

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)

Reference number: FTS/HPC/LM/21/0290

Re: Property at 41 Lawrie Reilly Place, Edinburgh, EH7 5EU (“the Property”)

The Parties:

Ms Shelagh Young, 41 Lawrie Reilly Place, Edinburgh, EH7 5EU (“the Applicant” and “Homeowner”)

RMG Scotland Ltd, Unit 6, 95 Morrison Street, Glasgow, G5 8BE (“the Respondent” and “Property Factor”)

Tribunal Members:

Martin J. McAllister, Solicitor, (Legal Member)

**Mike Links, Chartered Surveyor, (Ordinary Member)
(the “tribunal”)**

This document should be read in conjunction with the First-tier Tribunal’s Decision of 2nd December 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 2nd December 2021, it proposed to make a Property Factor Enforcement Order (PFEO) as follows:

The Property Factor is to pay compensation of £600 to the Homeowner within twenty eight days of service of the Property Factor Enforcement Order.

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 11th December 2021.

The Applicant and the Respondent each communicated with the Tribunal on 13th December 2021 expressing views on the Decision and the proposed PFEO.

The Respondent

The Respondent stated that it did not wish to make any comments on the Decision and that it had already contacted the Applicant with regard to making an arrangement for payment to her of the sum referred to in the proposed PFEO.

The Applicant

The Applicant stated that she was grateful that compensation had been awarded by the Tribunal and that it was recognised that “RMG could have performed better.” In response to the proposed PFEO, the Applicant raised some matters which she wanted brought to the attention of the Tribunal.

1. The Applicant stated that she considered that the Decision wrongly stated that street lighting in the Development is paid for by the local authority.

The members of the Tribunal considered this and considered that the terms of the Decision accurately reflected the evidence which was given by the Respondent. The members of the Tribunal accepted that the Homeowner’s view on the matter went directly to the question of accuracy of the invoices and accounting information provided to her by the Respondent but did not consider that matter to be of any significant relevance in view of the Respondent’s admission that it had not provided accurate financial information and statements to the Applicant.

2. The Applicant stated that she considered it misleading that RMG Scotland was not a legal entity when it issued a written statement of services in 2017. She stated that she did not want to appeal on this particular point.

The members of the Tribunal considered that, in the particular circumstances of the case, the threshold of false and misleading information referred to in the Code had not been reached and stood by its Decision in this regard.

3. The Applicant noted that the concerns which she had about the lack of detailed financial information had been supported in the Decision but was concerned that she has not been provided with a budget for 2021 and has not been provided with quarterly invoices.

The members of the Tribunal noted that the Respondent had indicated that it would improve its financial reporting to homeowners both prior to and following upon the introduction of the new financial IT system which was referred to in evidence. It was considered that it was open to the Applicant to make an appropriate complaint to the Respondent if this did not occur and that, if she did not receive satisfaction in this regard, it was open to her to submit an application to the Tribunal.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following Property Factor Enforcement Order:

The Property Factor is to pay compensation of £600 to the Homeowner within twenty eight days of service of the Property Factor Enforcement Order.

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.



Martin J. McAllister
Legal Member

30th January 2022

