

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Compliance Decision: Property Factors (Scotland) Act 2011, Sections 20 and 23

Case Reference Number: FTS/HPC/PF/17/0309

The Property:

Flat 2/1, 8 Whitehill Street, Glasgow, G31 2LJ

The Parties:-

Kevin Brown, Flat 3/2, 6 Bowmont Gardens, Glasgow G12 9LR

("the Homeowner")

and

Apex Property Factor, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH

("the Factors")

Tribunal Members:

Adrian Stalker (Chairman) and Robert Buchan (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Factors have failed to comply with the terms of the Property Factor Enforcement Order ("PFEO") issued on 11 May 2018, and that the Tribunal will serve notice of the failure on the Scottish Ministers, in terms of section 23(2) of the Property Factor (Scotland) Act 2011.

Reasons for Decision

1. By a decision dated 12 February 2018, the Tribunal determined that the Factors had breached their duties in terms of section 17(1)(b) of the Property Factor (Scotland) Act 2011 ("the 2011 Act") in that they had failed to comply with the Code of Conduct for Property Factors as required by section 14(5) of the 2011 Act. It also found that the Factors had failed in their property factor duties in terms of section 17(1)(a) of that Act as described in the said decision.

2. As required by section 19(2) of the Act, the Tribunal issued a Notice of a Proposed PFEO. It did so on the same date as the said decision and invited representations thereon within 14 days of the Notice being received by the parties. It then issued a final PFEO on 11 May 2018.
3. The PFEO stated:

In terms of section 20(1) of the Property Factors (Scotland) Act 2011, the Factors are required, within 8 weeks, to take the following steps and produce confirmation that they have done so for consideration by, and to the satisfaction of, the Tribunal:-

1. To issue to the Homeowners at 8 Whitehill Street, Glasgow, on whose behalf they currently manage that property, an accurate and comprehensive Statement of Services, in writing, which complies with section 1 of the Code of Conduct for Property Factors, making reference where necessary to the relevant provisions within the Title Deeds for the Property which describe the Property Factor's responsibilities and duties, and setting out, in particular:

- a) The Factors' authority to Act;**
- b) The services provided by the Factors;**
- c) Their financial and charging arrangements;**
- d) Their communication arrangements, including their in-house complaints procedure;**
- e) A declaration of interests, if applicable;**
- f) A statement of how to end the arrangement;**

all in accordance with the detailed terms of section 1 of the Code.

2. To provide a copy of this decision to the other Homeowners at 8 Whitehill Street on whose behalf they currently manage that property, with a covering letter which contains the following statement:

"Reference is made to the attached decision of the First-tier tribunal for Scotland (Housing and Property Chamber) in respect of a complaint made by Kevin Brown, owner of Flat 2/1, 8 Whitehill Street, Glasgow. Your attention is drawn, in particular, to paragraphs 53 to 67, which concern the arrangements for insurance of 8 Whitehill Street.

The insurance previously arranged on your behalf by Apex Property Factor has not been arranged in

accordance with the Title Deeds for 8 Whitehill Street, Glasgow, and does not cover the whole building of which your flat forms part. It covers only your flat and other flats in the building. There is no common insurance policy over the whole building comprising 2 and 8 Whitehill Street, Glasgow, in accordance with the Title Deeds. You may wish to consider the implications of this with the other Homeowners in the building and/or take advice as to how the insurance of the building should be arranged. Apart from the fact that it is a condition of the Title, a common insurance policy over a block in multiple ownership is normally preferred, because: (a) it ensures that the block is properly insured; (b) all of the owners are contributing to it; and (c) it is easier to ensure that the level of cover, including public liability is adequate. However, should you decide to proceed with an individual policy, it may be possible for you to arrange cheaper insurance of your own flat yourself, rather than doing so through the Factors. You should consider seeking advice from insurers, or brokers, as to the effect of taking out an individual policy (as opposed to a common policy covering the whole building), in the event that the building is damaged.”

3. To provide the Homeowner with written confirmation of:

- a) any commission, administration fee, rebate or other payment or benefit the Factors have received from the company currently providing insurance cover and any financial or other interest that the Factors have with the insurance provider.
- b) Any other charge made by the Factors for providing the insurance.
- c) How and why the Factors appointed the current insurance provider, including any cases where the Factors decided not to obtain multiple quotes.

4. Prepare a schedule of proposed staff training to ensure that all of the Factors’ staff have detailed knowledge of the terms of the Code of Conduct and are fully aware of the Factors’ obligations: -

- a) to comply with the Code of Conduct;
- b) to comply with their duties as Property Factors particularly those duties in relation to arranging insurance;
- c) to ensure adequate customer relations and to communicate effectively;

including details of the provider of the training and timescales for the provision of delivery of the training.

5. To make a payment of £500 to the Homeowner, within two weeks of the date of this decision, by way of a personal payment and not by way of a credit to the Homeowner's account. Evidence of such payment should be provided to the Tribunal.

4. Since the PFEO was issued, the Tribunal has received no contact from the Factors. It has received emails from the Homeowner. His email of 2 June attached a letter that has been issued to him (addressed to "Homeowner"). This includes a paragraph which corresponds to the second paragraph in the statement required by point 2 of the PFEO (beginning: "The insurance previously arranged"). The letter does not contain the first paragraph that statement (beginning: "Reference is made"). The letter does not bear to enclose a copy of the decision of the Tribunal dated 12 February 2018.
5. The Homeowner's detailed email of 9 July explains that as far as he is aware, no further action has been taken by the Factors to comply with the remaining parts of the PFEO. In particular, he has not received the payment of sum of £500, as is required by point 5 of the PFEO.
6. In terms of Section 23 of the 2011 Act it is for the Tribunal to decide whether a Property Factor has failed to comply with a PFEO. On the basis of the information submitted by the Homeowner and in the absence of any further response from the Factors, the Tribunal is satisfied, in the foregoing circumstances, that none of the five points in PFEO has been complied with. Accordingly, it is required by section 23(2) of the 2011 to serve notice of the failure to comply, on the Scottish Ministers.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014, 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.

Adrian Stalker

Legal Member and Chair

21 August 2018

Date