

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 19(3)

Chamber Ref: FTS/HPC/PF/19/2093

Property at 20/7 Coburg Street, Edinburgh, EH6 6HL
(“The Property”)

The Parties:-

Carol Black, 20/7 Coburg Street, Edinburgh, EH6 6HL
(“the Applicant”)

James Gibb Property Management Limited, 4 Atholl Place, Edinburgh, EH3 8HT
(“the Respondent”)

Tribunal Members:
Ms Susanne L M Tanner QC (Legal Member)
Mr David Godfrey (Ordinary Member)

DECISION

1. The tribunal decided to make a Property Factor Enforcement Order (“PFEO”)
2. The decision of the tribunal is unanimous.

STATEMENT OF REASONS

1. On 3 February 2021, the tribunal made a decision in terms of Section 19(1) of the 2011 Act that the Respondent had failed to carry out its property factor’s duties and had failed to comply with Code of Conduct for Property Factors, Sections 2.5, 6.9 and 7.1. A proposed Property Factor Enforcement Order (“PFEO”) of the same date was issued to parties.

2. Section 19 of the 2011 Act provides as follows:

“... (2) In any case where the First-tier tribunal proposes to make a property factor enforcement order, it must before doing so-

(a) give notice of the proposal to the property factor, and

(b) allow parties an opportunity to make representations to it.

(3) If the First-tier tribunal is satisfied, after taking account of any (representations made under subsection (2)(b), that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order. ...”

3. On 3 February 2021, the tribunal’s original decision and proposed PFEO were issued to both parties. Parties were given notice that they should ensure that any written representations which they wished to make under section 19(2)(b) reached the tribunal by no later than 14 days after the date that the decision and the proposed PFEO was sent to them by the tribunal. Parties were advised that if no representations were received within that timescale, then the tribunal would be likely to proceed to make a PFEO without seeking further representations from the parties.
4. Following a review at the instance of the Applicant dated 18 February 2021, in relation to the tribunal’s decision dated 3 February 2021, the tribunal corrected a number of clerical mistakes and other accidental slips or omissions contained in its decision and sent notification of the amended decision to all parties; made necessary amendment to the decision published on the tribunal’s website; and thereafter, determined that the Applicant’s application for review was wholly without merit and refused the application. Reference is made to the terms of the duly amended decision dated 2 March 2021.
5. Neither party submitted any written representations in response to the proposed PFEO in terms of Section 19(2)(b) within the stipulated time period.
6. There being no representations to take into account, the tribunal is satisfied that the Respondent has failed to carry out its property factor’s duties and to ensure compliance with the Code of Conduct, therefore the tribunal must make a PFEO in terms of Section 19(3) of the 2011 Act. A PFEO is attached to this Decision and should be read in conjunction with it.

Appeals

7. 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.



Ms. Susanne L M Tanner QC
Legal Member and Chair

13 April 2021