

Housing and Property Chamber

First-tier Tribunal for Scotland



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

PROPOSED PROPERTY FACTOR ENFORCEMENT ORDER: Property Factors (Scotland) Act 2011, section 19(2)

Case Reference Number: FTS/HPC/PF/17/0309

The Property:

Flat 2/1, 8 Whitehill Street, Glasgow, G31 2LJ

The Parties:-

Kevin Brown, Flat 3/2, 6 Bowmont Gardens, Glasgow G12 9LR

(“the Homeowner”)

and

Apex Property Factor, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH

(“the Factors”)

Tribunal Members:

Adrian Stalker (Chairman) and Robert Buchan (Ordinary Member)

This document should be read in conjunction with the tribunal’s decision of 12 February 2018

The tribunal proposes to make a Property Factor Enforcement Order in the following terms:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required, within 8 weeks, to take the following steps and produce confirmation that they have done so for consideration by, and to the satisfaction of, the Tribunal:-

1. To issue to the Homeowners at 8 Whitehill Street, Glasgow, on whose behalf they currently manage that property, an accurate and comprehensive Statement of Services, in writing, which complies with section 1 of the Code of Conduct for Property Factors, making reference where necessary to the relevant provisions within the Title Deeds for the Property which describe the Property Factor's responsibilities and duties, and setting out, in particular:

- a) The Factors' authority to Act;**
- b) The services provided by the Factors;**
- c) Their financial and charging arrangements;**
- d) Their communication arrangements, including their in-house complaints procedure;**
- e) A declaration of interests, if applicable;**
- f) A statement of how to end the arrangement;**

all in accordance with the detailed terms of section 1 of the Code.

2. To provide a copy of this decision to the other Homeowners at 8 Whitehill Street on whose behalf they currently manage that property, with a covering letter which contains the following statement:

“Reference is made to the attached decision of the First-tier tribunal for Scotland (Housing and Property Chamber) in respect of a complaint made by Kevin Brown, owner of Flat 2/1, 8 Whitehill Street, Glasgow. Your attention is drawn, in particular, to paragraphs 53 to 67, which concern the arrangements for insurance of 8 Whitehill Street.

The insurance previously arranged on your behalf by Apex Property Factor has not been arranged in accordance with the Title Deeds for 8 Whitehill Street, Glasgow, and does not cover the whole building of which your flat forms part. It covers only your flat and other flats in the building. There is no common insurance policy over the whole building comprising 2 and 8 Whitehill Street, Glasgow, in accordance with the Title Deeds. You may wish to consider the implications of this with the other Homeowners in the building and/or take advice as to how the insurance of the building should be arranged. Apart from the fact that it is a condition of the Title, a common insurance policy over a block in multiple ownership is normally preferred, because: (a) it ensures that the block is properly insured; (b) all of the owners are contributing to it; and (c) it is easier to ensure that the level of cover, including public liability is adequate. However, should you decide to proceed with an individual policy, it may be possible for you to arrange cheaper insurance of your own flat yourself, rather than doing so through the Factors. You should consider seeking advice from insurers, or brokers, as to the effect of taking out an individual policy (as

opposed to a common policy covering the whole building), in the event that the building is damaged.”

3. To provide the Homeowner with written confirmation of:

- a) any commission, administration fee, rebate or other payment or benefit the Factors have received from the company currently providing insurance cover and any financial or other interest that the Factors have with the insurance provider.
- b) Any other charge made by the Factors for providing the insurance.
- c) How and why the Factors appointed the current insurance provider, including any cases where the Factors decided not to obtain multiple quotes.

4. Prepare a schedule of proposed staff training to ensure that all of the Factors’ staff have detailed knowledge of the terms of the Code of Conduct and are fully aware of the Factors’ obligations: -

- a) to comply with the Code of Conduct;
- b) to comply with their duties as Property Factors particularly those duties in relation to arranging insurance;
- c) to ensure adequate customer relations and to communicate effectively;

including details of the provider of the training and timescales for the provision of delivery of the training.

5. To make a payment of £500 to the Homeowner, within two weeks of the date of this decision, by way of a personal payment and not by way of a credit to the Homeowner's account. Evidence of such payment should be provided to the Tribunal.

Section 19(2) and (3) of the 2011 Act provides as follows:

- (2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it 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 it.
- (3) If the First-tier Tribunal is 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 First-tier Tribunal must make a property factor enforcement order.

The intimation of the tribunal’s decision and this proposed Property Factor Enforcement Order to the parties should be taken as notice for the purposes of section 19(2)(a), and parties are hereby given notice that they should ensure that

any written representations which they wish to make under section 19(2)(b) reach the Tribunal Office by no later than 14 days after the date that the decision and this proposed Property Factor Enforcement Order are intimated to them. If no representations are received within that time, then it is likely that the tribunal will proceed to make a Property Factor Enforcement Order without seeking further representations from the parties.

Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence.

Adrian Stalker

Signed

Date 12 February 2018

Chairman