



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

Decision issued under s19 of the Property Factors (Scotland) Act 2011 and The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: Reference number: FTS/HPC/PF/21/2591

Property: Flat 6, 4 West Pilton Way, Edinburgh, EH4 4GW (“The property”)

Parties:

Arron Ashton, residing at Flat 6, 4 West Pilton Way, Edinburgh, EH4 4GW (“the Applicant”)

And

Residential Management Group (Scotland) Ltd, a company incorporated under the Companies Acts and having their registered office at Unit 6 95 Morrison Street, Glasgow, United Kingdom, G5 8BE (“the Respondent”)

Unanimous Decision of the Tribunal

The Tribunal determined that the property factor has acted on notice of a proposed Property Factor Enforcement Order so that a Property Factor Enforcement Order is no longer necessary.

Tribunal Members:

Paul Doyle (Legal Member)

Helen Barclay (Ordinary Member)

Background

1. By application dated 19 October 2021, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of his complaint that the Property Factor has breached the code of conduct imposed by Section 14 of the 2011 Act.

2 The application stated that the applicant considered that the Property Factor failed to comply with Sections 2.5, 4.1, 4.5, 4.9, and 7.1 of the code of conduct for property factors.

3. After considering all of the evidence presented in this application at a hearing on 5 September 2022, the tribunal determined that the Property Factor had breached sections 2.5 and 4.1 of the code of conduct of the code of conduct for property factors.

4. On 5 September 2022 the tribunal served notice of intention to make the following property factor enforcement order (“PFEO”)

“Within 28 days of the date of service on the property factor of this property factor enforcement order the property factor must credit the applicant’s account for the year to April 2019 with the sum of £496.17.”

5. Section 19 of the 2011 Act contains the following:

(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to it.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order.

(4) Subject to section 22, no matter adjudicated on by the First-tier Tribunal may be adjudicated on by another court or tribunal.

6. In an email dated 7 October 2022 the property factor said

We write to advise that following the attached communication and the PFEO, £496.17 has been credited to the applicant’s account.

An email has been sent to the applicant with a detailed breakdown of their account, this is also being sent via post for their information.

A copy of a communication that has been sent to the applicant is also attached which advises of the credit being applied to their account.

7. The applicant was invited to comment on the contents of the Property Factor’s email. He confirmed that the Property Factor has allocated £496.17 to the credit of his account.

8. The tribunal is satisfied that the concerns voiced in the proposed Property Factor Enforcement order have been adequately addressed by the Property Factor, and that no meaningful purpose would be served in serving a property factor enforcement

order. There has been a material change in circumstances since the decision of the tribunal intimated 5 September 2022.

9. Having consider matters anew in light of the property Factors actions since 5 September 2022, the tribunal finds that a Property Factor Enforcement Order is no longer necessary.

Appeals

10. 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

Date

8 November 2022.

Legal Member