

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under section 17 of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber Ref: FTS/HPC/LM/21/0858

Re: Property at 42 Dykebar Avenue, Knightswood, Glasgow, G13 3HF (“the Property”)

Parties:

Lorraine Gray 42 Dykebar Avenue, Knightswood, G13 3HF (“the Applicant)

Lowther, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL (“the respondent”)

Tribunal Members:

Mr Jim Bauld (Legal member)

Mr Robert Buchan (Ordinary Member)

DECISION

The Tribunal decides not to issue a Property Factor Enforcement Order.

The decision is unanimous.

Background

1. By application dated 11 April 2021, the homeowner applied to the Tribunal for a determination on whether the factor had failed to comply with various sections of the Code of Conduct for Property Factors imposed by section 14 of the Property Factors (Scotland) Act 2011 and to carry out the property factor duties in terms of section 17 (1) (a) of the Property Factors (Scotland) Act 2011 (hereafter referred to as “the 2011 Act”).
2. On 4 May 2021 the application was accepted by the tribunal and referred for determination by the tribunal.
3. A hearing was set to take place on 9 July 2021 and appropriate intimation of that hearing was given to the parties.



Hearing

4. The hearing took place before the Tribunal on 9 July 2021 by means of a telephone case conference. After the hearing was concluded, the tribunal issued a decision together with a draft of its proposed property factor enforcement order (“PFEO”)
5. The terms of the proposed PFEO were as follows
 - ***The Property Factor is ordered to effect the repairs to or replacement of the boundary fence between the property and the adjacent property at 40 Dykebar Avenue as set out in their letter dated 5 March 2020 and to effect these repairs or replacement at their sole expense without any charge being levied against the applicant and that all such repairs or replacement are completed no later than 30 September 2021***
 - ***To refund to the applicant all factoring/management charges levied in all bills remitted to the applicant from 1 February 2020 until the date of this decision, such refund to be effected by direct payment to the applicant of said sums and not by a credit being applied to her account within 28 days of the date of this Decision.***
 - ***To make payment of FIVE HUNDRED POUNDS (£500.00) to the Homeowner within 28 days of the date of this Decision.***
6. Parties were invited to make representations to the tribunal in respect of this proposed order in terms of section 19 (2) of the 2011 Act.

Subsequent representations

7. Subsequent to the issue of the proposed PFEO the respondent sent an email dated 3 August 2021 to the tribunal administration confirming that they would comply with the terms of the draft order and would make appropriate payments to the homeowner and would renew the fence at no cost to her. By emails dated 5 August 2021, 11 August 2021 and 15 September 2021, the homeowner confirmed that she had received the payments set out in the proposed PFEO and that a new fence had been installed at her property. She confirmed that the respondents were fully compliant with the terms of the proposed PFEO



8. In the circumstances the tribunal takes the view that issuing a final PFEO would appear to be unnecessary and accordingly the tribunal has elected in terms of section 19 (1) (b) of the 2011 Act not to make a PFEO in this case

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Date: 20 September 2021

Legal Member: