

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 23 of the Property Factors (Scotland) Act 2011 (“the Act”)

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 that the Factor has failed to comply with the Property Factor Enforcement Order imposed by it in respect of the Property and dated 18 November 2021 (“PFEO”).

The Tribunal determines to serve notice of that failure on the Scottish Ministers in terms of Section 23(2) of the Act.

The Tribunal intends to issue an Order for Payment of the sum of £2,653.20 against the Factor, gives notice to the Parties of this intention and directs the Parties to make written representations in terms of Rule 16 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) within 14 days of the date hereof.

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. In response to the Application, the Factor lodged written representations, a copy of the WSoS and a copy of a letter dated 4 August 2021 from the Factor to the Homeowner. The Factor advised that it did not intend to attend the Hearing and that it "would take on board any decision" made. A Hearing took place at 10.00 on 8 October 2021 by telephone conference. The Homeowner was present and represented by Ms. Turnbull. The Factor did not take part. The outcome of that Hearing was that the Tribunal found that the Factor had failed to comply with the Property Duties and proposed a Property Factor Enforcement Order ("PFEO")

3. The proposed PFEO was intimated to the Factor who made no comment or response. Therefore, on 18 November 2021 the Tribunal made the PFEO as follows:-

"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."*

4. The PFEO was intimated to the Factor by recorded delivery mail.

Compliance with PFEO

5. 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.

6. 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, accordingly, determines that the Factor has failed to comply with the PFEO and that there is no reasonable excuse for the failure.

7. Section 23(2) of the Act states *"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."* The Tribunal, accordingly, serves notice on the Scottish Ministers.

Payment Order

8. Section 20 of the Act states: *“A property factor enforcement order is an order requiring the property factor to...(b)where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable.”*

9. The Tribunal considered it reasonable in the PFEO to order the Factor to make payment to the Homeowner of £2,653.20, which payment the Factor has failed to make. Accordingly, the Tribunal proposes to issue an Order for Payment of this sum against the Factor and in favour of the Homeowner. Before doing so, the Tribunal gives the Parties notice of its intention and, in terms of Rule 16 of the Rules, directs the Parties to make written representations within 14 days of the date hereof for its consideration.

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

19 January 2022