

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision issued under s19 of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/21/0889

The Property: 21 Florida Drive, Mount Florida, Glasgow, G42 9DN (“The Property”)

The Parties:-

Andrew Bussey and Laura Bussey, residing together at 21 Florida Drive, Mount Florida, Glasgow, G42 9DN (“the applicants”)

Lowther Homes Ltd, a company incorporated under the Companies Acts (SC 402836) having its Registered office at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL (“The property factor”)

Because the property factor has breached the code of conduct for property factors and has failed to carry out its duties in terms of s.17 of the Property Factors (Scotland) Act 2011, the tribunal unanimously decides to issue a Property Factor Enforcement Order (“PFEO”).

Committee Members

Paul Doyle	Legal Member
David Godfrey	Ordinary Member

Reasons for decision

1 By application dated 6 April 2021, the applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of their complaint that the property factor has breached the code of conduct imposed by Section 14 of the 2011 Act & that the property factor has failed to comply with the property factor’s duties.

2 The application stated that the applicant considered that the respondent failed to comply with Sections 2.1, 2.5, and 6.1 of the code of conduct for property factors and breached the property factor’s duties.

3. On 20 August 2021 the First-tier Tribunal for Scotland (Housing and Property Chamber) decided that the property factor has breached the code of

conduct for property factors and has failed to carry out its duties in terms of s.17 of the Property Factors (Scotland) Act 2011, the tribunal notified parties of the terms of the proposed Property Factor Enforcement Order (“PFEO”) and invited representations from parties about the terms of the proposed PFEO.

4. Section 19 of the Property Factors (Scotland) Act 2011 contains the following:

(2) In any case where the committee proposes to make a property factor enforcement order, they 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 them.

(3) If the committee are 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 committee must make a property factor enforcement order.

(4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal.

5. None of the parties has made any representations in response to the tribunal's decision dated 20 August 2021. The tribunal accordingly issues a PFEO in the terms proposed in the decision dated 20 August 2021.

PROPERTY FACTOR ENFORCEMENT ORDER

6. The tribunal makes the following property factor enforcement order (PFEO)

Within 28 days of the date of service on the respondent of this property factor enforcement order the respondent must pay the applicant £3,500.00 representing a proportion of the cost of remedial works made necessary to the interior of the homeowners property by a prolonged period of water ingress caused by damage to the roof of the property.

7. Failure to comply with a PFEO 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

7 October 2021

Legal Member