

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision on Homeowners Application – Property Factors (Scotland) Act 2011 section 19 (1) (a)

Chamber Ref: FTS/HPC/PF/17/0255

**43 North Anderson Drive, Aberdeen, AB16 6HP
("the property")**

The Parties:-

**MRS ANGELA COOPER, 86 Summerhill Crescent, Aberdeen, AB15 6ED
("the Applicant")**

**ABERDEEN CITY COUNCIL, Communities, Housing & Infrastructure, Marischal College
Business Hub, 11 Bridge Street, Aberdeen, AB10 1AB
("the Respondent")**

Tribunal Members:

Graham Harding (Legal Member)
Mike Scott (Ordinary Member)

DECISION

The First Tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") having made such enquiries as it saw fit determined to vary the Proposed Property Factor Enforcement Order ("PFEО") dated 8 March 2018 by adding the words:- "(subject to any appeal lodged in terms of S5(4)(b) of the Tenements (Scotland) Act 2004)" at the end of Clause 2(iii)

Background

1. Following a hearing at Ferryhill Community Centre, Aberdeen on 20 February 2018 the tribunal determined unanimously that in relation to the Applicant's application the Respondent had not complied with Sections 1,2,3 and 6 of the Code of Conduct for Property Factors ("the Code").

2. The tribunal issued its decision and Proposed PFEO on 8 March 2018 in the following terms:- Within 28 days of the communication of the PFEO to the Respondent, the Respondent must:-
 - (i) Pay compensation to the Applicant in the sum of ONE HUNDRED AND FIFTY POUNDS (£150) in respect of the time and inconvenience suffered by the Applicant occasioned by the Respondent's failure to comply with its duties under the code.
 - (ii) Provide a draft Statement of Services for approval by the owners of the properties in the block in which the Applicant's property is located.

Within a further 28 days thereafter provide the Applicant with:-

- (iii) a final Statement of Services compliant with the Code.
 - (iv) Provide documentary evidence of compliance with the above Orders to the tribunal within 7 days of having done so.
3. Following the tribunal's decision and proposed PFEO being sent to the parties the tribunal received written representations from the Respondent's solicitor Mr Craig Donald by letter dated 26 March 2018.
4. Mr Donald stated that as his clients were intending to seek a Scheme Decision under the Tenements (Scotland) Act 2004 to approve the Respondent's Statement of Services and as any owner not in favour of the decision could challenge it in the Sheriff Court the PFEO as presently worded did not allow for such a challenge. The Respondent therefore proposed that the wording of Clause 2(iii) of the PFEO be amended by the addition at the end thereof the words:- "(subject to any appeal lodged in terms of S5(4)(b) of the Tenements (Scotland) Act 2004)."
5. The tribunal sent a copy of the Respondent's representations to the Applicant. In an email dated 3 April 2018 the Applicant did not oppose the variation sought by the Respondent.
6. Having considered the parties representations the tribunal unanimously agreed to vary the PFEO in the terms sought by the Respondent.

Reason for Decision

7. In all the circumstances it appeared to the tribunal that the PFEO would require to be varied to take account of an owner marking an appeal to the Sheriff Court if not satisfied with the terms of the Scheme Decision.
8. The tribunal therefore varied the PFEO accordingly.

APPEALS

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.

Graham Harding / Legal Member

13 April 2018 Date