

Housing and Property Chamber

First-tier Tribunal for Scotland



FIRST-TIER TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY CHAMBER)

Decision and Certificate of Compliance following upon a Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/21/1377

Re: 0/1,140, Lochleven Road, Glasgow, G42 9SQ (“The Property”)

The Parties:-

Mr Sam Webb residing at 0/1,140, Lochleven Road, Glasgow, G42 9SQ (“the Homeowner”) and

W.M. Cumming, Turner and Watt having a place of business at 40, Carlton Place, Glasgow, G5 9TS (“the Factor”)

Tribunal Members

Karen Moore (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The Tribunal determines and certifies that the Factor has complied with the Property Factor Enforcement Order imposed by it in respect of the Property and dated 18 November 2021 (“PFEO”).

Background

1. By application received between 8 June 2021 and 25 July 2021 (“the Application”) the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with the Property Factor’s Duties (“the Duties”). The Application comprised the following documents: application form dated 1 June 2021; copy email correspondence from the Homeowner’s co-owner to the Factor; a copy quote dated 12 October 2018, copy buildings policy and a copy of the Factor’s Written Statement of Service (“the WSoS”).
2. A Hearing took place at 10.00 on 8 October 2021 by telephone conference. The outcome of that Hearing was that the Tribunal found that the Factor had failed to comply with the Property Duties and made the following Property Factor Enforcement Order (“PFEO”):-

“No later than 10 December 2021 the Factor must at its own cost and expense

- 1. refund to the Homeowner the sum of £1,453.20 which he was bound to pay as a consequence of the Factor providing inaccurate and false information;*
- 2. compensate the Homeowner in the sum of £1,000.00 for the distress, inconvenience and stress caused to him by the Factor’s actions and*
- 3. reimburse the Homeowner the sum of £200.00 towards the cost of making good décor following the completion of the dry rot works.”*

Compliance with PFEO

3. Following a PFEO compliance check, the Homeowner’s representative, Ms. Turnbull, by email dated 13 December 2021, advised the Tribunal that the Factor had not complied with the PFEO. No information or representations about compliance have been received from the Factor and no excuse or reason for the failure has been presented. The Tribunal made a finding of failure to comply which was intimated to the Parties.

4. By email dated, 3 February 2022, the Homeowner advised the Tribunal that he had received payment of the sums narrated in the PFEO.

5. Section 23(1) of the Act states: *“It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a property factor enforcement order made by the First-tier Tribunal”*. The Tribunal, on the basis of the Homeowner’s email is satisfied that the Factor has now complied with the PFEO and certifies

6. The members of the Tribunal considered matters and determined that the PFEO had been complied with as they were satisfied with the terms of the emails from the Homeowner and the Property Factor and so issues this Certificate of Compliance.

7. The decision is unanimous.

Appeal

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.

Karen Moore

Chairperson 2 March 2022