

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/19/3399

**82/2 Harvesters Way, Wester Hailes, Edinburgh EH14 3JJ
 (“the Property”)**

The Parties:-

**Miss Christian Marie Wood, 82/2 Harvesters Way, Wester Hailes, Edinburgh
EH14 3JJ
 (“the Homeowner”)**

**Residential Management Group Limited, RMG House, Essex Road,
Hoddesdon, Hertfordshire EN11 0DR
 (“the Factor”)**

Tribunal Members:

**Graham Harding (Legal Member)
Carol Jones (Ordinary Member)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 26 March 2021.

Decision

The Tribunal has decided that it should make a PFEO in the terms originally proposed by it.

The decision of the Tribunal is unanimous.

Reasons for Decision

In the Tribunal’s decision of 26 March 2021, it proposed to make a PFEO as follows:

- (1) That the Factor calls a meeting of Plot proprietors as soon as practically possible in line with any Scottish Government Covid-19 restrictions and in accordance with Rule 18.2.1 of the Deed of Conditions burdening the Development for the purpose of having its appointment confirmed by a majority of the plot proprietors.
- (2) That until the Factor has had its appointment confirmed at a meeting of plot proprietors it refrains from charging the Homeowner any management fees.
- (3) That the Factor issues a letter of apology to the Homeowner within 30 days

apologising for its poor communication with her throughout 2019 and for failing to deal timeously with her complaints.

(4) That the Factor makes payment to the Homeowner within 30 days from its own funds the sum of £500.00.

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 29 March 2021.

By letter dated 7 April 2021 the Homeowner acknowledged receipt of the proposed PFEO and commented on steps she intended to take at the proposed meeting of owners. She also wished the co-owners to be made aware of the possible subsidence and water ingress at the property. These were matters outwith the jurisdiction of the Tribunal.

By email dated 29 April 2021 the Homeowner advised the Tribunal that the Factor had not complied with any of the requirements of the proposed PFEO other than to attempt to arrange a Zoom meeting for 16 May 2021. The Homeowner also advised that the Factor had submitted an invoice for management fees for the period January to March 2021 which she understood she was not to be charged.

By email dated 4 May 2021 the Factor advised the Tribunal that arrangements were being made to comply with the actions set out in the proposed PFEO and that payment of £500.00 would shortly be made to the Homeowner. The email went on to say that once payment had been made a letter of apology would be sent to the Homeowner.

By email dated 15 May 2021 the Homeowner advised the Tribunal that she had not received either payment or an apology.

Having considered the representations made on behalf of both parties the Tribunal determined that it was appropriate to issue a PFEO in the same terms as the proposed PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

- (1) That the Factor calls a meeting of Plot proprietors as soon as practically possible in line with any Scottish Government Covid-19 restrictions and in accordance with Rule 18.2.1 of the Deed of Conditions burdening the Development for the purpose of having its appointment confirmed by a majority of the plot proprietors.
- (2) That until the Factor has had its appointment confirmed at a meeting of plot proprietors it refrains from charging the Homeowner any management fees.
- (3) That the Factor issues a letter of apology to the Homeowner within 30 days apologising for its poor communication with her throughout 2019 and for failing to deal timeously with her complaints.
- (4) That the Factor makes payment to the Homeowner within 30 days from its own funds the sum of £500.00.

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.

Graham Harding

Legal Member and Chair

25 May 2021

Date