

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision: Section 43 Tribunals (Scotland) Act 2014 and regulation 39 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: HOHP/LM/16/0162

11 East Barns Street (“The House”)

The Parties:-

**Mrs Anne McCormick,
11 East Barns Street, Clydebank, G81 1DA
 (“the homeowner”)**

**West Dunbartonshire Council,
Aurora House,
3 Aurora Avenue, Queens Quay,
Clydebank,
G81 1BF
 (“the property factor”)**

**Tribunal Members:
Martin J. McAllister (Legal Member)
Ahsan Khan (Ordinary Member)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) considered the application for review submitted by the homeowner and determined not to exercise its discretion to review the decision made by it and dated 14th July 2018 together with the proposed property factor enforcement order of the same date.

Background

The Tribunal made a Determination to make a Property Factor Enforcement Order (PFEO) and this was contained in a Decision dated 15th November 2017 and intimated to parties on 20th November 2017. Prior to this, the Tribunal had considered the Application and had issued a Decision on 20th March 2017. That Decision was reviewed and it was determined that the Application be considered anew and a Decision following upon a Hearing was dated 15th November 2017. The property factor

sought leave to appeal the Decision in terms of Section 46 of the Tribunals (Scotland) Act 2014 and Regulations 37 and 38 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017. Leave to appeal was granted. The Upper Tribunal for Scotland refused the Appeal and its Decision was issued to parties on 12th April 2018. The property factor requested that the Upper Tribunal for Scotland review its Decision and this was refused. On 14th July 2018 the Tribunal issued a Decision and a PFEO requiring the Property Factor to make a payment to the Homeowner of £200 in respect of compensation.

Application for Review:

On 23rd July 2018 the property factor submitted an email to the First-tier tribunal for Scotland requesting that the tribunal review its decision to issue a PFEO.

The property factor's reasons for requesting a review are summarised as follows:

1. The Tribunal had imposed a fine of £100 and intimated it in its Decision of 20th March 2017.
2. The Tribunal had increased this to £200 in its later Decision.
3. No explanation for the increase had been given.
4. A review is necessary so that reasons for the increase can be given.
5. All decisions of a public body require to be based on logical proof or evidence and the increase was a breach of natural justice.
6. Failing reasons for the increase being given, the property factor requests that the fine be reduced to £100.

Findings

The tribunal considered matters in terms of the provisions of Section 43 of the Tribunals (Scotland) Act 2014 and Regulation 39 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that the application is wholly without merit and that it would not exercise its discretion to review its decision.

Reasons

In arriving at its Decision of 15th November 2017 the tribunal had determined the matter after considering written representations made by parties, hearing oral representations from a solicitor acting on behalf of the property factor and thereafter exercising its judicial discretion in fixing a level of compensation to be paid.

It considered the terms of the application for review:

1. Following upon the review of the Decision of 20th March 2017, the Application was considered anew and with the benefit of oral representations from a solicitor representing the property factor.
2. In the application for review the property factor recognised that the fixing of the level of compensation (erroneously referred to by the property factor in its email as a fine) is a matter within the judicial discretion of the Tribunal.

3. The fixing of compensation together with all the facts and circumstances of the case was considered without reference to the earlier Hearing and Decision.
4. The matter is within the Tribunal's Discretion and no reasons for arriving at the level of compensation require to be given.
5. It is not accepted that the fixing of compensation following a process where parties could make written and oral representations was a breach of natural justice.
6. Since the matter of the level of compensation is within the Tribunal's discretion, no adjustment requires to be made to the level of compensation.

Martin J. McAllister, Legal member
31st July 2018