

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision: Property Factors (Scotland) Act 2011: Section 19(3)

Chamber Ref: FTS/HPC/PF/20/1368

**Ground Flat, 76 Clydesdale Road, Mossend, Bellshill, Lanarkshire ML4 2QL
("The Property")**

The Parties:-

**Mr Fergus Macleod, 76 Clydesdale Road, Mossend, Bellshill, Lanarkshire ML4 2QL
("the Homeowner" and "Applicant")**

**Apex Property Factor Limited, having its registered office at 46 Eastside, Kirkintilloch, East Dunbartonshire G66 1QH
("the Property Factor" and "Respondent")**

**Tribunal Members:
Martin J. McAllister, Solicitor, (Legal Member)
Mary Lyden, (Ordinary Member)
(the "tribunal")**

Introduction

In this Note the Property Factors (Scotland) Act 2011 is referred to as "the Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as "the Rules," the First-tier Tribunal for Scotland (Housing and Property Chamber) is referred to as "the Tribunal" and Apex Property Factor Limited is referred to as Apex.

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Respondent had complied with the Code of Conduct for Property Factors ("the Code"), and with its duties as Property Factors, determined that the Respondent had failed to comply with the Code and with

its duties as Property Factors. It makes a property factor enforcement order, in the following terms:

In terms of section 20(1) (b) of the Property Factors (Scotland) Act 2011, the Respondent is required to make the following payments to the Applicant:

- (a) Seven Thousand One Hundred and Eighteen Pounds, twenty nine pence (£7,118.29);**
- (b) Two Hundred and Fifty Pounds (£250).**

Payments should be made within 14 days of intimation of the property factor enforcement order. Evidence of such payment should be provided to the Tribunal.

Background

1. By an application to the First-tier tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) dated 22nd May 2020, the Applicant sought a determination of whether the Factors had failed: (a) under section 14(5) of the Property Factors (Scotland) Act 2011 (“the Act”), to comply with the Code; and (b) to perform the property factor duties, as defined in section 17(5) of the Act, in respect of their factoring of the property. On 17th August 2020, a Convener having delegated powers under section 18A of the Act made a decision, under section 18(1)(a), to refer the application to a tribunal for determination. On 13th October a Hearing was held at which there was appearance by the Applicant but none by the Respondent. The tribunal’s Decision dated 15th October should be read in conjunction with this Decision.

2. In its Decision dated 15th October 2020, the tribunal determined that Apex had failed to comply with the Code and with the property factors duties. It determined that a property factor enforcement order be made. A proposed property factor enforcement order was intimated to both parties. No representations were received. The terms of the proposed property factor enforcement order were:

The Respondent is required to make the following payments to the Applicant:

- (a) Seven Thousand One Hundred and Eighteen Pounds, twenty nine pence (£7,118.29);**
- (b) Two Hundred and Fifty Pounds (£250).**

Payments should be made within 14 days of intimation of the property factor enforcement order. Evidence of such payment should be provided to the Tribunal.

3. The Property Factor was removed from the Property Factor Register under section 8(1) of the Act. The effective date of removal was 10th January 2020.
4. A check with Companies House confirmed that Apex Property Factor Limited is still registered as a limited company.
5. The tribunal determined that the property factor has failed to carry out the property factor's duties and has failed to comply with the Code.
6. The tribunal had regard to Section 19(3) of the Act and made a property factor enforcement order in terms previously stated.

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.

Martin J. McAllister,
Legal Member of the
First-tier Tribunal for Scotland
24th November 2020