



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

Property Factor Enforcement Order: Section 19(3) of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/PF/21/2091

Re: Property at 16 Battlefield Avenue, Glasgow, G42 9HP (“the Property”)

The Parties:

Mr John Kennedy, 24 Loughtoun Gardens, Cumbernauld, G67 4EZ (“the Homeowner”)

Cumming, Turner & Watt, 40 Carlton Place, Glasgow, G5 9TS (“the Property Factor”)

Tribunal Members:

Neil Kinnear (Legal Member) and Ahsan Khan (Ordinary Member)

DECISION

[1] The Tribunal has decided that it should make a Property Factor Enforcement Order (“PFEO”) in the terms originally proposed by it. The decision of the Tribunal is unanimous.

[2] The Tribunal proposed to make the following PFEO in its notice of proposal dated 6th January 2022:

“Within 28 days of intimation of the PFEO, the Property Factor must make payment to the Homeowner of the sum of £1,500.00 in respect of the Property Factor’s failure to comply with sections 1, 2.5, 3.3, 4.1, 4.3, 6.1, 6.9 and 7.1 of the Code of Conduct for Property Factors in compensation to reflect the anxiety and distress caused to the Homeowner by the Property Factor’s said failure and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings and also in respect of the sums claimed by the Property Factor from the Homeowner, much of which amount the Property Factor appears to accept should be waived by it as a result of its failings.”

[3] 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.

[4] Neither the Homeowner nor the Property Factor made representations under section 19(2)(b) of the Act.

[5] The Tribunal has now confirmed its decision made in terms of section 19(1)(a) of the Act, and it is appropriate that it makes a PFEO.

[7] The Tribunal hereby makes the following PFEO:

“Within 28 days of intimation of the PFEO, the Property Factor must make payment to the Homeowner of the sum of £1,500.00 in respect of the Property Factor’s failure to comply with sections 1, 2.5, 3.3, 4.1, 4.3, 6.1, 6.9 and 7.1 of the Code of Conduct for Property Factors in compensation to reflect the anxiety and distress caused to the Homeowner by the Property Factor’s said failure and in respect of the Homeowner’s time and inconvenience in dealing with the complaints process and Tribunal proceedings and also in respect of the sums claimed by the Property Factor from the Homeowner, much of which amount the Property Factor appears to accept should be waived by it as a result of its failings. 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 Tribunal (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.

02 February 2022

Legal Member

Date