

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision issued under s19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/20/2471

The Property: 15 Silverholm Drive, Jerviswood Park, Cleghorn, Lanark, ML11 7SY (“The Property”)

The Parties:-

Malcom Campbell, residing at 15 Silverholm Drive, Jerviswood Park, Cleghorn, Lanark, ML11 7SY (“the applicant”)

Newton Property Management Ltd, a company incorporated under the Companies Acts and having a place of business at 87 Port Dundas Road, Glasgow, G4 0HF (“The property factor”)

Because the property factor has breached the code of conduct for property factors and has failed to carry out its duties in terms of s.17 of the Property Factors (Scotland) Act 2011, the tribunal unanimously decides to issue a Property Factor Enforcement Order (“PFEO”).

Committee Members

Paul Doyle	Legal Member
David Godfrey	Ordinary Member

Reasons for decision

1 By application dated 26 November 2020, 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 & that the property factor has failed to comply with the property factor’s duties.

2 In a decision issued on 24 March 2021 the tribunal notified parties of a proposed PFEO and invited written representations within 14 days.

3. By email dated 25 March 2021 the applicant challenged the quantification of the order for payment in the proposed PFEO, and asked the tribunal to take

account of invoices and calculations which had not been placed before the tribunal in evidence.

4. By email dated 29 March 2021 the property factor complained that documentary evidence (an opinion from the Environmental Law Chamber referred to at paragraph 9 of the tribunal's decision dated 23 March 2021) had been lodged on the day of the hearing and asked for further time to instruct an independent legal opinion addressing the interpretation of the burdens contained in the deed of conditions registered in the Land Register of Scotland on 17 February 2009 by R.F. Chappelle (Developments) Ltd.

5. The tribunal's decision is based on the evidence placed before the tribunal. It would be wrong for the tribunal to consider evidence tendered after the hearing has finished and after the tribunal has issued their decision. The applicant's request to allow further evidence to be received after the tribunal's decision was issued is refused.

6. The property factor received adequate notice of the time, date and method of the tribunal hearing. The property factor has been on notice of the issues which would be determinative of this application since the application was referred to the tribunal on 18 January 2021. The property factor was offered the opportunity to lead evidence but chose not to attend the tribunal hearing and to rest on their written submissions only.

7. The documentary evidence the property factor now objects to is an opinion prepared by the applicant's lawyer. That opinion is evidentially neutral and did not form part of the tribunal's decision-making process. None of the tribunal's findings of fact are drawn from the opinion from the Environmental Law Chamber.

8. Section 19 of the Property Factors (Scotland) Act 2011 contains the following:

(2) In any case where the committee proposes to make a property factor enforcement order, they 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 them.

(3) If the committee are 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 committee must make a property factor enforcement order.

(4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal.

9. Neither parties' written representations change the tribunal's decision to issue a PFEO, nor do either parties' representations persuade the tribunal to change the proposed terms of the PFEO. The tribunal accordingly issues a PFEO in the terms proposed in the decision dated 23 March 2021.

PROPERTY FACTOR ENFORCEMENT ORDER

10. The tribunal makes the following property factor enforcement order (PFEO)

Within 28 days of the date of service on the respondent of this property factor enforcement order the respondent must pay the applicant £450.00 as reimbursement of the cost of maintenance incorrectly charged to the applicant between 2015 and 2020.

11. Failure to comply with a PFEO may constitute an offence.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

8 April 2021

Legal Member