

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision: Property Factors (Scotland) Act 2011 (“the 2011 Act”), Section 23(1)

Chamber Ref: FTS/HPC/PF/19/3983

Flat 1/1, 44 Pendeen Crescent, Glasgow, G33 4TL
(“The Property”)

The Parties:-

Mrs Lorraine Todd, Flat 1/1, 44 Pendeen Crescent, Glasgow, G33 4TL
(“the Applicant”)

Cumming, Turner and Watt, 40 Carlton Place, Glasgow, G5 9TS
(“the Respondent”)

Tribunal Members:

Ms. Susanne L M Tanner Q.C. (Legal Member)

Mr. Kingsley Bruce (Ordinary Member)

DECISION

1. The tribunal decided that the Property Factor has failed to comply with a Property Factor Enforcement Order (“PFEO”) made by the tribunal on 4 February 2021.
2. The tribunal will serve notice of the failure on the Scottish Ministers.
3. The tribunal’s administration will report the Property Factor to Police Scotland for investigation of a potential criminal offence in terms of Section 24 of the 2011 Act.
4. The decision of the tribunal is unanimous.

STATEMENT OF REASONS

Property Factor Enforcement Order (“PFEO”)

1. The tribunal made a PFEO on 4 February 2021 in terms of Section 19(3) of the 2011 Act, requiring the Respondent to make a specified payment for the Applicant and execute a specified action, within the period of 30 days of intimation of the PFEO, as follows:
 - i. *“3.1. Make payment to the Applicant of the sum of FOUR HUNDRED AND TWENTY FIVE POUNDS (£425.00) STERLING in cleared funds (and not by credit to the Applicant’s factoring account); and*
 - ii. *3.2. Produce and exhibit to the tribunal evidence of said payment.”*
2. The PFEO was intimated to parties on 5 February 2021.
3. The period for the payment to be made and the action to be executed expired on 7 March 2021.

Representations from parties

4. On 12 March 2021, the Applicant sent an email to the tribunal’s administration in the following terms:

*“Hi
Further to your email of 5th February, I haven’t yet heard from the Factor.”*
5. On 12 March 2021, the tribunal’s administration sent a letter to the Respondent and provided a pro forma letter for completion, relative to compliance or otherwise with the terms of the PFEO; and invited the Respondent to submit any requests to vary or revoke the PFEO. The letter to the Respondent was sent on 12 March 2021 via email and also by Recorded Delivery, which was delivered on 16 March 2021.
6. No written submissions were received from the Respondent.
7. No further written submissions were received from the Applicant.

Decision in terms of Section 23 of the 2011 Act

8. The PFEO was intimated to parties on 5 February 2021. The period for payment to be made and the action to be executed was 7 March 2021. The PFEO has not been varied. The tribunal is satisfied that the 30 day period has ended, as required by Section 23(3)(a) of the 2011 Act.
9. The tribunal considered the terms of Section 23(3)(b) of the 2011 Act.
10. The tribunal is not satisfied that the Property Factor is unable to comply with the order because of a lack of necessary rights despite having taken reasonable steps for the purposes of acquiring those rights, nor that any action required by the order is likely to endanger any person, in terms of Section 23(3)(b) of the 2011 Act, no submissions or evidence having been submitted by the Property Factor to that effect.
11. As the tribunal is satisfied that the requirements of Section 23(3) of the 2011 Act are met, it is open to the tribunal to decide whether the Property Factor has failed to comply with the PFEO in terms of Section 23(1) of the 2011 Act.
12. The tribunal considered the orders in the PFEO, the Applicant's submissions and the Respondent's failure to respond to the correspondence regarding compliance or otherwise with the PFEO, and decided as follows:

The Respondent has failed to comply with the PFEO orders 3.1 and 3.2.

Notification to the Scottish Ministers

13. The tribunal must serve notice of the failure to comply on the Scottish Ministers, in accordance with Section 23(2) of the 2011 Act.

Report to Police Scotland

14. The tribunal will report the Property Factor to Police Scotland for investigation as to a potential criminal offence in terms of Section 24 of the 2011 Act.

Appeals

15. **A homeowner or property factor 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.

Ms. Susanne L. M. Tanner Q.C.
Legal Member

31 March 2021