

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Proposal regarding the making of a Property Factor Enforcement Order:
Property Factors (Scotland) Act 2011 Section 19(2)**

Chamber Ref: FTS/HPC/PF/20/0399

1 Cleveden Drive, Kirklee, Glasgow, G12 0SB (“the House”)

The Parties:-

Mr David Kincaid, 1 Cleveden Drive, Kirklee, Glasgow, G12 0SB (“the Homeowner”)

Apex, 46 Eastside, Kirkintilloch, East Dunbartonshire G66 1QH (“the Factor”)

This document should be read in conjunction with the First-tier Tribunal’s Decision of the same date.

The First-tier Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”):

“The Factor is required to:

1. Refund to the Homeowner within 21 days of intimation to them of the PFEO the sum of £189.91 from their own funds, which sum constitutes the float of £120 paid by the Homeowner and the remaining balance of £69.91 on the Homeowner’s account; and
2. Pay to the Homeowner within 21 days of intimation to them of the PFEO the sum of £100 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Factor’s failure to comply with the Code of Conduct for Property Factors.

Section 19 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 First-tier Tribunal's Decision and this proposed PFEO 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 First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a PFEO without seeking further representations from the parties.

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
16th November 2020