

- (1) The Tribunal order the Respondent to pay to the Applicant one half of the management fee paid by her for the period 1 October 2022 to 1 October 2023, and
- (2) The Tribunal order the Respondent to pay to the Applicant the sum of £350 for her time, effort, and inconvenience.

All within 28 days of intimation of the PFEO.

The Tribunal indicated that prior to making a PFEO, it would provide the parties with the opportunity to make representations under section 19(2)(b) of the Act.

The Tribunal received the following submissions from the parties:-

1. The Respondent sent an email to the Tribunal on 4 September 2024 stating that they had made payment of the sum specified in the proposed order.
2. The Applicant sent an email to the Tribunal on 11 September 2024 confirming that payment had been made into her account.

Neither party provided any further comments on the proposed order.

The Tribunal is satisfied that the Respondent has failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 Act in that it did not comply with OSP 4, 6 and 11 and Sections 2.1, 2.7, 5.7, 6.4 and 7.2 of the 2021 Code of Conduct for Property Factors. It has also failed to carry out its property factors duties in terms of Section 17(5) of the Act.

Section 19(3) of the 2011 Act states that if the Tribunal is satisfied that the Property Factor has failed to carry out its duties and/or comply with its section 14 duty, the Tribunal “must” make a PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) The Tribunal order the Respondent to pay to the Applicant one half of the management fee paid by her for the period 1 October 2022 to 1 October 2023, and
- (2) The Tribunal order the Respondent to pay to the Applicant the sum of £350 for her time, effort, and inconvenience.

All within 28 days of intimation of the PFEO.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A party aggrieved by a 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.

Josephine Bonnar, Legal Member

25 September 2024