

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision and Statement of Reasons in respect of the Application for Review by the Homeowners in terms of Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PF/17/0293, FTS/HPC/PF/17/0294, FTS/HPC/PF/17/0295, FTS/HPC/PF/17/0289, FTS/HPC/PF/17/0292, FTS/HPC/PF/17/0290 and FTS/HPC/PF/17/0291

Flat 2/1, 1276 Argyle Street, Glasgow, G3 8AA
Flat 2/2, 1276 Argyle Street, Glasgow, G3 8AA
Flat 3/3, 7 Radnor Street, Glasgow G3 7UA
9-11 Radnor Street, Glasgow, G3 7UA
13 Radnor Street, Glasgow, G3 7UA
3-5 Radnor Street, Glasgow G3 7UA
Flat 1/1, 1276 Argyle Street, Glasgow G3 8AA
(known collectively as “the Property”)

The Parties:-

Mr. Russell Hyslop, residing at 20 Peters Gate, Bearsden, Glasgow, G61 3RY
Mr. Colin Montgomery, residing at 71 Rodger Avenue, Newton Mearns, Glasgow, G77 6JS, represented by Russell Hyslop
Dr Jeremy Roberts, Dr Hilary Melrose, Dr Gillian Eardley, Dr Anne Reid, Dr Patrick MacLaren, Partners of Radnor Street Surgery, 3 Radnor Street, Glasgow, G3 7UB, represented by Russell Hyslop
Mrs. Patricia Sampaio, residing at 24 St Anne’s Drive, Giffnock, Glasgow, G46 6JP, represented by Russell Hyslop
(known collectively as “the Homeowners”)

Apex Property Factor Limited, 46 Eastside, Kirkintilloch, East Dunbartonshire, G66 1QH
(“the Property Factor”)

Tribunal Members:-

Patricia Anne Pryce	-	Chairing and Legal Member
Ann MacDonald	-	Ordinary Member (Housing)

Decision

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 Homeowners' review should be granted, determines unanimously that the review should be granted and determined to vary the proposed Property Factor Enforcement Order ("PFEO") dated 20 August 2018 by deleting Paragraph 5 of the proposed PFEO.

Procedural History

The Homeowners and the Property Factor submitted applications to review the decision and proposed PFEO of the tribunal dated 20 August 2018. The tribunal issued its decision in respect of the review applications by way of a letter to the parties dated 26 September 2018, which should be read along with the present decision. In short, the tribunal refused the Property Factor's application for review. The tribunal refused the Homeowners' application for review of its decision of 20 August 2018 insofar as it related to an alleged failure by Apex to carry out the property factor's duties. However, the tribunal granted a review in respect of the proposal within the proposed PFEO that Apex should issue fresh and accurate invoices. The tribunal determined that a hearing should be appointment to allow parties to make representations in respect of this specific issue.

In advance of the hearing, both the Homeowners and the Property Factor submitted written representations to the tribunal in respect of the review.

Hearing

A hearing took place in the Glasgow Tribunal Centre, York Street, Glasgow on 22 November 2018.

The Homeowners all attended and were all represented by Mr Russell Hyslop. Mrs Sandra McGraw, Practice Manager, attended on behalf of the Doctors but was happy to be represented by Mr Hyslop. Mr Montgomerie and Mrs Sampaio were also present.

The Property Factor did not attend nor was it represented.

Preliminary Issues:-

1. Proceeding Absence of the Property Factor

The tribunal did not commence until 10.15 am, allowing the Property Factor an additional 15 minutes to attend. The Property Factor did not attend nor was it represented.

The Clerk to the tribunal checked the Case Management System and confirmed that the Property Factor had been sent notification of the date, time and place of the hearing by way of a letter dated 1 October 2018, which letter also contained the time limits for responses by the Property Factor. In

response, the Property Factor confirmed by way of an email dated 8 October 2018 from its Legal Manager, Mr Neil Cowan, to the tribunal that it wished to appear at the review hearing. This email also contained written submissions in respect of the review. Thereafter, an email was sent to the Property Factor dated 9 October 2018 reminding the Property Factor of the date of the hearing.

Mr Hyslop submitted that Property Factor had been given ample notification of the review hearing, the same notification as the Homeowners had received. He also submitted that the Property Factor had demonstrated various delaying tactics throughout the consideration of these applications, to the point where it had taken over a year for the evidential hearing to take place.

The tribunal determined unanimously to hear the review application in the absence of the Property Factor. The Property Factor had received reasonable notice of the date, time and place of the hearing, satisfying the terms of Rule 29 of the Rules.

The Hearing

Mr Hyslop submitted that the Homeowners were content with the terms of the tribunal's decision of 20 August 2018. However, they objected to Paragraph 5 of the proposed PFEO. He referred to his written representations which had submitted to the tribunal on 5 October 2018 and which had been crossed over to the Property Factor.

Mr Hyslop confirmed that none of the Homeowners had received any compensation from the Property Factor in terms of the proposed PFEO.

However, the issue with Paragraph 5 of the proposed PFEO was that the Property Factors had still not issued fresh and accurate invoices to the Homeowners. Mr Montgomerie had not received any fresh invoices. Mr Hyslop had received invoices where only parts were amended but were inconsistent. He referred to the productions contained within his submissions. As an example, he referred to the inconsistency between the invoices for his flats at 2/2 and 2/1, both 1276 Argyle Street, wherein the invoice re 2/2 referred to 56 litter pickings and the invoice re 2/1 referred to 64 litter pickings yet this was for the same tenement close. In addition, as regards his flat 2/2 property, he was still being invoiced for "pro-forma invoice" which no other owner was being billed. In contrast, Mrs Sampaio had only received one amended invoice which had only removed one litter picking for one month. The Doctors had received two credit notes and two fresh invoices and there is now an additional "doubled up" charge of £168.69 appearing without explanation. The invoices still contain sums in respect of court actions where the debts are in dispute and these costs are also being sought by the Property Factor in these court actions.

Mr Montgomerie submitted that the court action raised against him by the Property Factor has now been closed without a finding against him.

In short, Mr Hyslop submitted that, despite being afforded the opportunity to provide fresh and accurate invoices, the Property Factor had still failed to address the issue

of erroneous entries or provide proof that the work charged for was actually undertaken. He had no faith in the ability of the Property Factor to produce accurate invoices at this stage, four years after their appointment. Given this, in terms of the review application, he did not feel that Paragraph 5 of the proposed PFEO was fair and reasonable as the Property Factor simply could not be trusted to issue accurate invoices.

Reasons for Decision

The tribunal considered the written submissions it had received from the parties together with the oral representations made by the Homeowners at the hearing. The tribunal had no difficulty in accepting the Homeowners' position regarding the invoices, having read through the invoices the Property Factor had produced subsequent to the proposed PFEP. Despite being afforded another opportunity to get things right, the Property Factor failed to take advantage of this. The invoices produced to the tribunal in respect of the present hearing, a copy of which had been crossed over to the Property Factor, were unclear, inconsistent and unintelligible. It is of real concern to the tribunal that the Property Factor continues to conduct its business in this manner. Despite the strong terms of the tribunal's decision of 20 August 2018, the Property Factor appears to have ignored this. The Property Factor has failed to implement any part of the proposed PFEO. The tribunal agrees with the submission of the Homeowners that the Property Factor simply cannot be trusted to produce clear and accurate invoices. In light of this, the tribunal determined unanimously to vary the proposed PFEO by deleting Paragraph 5. The rest of the proposed PFEO remains the same.

Patricia Anne Pryce

Legal Member and Chair

22 November 2018

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Date

