

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**Decision and Statement of Reasons under Section 23 of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/22/0658 and FTS/HPC/PF/22/1123**

**Re : Flat 7/4, Kirkmay House, North Market Gate, Crail KY10 3TH ("Property")**

**The Parties:-**

**Lorna Allport, 7 Bedcow View, Kirkintilloch, Glasgow G66 3JA ("Homeowner")**

**Abbey Forth Property Management Ltd, Balcairn House, Viewfield, Dunfermline KY12 8HY ("Factor")**

**Tribunal Members:**

**Joan Devine – Legal Member**

**Elaine Munroe – Ordinary Member**

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") unanimously determined that the Property Factor Enforcement Order dated 16 May 2023 ("PFEО") has not been complied with and determines in terms of Section 23(1) of the 2011 Act that the Factor has failed to comply with the PFEО.

### **Background**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") considered an application by the Homeowner submitted in terms of Section 17 of the Property Factors (Scotland) Act 2011 ("2011 Act"). A case management discussion took place before the Tribunal on 24 April 2023. The Tribunal unanimously determined that the Factor had failed to comply with the Code of Conduct for Property Factors as required by section 14 of the 2011 Act. The Tribunal unanimously determined that the Factor had failed to comply with its factor duties in terms of section 17(5) of the 2011 Act. The Tribunal issued a decision on 24 April 2023 ("Decision") along with a proposed property factor enforcement order.
2. Neither Party commented on the proposed property factor enforcement order ("PFEО"). The Tribunal issued the PFEО dated 16 May 2023.

3. On 8 June 2023 a letter was sent to the Parties in terms of which they were asked to state whether or not the actions required in the PFEO had been completed. The Homeowner responded stating that the Factor had not complied with any part of the PFEO. The Factor did not respond.

### **Discussion**

4. Section 23 of the 2011 Act provides as follows:

#### ***"23 – Effect or failure of comply with Property Factor Enforcement Order***

- (1) *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.*
  - (2) *Where the First-tier Tribunal decides that a Property Factor has failed to comply with the Property Factor Enforcement Order, the First-tier Tribunal must serve notice of the failure on the Scottish Ministers.*
  - (3) *The First-tier Tribunal may not decide that a Property Factor has failed to comply with a Property Factor Enforcement Order –*
    - (a) *unless the period within which the Order requires any work to be executed has ended, or*
    - (b) *if the First-tier Tribunal is satisfied on the submission of the Property Factor or otherwise –*
      - (i) *that the Property Factor is unable to comply with the Order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*
      - (ii) *that any action required by the Order is likely to endanger any person.*
  - (4) *Where the First-tier Tribunal is prevented by reason only of sub-section 3(b) from deciding that a Property Factor has failed to comply with a Property Factor Enforcement Order, the First-tier Tribunal must serve notice on the Scottish Ministers stating that it considers the Property Factor to be unable to comply with a Property Factor Enforcement Order.*
5. The Homeowner said that there had been no compliance by the Factor with the PFEO. This was not disputed by the Factor.

### **Decision**

6. The Tribunal, having no reason to dispute the Home Owner's submission to it that the PFEO had not been complied with and having no grounds before it to engage Section 23(3) of the 2011 Act, determines in terms of Section 23(1) of the 2011 Act that the Factor has failed to comply with the PFEO.
7. The decision is unanimous.
8. In terms of Section 23(2) of the 2011 Act the Tribunal must serve notice of the failure to comply with the PFEO on the Scottish Ministers and accordingly a copy of this decision will be served on the Scottish Ministers.

### **Appeals**

**In terms of section 46 of the Tribunals (Scotland) Act 2014 a homeowner or property factor 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 : 14 July 2023