

Housing and Property Chamber

First-tier Tribunal for Scotland



Certificate of Compliance and Decision relating to the Property Factor Enforcement Order (“PFEО”) dated 9 June 2021 issued under the Property Factors (Scotland) Act 2011 (“the Act”)

Case reference: FTS/HPC/PF/19/2260

Re:- 100 Rockbank Crescent, Glenboig, North Lanarkshire ML5 2TA

The Parties:-

**Mr John Wallace, 100 Rockbank Crescent, Glenboig, North Lanarkshire ML5 2TA
 (“the Applicant”)**

and

**Newton Property Management, 87 Port Dundas Road, Glasgow G4 0HF
 (“the Respondent”)**

Tribunal Members:

Richard Mill (legal member) and Mary Lyden (ordinary member)

Decision

1. The Tribunal unanimously determined that the respondent has complied with the PFEО dated 5 March 2020, and accordingly the Tribunal determined to issue a Certificate of Completion in confirmation that compliance had been achieved.

Reasons for Decision

2. Following the Tribunal's primary decision dated 15 November 2019, a PFEО dated 5 March 2020 was issued in the following terms:-
 - “1. The respondent shall credit the homeowner's factoring account to the extent of £850.00 within 7 days of the homeowner clearing the remaining balance of his account in the sum of £514.76 (equal to the total balance on the account as at 7 January 2020 of £1,364.76 less the £850.00 credit).
 2. The respondent shall issue a letter of apology to the homeowner for having breached sections 1, 2.5 and 4.8 of the Code. The respondent shall also issue a letter of satisfaction to the homeowner confirming

that all debts and sums due under any Court Decree have been paid and settled in full. Said letters are to be issued within 7 days.”

3. Item 2. of the said PFEO was evidenced to have been complied with shortly after issue of the PFEO. The only live outstanding issue has been the delay in the respondent implementing item 1. Which has been due to the conditional nature of it and the specific requirement placed upon the applicant to clear the balance on his factoring account. The applicant failed to do so which resulted in the respondent initiating formal debt recovery proceedings against him in the Sheriff Court. Due to the delays involved in that process and the additional delays occasioned by the covid-19 pandemic that legal process was not concluded until 2021.
4. Payment from the applicant to the respondent was not made until 28 July 2021 thus triggering the obligation on the respondent to implement item 1. of the PFEO. The respondent credited the applicant's factoring account in the sum of £850 on 16 August 2021. There was a delay of greater than 7 days between the applicant's payment to the respondent and the credit being applied though the tribunal is satisfied that the time delay is of no consequence when looked at in the round and has not prejudiced the applicant.
5. In earlier communications the applicant disputed the respondent's compliance with item 1. of the PFEO. The tribunal issued a Direction requiring evidence of compliance from the respondent in the form of the copy factoring statement. This has been produced. The tribunal finds that this is a credible and reliable document and significant weight has been attached to this documentary evidence. This clearly evidences the £850 credit.
6. The Tribunal issued a former Direction dated 19 October 2021 stating an intention to determine the issue of the respondent's compliance with the PFEO on the basis of the copy factoring account which is a transparent process and proportionate to the issues involved. There can be no dispute about compliance. The tribunal has determined that there is no necessity to unnecessarily convene a hearing at public expense to examine matters further.

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.

Legal Member

Date: 4 November 2021