

Housing and Property Chamber

First-tier Tribunal for Scotland



PROPERTY FACTOR ENFORCEMENT ORDER

Issued by the First-tier Tribunal for Scotland (Housing and Property Chamber)
Under section 17 of the Property Factors (Scotland) Act 2011

Chamber Ref:FTS/HPC/PF/21/0244

Flat 1, 33 Kent Road, Glasgow, G3 7BY ('the Property')

The Parties:

Leanne Baxter residing at 156 Fernwood Drive, Old Tappen, NJ07675, New Jersey, USA ('the Homeowner and Applicant')

Speirs Gumley, 270 Glasgow Road, Rutherglen, Glasgow, G73 1UZ ('the Factor and Respondent')

Committee members:

Jacqui Taylor (Chairperson) and Mike Scott (Ordinary Member).

NOTICE TO THE PARTIES

1. The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for Property Factors, in terms of the Property Factors (Scotland) Act 2011 ('the 2011 Act') determined that the Factor had failed to comply with sections 2.5,4.4 and 6.1 of the Code of Conduct, all as stated in their decision dated 19th April 2022.

2. The Tribunal intimated to the parties, in terms of their said decision dated 19th April 2022, that they proposed to make a Property Factor Enforcement Order, requiring the Property Factor to pay the Applicant and Homeowner the sum of £300. The parties were given notice that they should ensure that any written representations they wish to make under section 19(2)(b) of the Act reach the Housing and Property Chamber's office by no later than 14 days after the date that the Decision and the notice of the proposed Property Factor Enforcement Order was intimated to them.

3. The Applicant and Homeowner's solicitor sent the Tribunal representations in the following terms:

'3.1 *Breach of Section 2.5 of the Code.*

The Tribunal found that the Respondent failed to reply to emails issued by the Applicant to the Respondent dated 5th July 2016, 16 January 2019 and 28th January 2019. The Tribunal found that the Respondent delayed by a period of three weeks to respond to an email issued by the Applicant to the Respondent dated 11 December 2018. The Tribunal found that the Respondent delayed to respond to an email issued by the Applicant to the Respondent dated 14 September 2020.

The emails of 5th July 2016, 16 January 2019, 28th January 2019, 11 December 2018 and 14 September 2020 each request information and assistance in relation to serious issues surrounding insurance provision and poor communication by the Respondent.

The findings of the Tribunal demonstrate a course of conduct of the Respondent. The Tribunal found that the Respondent has consistently failed to communicate with the Applicant and resolve her valid concerns. The relationship between the Applicant and the Respondent has entirely broken down. The Applicant attempted to raise concerns and complaints within the aforementioned emails which were not resolved. On or around 21 October 2021, the Applicant's agent telephoned the Respondent. The Applicant's agent requested that the Respondent engage with the Applicant to resolve matters extra-judicially. The Respondent refused to do so.

But for the Respondent's various breaches of Section 2.5 of the Code, the Applicant would not have required to raise proceedings in this Tribunal. But for the Respondent's breach, the Applicant would not have required to seek legal advice and assistance. The Applicant has required to pay legal fees. The Applicant has required to take unpaid absence from work to attend three tribunal hearings. The Applicant has suffered stress and inconvenience. A reasonable estimate of the Applicant's loss as a consequence of the Respondent's breach of Section 2.5 of the Code is in the sum of £5,000.00.

It is respectfully submitted that the Tribunal should amend the proposed Property Factor Enforcement Order dated 19 April 2022 as follows:-

To delete the words "£300" where they appear in the first line of the proposed Order and replace with "£5,000.00."

To insert the following:- "Speirs Gumley must grant an formal, written undertaking to the Applicant affirming that all correspondence issued by the Applicant (including but not limited to email, telephone or letter correspondence) shall be responded to by Speirs Gumley, in full, within 7 days of the date of issue. Said undertaking must

include consent to the same being produced before the court in the event of any failure to adhere to the terms of the undertaking. The said undertaking must be delivered to the Applicant within 28 days of the communication to the Factor of the Property Factor Enforcement Order.”

3.2 Breach of Section 4.4 of the Code.

The Tribunal found that the Respondent failed to provide the Applicant with a clear statement of how service delivery and charges will be affected if one or more homeowners (the Applicant is a homeowner) did not fulfil their obligations. The proposed Property Factor Enforcement Order does not provide a remedy to the Respondent’s breach of Section 4.4 of the Code. It is respectfully submitted that the Tribunal should amend the proposed Property Factor Enforcement Order as follows:- To insert the following:- “Speirs Gumley must issue to the Applicant a clear statement of how service delivery and charges will be affected if one or more homeowners does not fulfil their obligations. In addition, Speirs Gumley must issue to the Applicant the most up to date statement of service referred to by the Respondent’s representative, Tom McKie, at the Evidential Hearing on 21 March 2022. The said statements must be delivered to the Applicant within 28 days of the communication to the Factor of the Property Factor Enforcement Order.”

3.3 Breach of Section 6.1 of the Code.

The Tribunal found that the Respondent has failed to keep the Applicant advised as to progress made in relation to gutter repairs at the property. The proposed Property Factor Enforcement Order dated 19 April 2022 does not provide a remedy to the Respondent’s breach of Section 6.1 of the Code.

It is respectfully submitted that the Tribunal should amend the proposed Property Factor Enforcement Order as follows:- To insert the following:- “Speirs Gumley must arrange, at their own expense, for all guttering at the development to be inspected by a competent and reputable tradesperson and to carry out all recommended repairs at their own expense. Said inspection must be instructed within 28 days of the communication to the Factor of the Property Factor Enforcement Order.’

4. The Tribunal considered the representations by the Homeowner and Applicant’s Solicitor and found as follows:

4.1 Breach of Section 2.5 of the Code of Conduct.

The Tribunal did not accept the assertion that had the Respondent not breached section 2.5 of the Code of Conduct the Applicant would not have required to seek

legal advice and assistance. There is no requirement for the Homeowner and Applicant to be legally represented. Tribunal Rule 40(1) provides that the Tribunal may award expenses against a party but only where that party through unreasonable behaviour in the conduct of the case has put the other party to unnecessary or unreasonable expense. The Tribunal have not found that the Respondents acted unreasonably in the conduct of the case. Further, the Tribunal do not accept the assertion that the breach of section 2.5 of the Code of Conduct by the Respondents resulted in the Homeowner incurring loss in the sum of £5000 as the Applicant and Homeowner had not provided evidence to support this assertion.

4.2 The Tribunal do not consider it to be necessary to amend the PFEO to require the Respondent to respond to communications from the Homeowner and Applicant within seven days of the date of issue as the communication standards are contained within the Code of Conduct and the Respondent's Written Statement of Services.

4.3 Breach of Section 4.4 of the Code of Conduct

The Tribunal accept that it is reasonable to amend the PFEO to require the Respondent to provide the Homeowner with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations.

4.4 Breach of Section 6.1 of the Code of Conduct

The Tribunal do not consider the suggested amendment to the PFEO with regards to the maintenance of the gutters to be reasonable as the gutters are the common property of the owners of the building of which the property forms part and the Homeowner had not been invoiced for the repair.

4.5 The Tribunal do not consider an apology to be necessary given the terms of the proposed PFEO.

5. The Respondent sent the Tribunal representations in the following terms:

5.1 'In making an award to the Applicant in this case, the Tribunal determined that we ought to pay the homeowner.... from our own funds and at no cost to the owners. Given the Applicants level of indebtedness, we would ask the Tribunal to confirm if it is acceptable that any award be credited to the Applicants common charge account.'

6. The Tribunal considered the representations by the Respondent's in relation to the proposed PFEO and found as follows:

6.1 Given the fact that the Homeowner's account with the Respondents is in arrears they considered it reasonable that the payment of £300 to be paid by the Respondents could be settled by applying a credit of £300 to the Homeowner's common charges account.

7. Consequently, the Tribunal make the following Property Factor Enforcement Order:

'Speirs Gumley must:

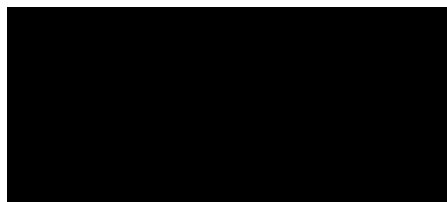
1. Provide the Homeowner with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations within 28 days of the communication to the Factor of the Property Factor Enforcement Order.

2. Pay the Homeowner £300 for the inconvenience she had suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order. Notwithstanding the foregoing, in the event that the Homeowner's account with Speirs Gumley is in debit the said sum of £300 may be credited to the Homeowner's common charges account.'

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

Appeals

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

Chairperson Date: 27th July 2022