

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION in respect of an application under section 19 (1)(b) of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber Reference: HOHP/PF/16/0100

The Parties:-

Miss Christine Wilson, residing at 7/3 Waverley Park, Abbeyhill, Edinburgh, EH8 8EU ("the Homeowner")

And

Charles White Limited, Citypoint 65, Haymarket Terrace, Edinburgh, EH12 5HD ("The Property Factor")

The Property:-

Subjects at 7/3, Waverley Park (and surrounding development), Abbeyhill, Edinburgh, EH8 8EW

Tribunal Members:

Mr James Bauld (Legal Member)
Ms Ann Macdonald (Ordinary Member)

Decision

The Tribunal determined that a Property Factor Enforcement Order should be made.

Reasons for Decision

The Tribunal issued a decision dated 31 March 2017 following upon a hearing which took place on 2 February 2017.

In that decision, the Tribunal determined that the Property Factor had failed to comply with certain duties arising from the Property Factors Code of Conduct ("The Code"). The Tribunal provided the parties with a copy of a proposed Property Factor Enforcement Order ("PFEO"). The Tribunal invited parties to make further representations to the Tribunal in terms of the relevant provisions of the Property Factors (Scotland) Act 2011.

The decision was issued to the parties by letters dated 3 April 2017. The Tribunal have subsequently received representations from the Property Factor. No representations were received from the homeowner.

The Property Factor, in the representations, indicated they had no grievance in respect of the proposed sanction set out in the proposed PFEO. Accordingly they were content that the Tribunal proceeded to make the relevant PFEO in those terms.

However, the Property Factor raised representations regarding certain parts of the original decision made by the Tribunal. In particular the Property Factor was concerned with regard to certain

comments made in paragraph 20 of the original decision. The Tribunal considered the terms of the representation made by the Property Factor and determined that the fourth and fifth sentences in paragraph 20 of the original decision should be treated as deleted from the original decision. Accordingly the Tribunal decided that the words

"the Tribunal took the view that the charge of £40 for additional costs of closing accounts and correspondence with new factor was not eligible to be charged because it was not included in the title deeds and the written statement of services did not advise that the factor was operated by custom and practice. The Tribunal also found that the communication from the factor was not deliberately misleading however it was not clear and did mislead the applicant."

should be deleted from the original decision.

Subject to that deletion, the Tribunal confirm all parts of the original decision and have now determined to make a Property Factor Enforcement Order in the following terms;

"The Tribunal order that the Property Factor makes a payment to the home owner of the sum of £100 within 4 weeks of the date of this decision."

The Property Factor Enforcement Order is set out in a separate document to this decision. The decision of the Tribunal is unanimous.

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.

J Bauld

James Bauld, Chairperson

Date

25 May 2017

Housing and Property Chamber First-tier Tribunal for Scotland



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

Property Factor Enforcement Order

made in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016

Chamber Ref: HOHP/PF/16/0100

The Parties:-

Miss Christine Wilson residing at 7/3 Waverley Park, Abbeyhill, Edinburgh, EH8 8EU ("the homeowner")

And

Charles White Ltd. Citypoint 65, Haymarket Terrace, Edinburgh, EH12 5HD ("the property factors")

The Property:-

Subjects at 7/3, Waverley Park (and surrounding development), Abbeyhill, Edinburgh, EH8 8EW

Tribunal Members

Mr James Bauld (Legal Member)

Ms Ann Macdonald (Ordinary Member)

This document should be read in conjunction with the tribunal's decision under section 19(1)(b) of the Act on the same date.

The Tribunal makes the following Property Factor Enforcement Order

"The Tribunal order that the property factor makes a payment to the homeowner of the sum of £100 within four weeks of the date of this decision."

Review of tribunal's decision

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.

Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence.

J Bauld

25 May 2017

James Bauld, chairperson

L Gray

Witness

7 West George Street, Glasgow, G2 1BA

COURT ADMINISTRATOR.