

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFEO”): Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/20/1457

The Parties:-

Miss Carla McLay, 10/6 Kilinside Road, Paisley (“the Homeowner”)

Hacking and Paterson Management Services, 1 Newton Terrace, Glasgow, G3 7PL (“the Factor”)

The Tribunal:-

**Melanie Barbour (Legal Member)
Angus Anderson (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 9 November 2020.

Decision

The Tribunal has decided that it should make a PFEO.

The decision of the Tribunal is unanimous

Reasons for Decision

In the Tribunal’s decision of 9 November 2020, it proposed to make a PFEO as follows:

Within a period of two months from the date of the PFEO the Factor must:

- (1) From their own funds credit the homeowner’s common charges account with the sum of £300.00.
- (2) Delete from the Homeowner's account their management fee of £39.25 plus vat for the period 29/02/2020-28/05/2020.

- (3) Agree a repayment plan with the homeowner in relation to the common charges which accrued from April 2019 until May 2020; the terms of repayment schedule to be agreed shall permit (if required by the homeowner) a repayment period of up to 12 months.
- (4) Provide to the Tribunal written confirmation that items (1) and (2) have been completed.

The Tribunal indicated that prior to making a property factor enforcement order, it would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

The Tribunal's decision was intimated to the parties on 10 November 2020.

By email dated 17 November 2020 the Factor wrote confirming that they had credited the Homeowner's common charges account with the sums of £47.10 in respect of the management fee payable from the date of entry until 28 May 2020; and the sum of £300 from HPMS funds. Further, they had written to the Homeowner confirming these payments had been made and offering to agree a repayment plan for the remaining factoring balance over a 12 months period. They attached a copy of the letter which they had issued to the Homeowner.

The Homeowner had not made any written representations in respect of the proposed property factor enforcement order or the correspondence received from the Property Factor.

The Tribunal considered the written correspondence from the factor. It noted that it appeared that they had fulfilled conditions 1, 2 and 4 of the proposed property factor enforcement order; and they had written to the Homeowner offering to enter into a repayment plan.

The Tribunal considered that it should vary the terms of the PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

Within a period of two months from the date of the PFEO the Factor must:

- (1) Seek to agree a repayment plan with the homeowner in relation to the common charges which accrued from April 2019 until May 2020; the terms of the repayment schedule to be agreed shall permit (if required by the homeowner) a repayment period of up to 12 months.

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

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.

Melanie Barbour

Legal Member and Chair

30 December 2020