

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factors (Scotland) Act 2011 Section 19(3)

Reference number: FTS/HPC/PF/20/1846

Kirkland Court, 8 Lasswade Road, Edinburgh, EH16 6 RZ (“the Property”)

The Parties:

Robert Buchanan, Kirkland Court, Flat 37, 8 Lasswade Road, Edinburgh, EH16 6RZ (“the Homeowner”)

Trinity Property Factors, 209/211 Bruntsfield Place, Edinburgh, EH10 4 DH (“the Property Factor”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Elizabeth Dickson (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision and proposed Property Factor Enforcement Order dated 17 January 2021.

Decision

The Tribunal has determined that it should not make a Property Factor Enforcement Order (“PFEO”).

The decision of the Tribunal is unanimous.

Reasons for decision

In the Tribunal’s decision of 17 January 2021, it proposed to make a PFEO as follows:

- (1) The Tribunal order the Property Factor to pay to the Homeowner the sum of £200 for his time, effort, and inconvenience, within 28 days of intimation of the PFEO. This payment is to be made by cheque or bank transfer and not as a

credit on the Homeowner's factoring account.

- (2) The Tribunal order the Property Factor to carry out a ballot of the Homeowners in the development on the issue of payment of the 20% of the Housing Managers salary not covered by the Government, during the period when she was on furlough.

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's decision was intimated to the parties. On 23 February 2021, the Property Factor advised the Tribunal that they had sent the payment by electronic transfer to the Homeowner on 2 February 2021. The Property Factor also stated that they had carried out a ballot of residents in relation to the 20% furlough top up payment. The residents had been notified of the outcome of the ballot. On 8 March 2021, the Homeowner's representative sent an email to the Tribunal confirming that the payment of £200 had been received and that a ballot had been carried out. The residents had voted against payment of the 20% top up payment. However, the Homeowner's share of this had not yet been refunded to him. Furthermore, there were ongoing issues with the Property Factor and the Homeowner was opposed to the PFEO being "rescinded". On 1 April 2021, the Property Factor sent an email to the Tribunal which stated that the residents had not been charged the 20% furlough top up payment. They provided a copy of a letter, sent to the Homeowner on 4 March 2021. This letter relates to the annual accounts and states that the 20% charge had not been applied. In response the Homeowner made a further written submission on 4 May 2021 which states that the information provided by the Property Factor did not show how the sums had been calculated. The Tribunal issued a request that the Property Factor provide evidence that the 20% salary top up had not been paid by or charged to the Homeowner. On 18 May 2021, the Property Factor submitted copies of invoices which (they said) showed the deduction of the furlough payments from the monthly payroll recovery. They also stated that they refunded £996.26 to the development in relation to the disputed 20%, after the ballot. The Homeowner challenged this stating that the figures did not add up and that no evidence of the refund had been provided. On 25 May 2021, the Tribunal invited the parties to provide written representations on whether a PFEO should be issued which required to Property Factor to refund the 20% top up or provide evidence that they had already done so. They were also asked to confirm if they thought a hearing should be arranged in relation to the matter. On 28 May 2021, the Property Factor lodged a written submission which stated that the information provided on 1 April 2021 (namely that the residents had not been charged the 20% top up) had been incorrect. They advised that the full salary (less the furlough payment from the Government of 80%) had been collected. This was refunded by credit note and the funds transferred back to the development account. A copy of the credit note and evidence of the transfer of funds was provided. A copy of the submission and the documents were issued to the Homeowner, but no response was provided to this or the Tribunal's email of 25 May 2021.

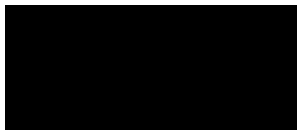
Section 19(3) of the 2011 Act states that, if the Tribunal is satisfied that the Property Factor has failed to comply with the Code of Conduct, it must make a PFEO. However,

following intimation of the proposed PFEO, the Property Factor has carried out both parts of the proposed order. The Homeowner indicated that he still wanted the Tribunal to issue a PFEO. However, he did not specifically challenge the terms of the proposed PFEO or dispute that both parts had been implemented. He referred to unspecified ongoing issues with the Property Factor. Subsequent enquires by the Tribunal led to information being provided by the Property Factor which (they later admitted) was misleading and inaccurate. This is highly unsatisfactory. However, it appears from the information and documents provided on 28 May 2021, that the Property Factor has addressed the outstanding issue of the refund of the 20% top up payment, which had been rejected by the Homeowner and the other residents when a ballot was taken.

The Tribunal notes that the Property Factor has paid the Homeowner the compensation specified by the Tribunal in the proposed PFEO and carried out a ballot in relation to the furlough payment. The Tribunal also notes that the 20% top up has been refunded by the Property Factor. The Tribunal is satisfied that no further requirements should be imposed on the Property Factor and determines that a PFEO should not be issued.

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
15 June 2021