

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of Section 23(1) of Property Factors (Scotland) Act 2011 (“the Act”)

Reference number: FTS/HPC/PF/19/1747 (“the Application”)

Re: Flatted Property at 173C, Greenrigg Road, Cumbernauld, Glasgow, G67 2QD (“the Property”)

The Parties:

Mrs. Zainab Kamara, the Homeowner, residing 4, Upton Close, Bexley, Kent, DA5 1HJ (“the Applicant”), and

Apex Property Factor Limited, the Factor, having a place of business at 46, Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH (“the Respondent”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) in terms of Section 23(1) of the Act determines that the Respondent has failed to comply with the PFEO.

Background

1. By application received by the First-tier Tribunal for Scotland (Housing and Property Chamber) between 5 June 2019 and 8 July 2019 (“the Application”) the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondents had failed to comply with Section 1 D at m and n, Section 2 at 2.5, Section 5 at 5.5 and 5.2 and Section 7 at 7.1 and 7.2 of the Property Factor Code of Conduct (“the Code”) and had failed to comply with its property factor duties. The Application was referred to the Tribunal and a Hearing was fixed for 18 September 2019 at the Glasgow Tribunal Centre, 20, York Street, Glasgow G2 8GT following which the Tribunal determined that the Respondent had failed to comply with the Section 14 duty in terms of the Act in respect of compliance with the Property Factor Code of Conduct (“the Code”) and

had breached Sections 2 at 2.5, Section 5 at 5.5 and 5.2 and Section 7 at 7.1 and 7.2 of the Code and had failed to comply with its property factor duties but had not breached Section 1D at m and n of the Code.

PFEO

2. The Tribunal imposed the following Property Factor Enforcement Order ("PFEO"):
"No later than 31 December 2019 the Factor shall pay to the Applicant the sum of £1,500.00 to compensate her in respect of the effect of its conduct and in respect of inconvenience caused to her by its failures and confirm to the Tribunal that it has done so;

No later than 31 December 2019 the Factor shall issue to the Applicant and copy to the Tribunal, evidence of the common building insurance policies, if any, for the Property which has been in place from March 2015 to 11 April 2019 and that to detail the basis upon which the Applicant's share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy and

In the event that the Factor cannot or does not comply with paragraph 2 above, no later than 31 January 2020 the Factor shall refund to the Applicant all of the insurance premiums paid by her to it and confirm to the Tribunal that it has done so."

Decision of Tribunal and Reasons for Decision

3. At the expiry of the PFEO, the Applicant advised the Tribunal that the Respondent had not complied with it. No communication was received from the Respondent.

4. The Tribunal had regard to the terms of Section 23 (1) of the Act which states:
"It is for the First-tier Tribunal to decide whether a property factor has failed to comply with a property factor enforcement order made by the First-tier Tribunal."

and

to the terms of Section 23(3) of the Act which states:

"The First-tier Tribunal may not decide that a property factor has failed to comply with a property factor enforcement order (a) unless the period within which the order requires any work to be executed has ended, or (b) if the First-tier Tribunal is satisfied, on the submission of the property factor or otherwise (i) that the property factor is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or (ii) that any action required by the order is likely to endanger any person."

5. The Tribunal, having no reason to dispute the Applicant's advice to it that the PFEO has not been complied with, and, having no grounds before it to engage Section 23(3) of the Act, determines, in terms of Section 23(1) of the Act that the Respondent has failed to comply with the PFEO.

6. This decision is unanimous.

7. In terms of Section 23(2) the Tribunal must serve notice of this failure on the Scottish Ministers.

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.

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

Karen Moore, Chairperson

Date 25 February 2020