

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 Reference: FTS/HPC/PF/20/2432 & FTS/HPC/PF/21/0476

Property address: 27 Dempsey Court, Queens Lane North, Aberdeen, AB1 54DY (“the House”)

The Parties

Mr David Gordon, 27 Dempsey Court, Queens Lane North, Aberdeen, AB1 54DY (“the Homeowner”)

James Gibb, 2 Thistle Street, Aberdeen, AB10 1XZ (“the Property Factor”)

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

1. In the Tribunal’s decision of 9th February 2022, it proposed to make a PFEO as follows:

“Within 28 days of intimation to them of the PFEO, the Property Factor is required to:

1. Pay to the Homeowner the sum of £1000 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Property Factor’s failure to comply with the Code of Conduct for Property Factors and for failing to carry out their property factor duties;
2. Provide documentation to the Homeowner in relation to the electrical testing tendering process, excluding any commercially sensitive information.
3. Provide to the Homeowner the missing utility bills in relation to the communal services, or, in their absence, refund from their own account charges set against the Homeowner for the missing periods. Provide

an explanation of the basis for the allocation of these charges made to the Homeowner

4. Confirm to the Homeowner the amount of commission (in cash terms) received by the Property Factor in respect of the property insurance for this development, for each of the past five years.
 5. Provide documentation to the Homeowner in relation to the insurance selection process, in particular the alternative quotes available, the excesses applicable thereto, any special terms and the levels of broker commission, (excluding any commercially sensitive information).
 6. At the Property Factor's own cost, rectify the damage to the paintwork caused by the flooding of the lift shaft.”
2. The Tribunal indicated that, prior to making a PFEO, 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 decision was issued on 10th February 2022.
 3. Neither party made representations on the terms of the PFEO.
 4. The Tribunal has now confirmed its decision made in terms of Section 19(1)(a) of the Act.

Property Factor Enforcement Order

5. The First-tier Tribunal hereby makes the following PFEO:

Within 28 days of intimation to them of the PFEO, the Property Factor is required to:

1. Pay to the Homeowner the sum of £1000 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Property Factor's failure to comply with the Code of Conduct for Property Factors and for failing to carry out their property factor duties;
2. Provide documentation to the Homeowner in relation to the electrical testing tendering process, excluding any commercially sensitive information.
3. Provide to the Homeowner the missing utility bills in relation to the communal services, or, in their absence, refund from their own account charges set against the Homeowner for the missing periods. Provide an explanation of the basis for the allocation of these charges made to the Homeowner.
4. Confirm to the Homeowner the amount of commission (in cash terms) received by the Property Factor in respect of the property insurance for this development, for each of the past five years.

5. Provide documentation to the Homeowner in relation to the insurance selection process, in particular the alternative quotes available, the excesses applicable thereto, any special terms and the levels of broker commission, (excluding any commercially sensitive information).
6. At the Property Factor's own cost, rectify the damage to the paintwork caused by the flooding of the lift shaft.

Failure to comply with a PFEO may have serious consequences and may constitute an offence.

Right of 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.

Legal Member and Chairperson

7th March 2022