

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/LM/21/1767

The Parties:-

Stephen McLarty, 11H North Frederick Path, Hanover Court, Glasgow, G1 2BG (“the Homeowner”)

Speirs Gumley Property Management, Red Tree Magenta, 270 Glasgow Road, Glasgow, G72 1UZ (“the Property Factor”)

The Tribunal:-

Melanie Barbour (Legal Member)
Elaine Munroe (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of the 27 February 2022.

Decision

The Tribunal has decided that it should make a Property Factor Enforcement Order (“PFEO”). The decision of the Tribunal is unanimous.

Reasons for Decision

In the Tribunal’s decision of 27 February 2022, it proposed to make a PFEO as follows:

Within a period of two months from the date of the PFEO the Factor must:

- (1) From their own funds credit the Homeowner’s common charges account with the sum of £300.00;

- (2) provide the Homeowner with copies of the following invoices and available records regarding:-
 - a. the works carried out to the flooring in block 11 in 2011 by Ian McDonald Flooring; and
 - b. the removal of the four trees constituting the supplementary grounds works carried out in 2020; and
- (3) Provide to the Tribunal written confirmation that items (1) and (2) have been completed.

The Tribunal indicated the 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 Tribunal's decision was intimated to parties on 9 March 2022.

By email dated 23 March 2022 the property factor made written representations in the following terms:-

"it is unlikely we will be able to provide a copy invoice relating to Yr.2011, but we will copy all parties to our eventual replies.

As detailed within the Tribunal's Decision at Point 62. the Tribunal confirm, 'We consider that the Property Factor requires to pay compensation to the Homeowner of £300 for the inconvenience caused to the Homeowner in not providing a proper and timeous response to complaints 1 and 2 of the Homeowners complaint.' It would be my contention that whilst in respect of 'Complaint 1', Point 49. of the decision highlights a breach under 6.3 of the code, the Tribunal accept it does, 'not consider that it was a significant breach given the works were carried out before the code came into force and there is no evidence that the information (was) requested by the Homeowner until 8 years after the works were carried out.' This was a simple error where we unintentionally gave the client either insufficient or inaccurate information following a lengthy passage of time, in the absence of any complaint, in writing, between the period 2011 - 2019.

In respect of 'Complaint 2', the Tribunal's decision is noted at Point 56, finding that, 'there was a breach of section 6.3 of the code because we note that the explanation for the further (tree) works does not appear to have been provided to the Homeowner before the hearing on 21 February 2022'. At Point 57. The Tribunal highlight this as a 'nominal' breach.

Consequently, I feel this award is disproportionate to the errors detailed above. The award of the Tribunal is equivalent to at least 8 quarters management fee (over 2 years) and in that period, we have undertaken a great many administrative tasks and work to arrange the maintenance, repair and 2 upkeep of Hanover Court, with some of those successful projects being discussed during the course of the recent Tribunal hearing. I would therefore appeal to the Tribunal to review downwards, the level of their award to our client, in respect of the breaches aforementioned."

The homeowner had not made any written representations in respect of the proposed property factor enforcement order or the correspondence received from the property factor.

The tribunal considered the further correspondence from the factor. The tribunal accepts the submission by the factor regarding that they may not be able to provide correspondence from 2011. The PFEO has been varied to reflect this consideration.

In terms of the level of compensation, the tribunal did not consider the breaches to be serious and that is noted in our decision. There is more than one breach however, and we consider that this complaint also requires to be set in the context of the homeowner being a long standing homeowner, and one who had (it appeared to the tribunal) paid his factoring fees and charges during the majority of his ownership, but had become dissatisfied with the factors over the last few years. Any award of compensation should not therefore be nominal. The breaches are not disputed by the factor, the level of compensation is. The factors consider that it is too high compared to the management fee charged. Giving consideration to the submission by the factor in this regard, and considering further our decision that the breaches were not found to be serious, the tribunal considers that the award of compensation should be varied to £200.

The tribunal considered that it should vary the terms of the PFEO.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

Within a period of two months from the date of the PFEO the Factor must:

- (1) From their own funds credit the Homeowner's common charges account with the sum of £200.00;
- (2) provide the Homeowner with all available copies of the following invoices and records regarding:-
 - a. the works carried out to the flooring in block 11 in 2011 by Ian McDonald Flooring; and
 - b. the removal of the four trees constituting the supplementary grounds works carried out in 2020; and
- (3) Provide to the Tribunal written confirmation that items (1) and (2) have been completed.

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

Melanie Barbour

Legal Member and Chair

19 April 2022

Date