

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/PF/23/4430

Flat 0/2, 36 Budhill Avenue, Glasgow, G32 0PN (“the Property”)

Kathryn Meeke, Rosewood Cottage, Lesmahagow, ML11 0HL (“The Applicant”)

James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX (“The Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Carol Jones (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal's Decision of 4 October 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 4 October 2024, it proposed to make a PFEO in the following terms: -

- (1) The Tribunal order the Respondent to repay to the Applicant the management fee paid by her for the period 1 February 2022 to 31 December 2023, and
- (2) The Tribunal order the Respondent to pay to the Applicant the sum of £750 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. On 8 November 2024, the Respondent stated that they had paid the sum of £1052.32 to the Applicant. This comprised the compensation proposed of £750 and £302.32, being the management fee which was to be repaid.
2. On 12 November 2024, the Applicant's representative confirmed that the sum of £1052.32 had been received.

Neither party lodged any further submissions

The Tribunal is satisfied that the Property Factor 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 11 and Section 2.1 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. Neither party has challenged the terms of the proposed PFEO. The Tribunal is satisfied, for the reasons outlined in their decision of 4 October 2024, that the terms of the proposed order are appropriate.

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 repay to the Applicant the management fee paid by her for the period 1 February 2022 to 31 December 2023, and
- (2) The Tribunal order the Respondent to pay to the Applicant the sum of £750 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 homeowner or property factor 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

24 November 2024