

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

#### Compliance Decision:

Property Factors (Scotland) Act 2011, Section 19

The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 as amended (“the 2017 Regulations”)

Chamber Ref: FTS/HPC/PF/20/1396

47/6 Bavelaw Road, Balerno, Edinburgh, EH14 7AA (“the Property”)

The Parties: -

Mr and Mrs Graeme and Alison Banks, residing at 14 Big Sand, Gairloch, IV21 2DD (“the Homeowners”)

RMG Scotland Ltd, Unit 6, 95 Morrison Street, Glasgow, G5 8BE (“the Factor”)

#### Tribunal Chamber Members

Maurice O’Carroll (Legal Member)

Andrew Taylor (Surveyor Member)

#### Decision of the Chamber

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Factor has complied in full with the terms of the Property Factor Enforcement Order (“PFEO”) dated 13 November 2020 and therefore no further action on the part of the Factor is required.

#### Reasons for Decision

1. By decision dated 29 October 2020, the Tribunal determined that the Factor had breached its factor duties in that it had failed to comply with sections 2.5, 4.1, 4.3, 4.8, 4.9, 6.1, 7.1, 7.2 and 7.4 of the Code of Conduct for Property Factors as required by section 14(5) of the Act.
2. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEO. It did so on the same date as the said decision and invited representations thereon within 14 days of the Notice being received by the parties. No representations in relation to the content of the Notice were made by either party. Accordingly, the Tribunal issued a final Property Factor Enforcement Notice on 13 November 2020.

3. The PFEO so issued required the Factor to carry out the following within 28 days of the Notice:
  - (i) Provide a written statement to the Homeowners setting out:
    - (i) its internal controls and systems that are in place to ensure that records of homeowner enquiries and complaints are recorded, retained, communicated to and accessible to other members of its staff to ensure that knowledge of such enquiries and complaints are not lost in the event of members of staff leaving the employment of the Factor; and
    - (ii) its internal systems that are in place to ensure that homeowner notifications of necessary repairs and services requested are dealt with expeditiously in compliance sections 2.5 and 6.1 of the Code.
  - (ii) Provide a written statement to the Homeowners setting out all sums due and owing in respect of their non-payment of factoring invoices from August 2018 to the date of compliance with this Order (allowing payment within 14 days) under deduction of the following amounts which are to be waived by the Factor:
    - (i) Any administrative charges (known as 'referral fees') or penalties (including interest charges) whatsoever, applied to the Homeowners' account in respect of its debt recovery procedure, whether previously stated by the Factor to be at Stage 1, 2 or 3 thereof; and
    - (ii) The quarterly management fees for factoring services for the said period in recognition of the Factor's poor standards of service during that time.
  - (iii) Pay compensation to the Homeowner in the sum of £250 (Two Hundred and Fifty Pounds) in respect of the time and inconvenience to the Homeowner occasioned by the Factor's failure to comply with its factor duties under the Code. Said compensation may be deducted from the statement of account of amounts due and owing by the Homeowners referred to in the previous paragraph at the option of the Factor; and
  - (iv) To provide documentary evidence of compliance with the above Order within 7 days of having done so.
4. On 15 December 2020, the Factor provided the Tribunal with evidence of having complied with the above Orders in the form of letters addressed to the Homeowners dated 10 and 15 December 2020, a copy of its revised Written Statement of Services and two updated statements of account for the Homeowners showing refunds made and the application of compensation ordered by the Tribunal.
5. At the request of the Homeowners, the Factor was required by the Tribunal to provide a further breakdown of the refunds provided further to requirement (ii) of the above Order. This was provided to the Tribunal on 23 December 2020.

6. On 5 January 2021, the Homeowners wrote to the Tribunal contesting the final sum stated as being due and owing in terms of the final statement of account. In their view, there required to be further deduction of £138 from it. By email dated 14 January 2021, the Factor accepted this further submission made by the Homeowners and undertook to provide a further revised final statement to the Tribunal.
7. The revised final statement of account was received by the Tribunal on 28 January 2021. It showed the deductions required in terms of requirements (ii) and (iii) of the PFEO, which included the sum of £138 discussed in the correspondence outlined above.
8. Having reviewed the correspondence from the Factor dated 15 and 23 December 2020 and 14 and 28 January 2021, the Tribunal was satisfied that the Factor had complied in full with the requirements of the PFEO issued on 13 November 2020. It therefore determined to issue the present Certificate of Compliance.

### **Appeals**

9. 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 within 30 days of the date the decision was sent to them.

Signed: M O'Carroll  
Chairman

Date: 28 January 2021