

Housing and Property Chamber First-tier Tribunal for Scotland



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

Property Factor Enforcement Order (“PFEO”):

Property Factors (Scotland) Act 2011 Section 19(3)

Chamber Ref: FTS/HPC/PF/17/0353

Re : Property at 18 Broom Drive, North Kilbowie, Clydebank G81 3HY (“the Property”)

The Parties:-

Myra Martin, 43 Kirk Crescent, Old Kilpatrick, G60 5NJ (“the Homeowner”)

West Dunbartonshire Council, Regeneration, Environment & Growth, Council Offices, Garshake Road, Dumbarton G82 3PU (“the Factor”)

Tribunal Members:-

David Bartos (Legal Member and Chair)
Ann MacDonald (Ordinary Member)

This document should be read in conjunction with the First-tier Tribunal’s Decision of 5 January 2018.

Decision

The Tribunal has decided to make a PFEO in the terms set out below.

The decision of the Tribunal is unanimous

Reasons for Decision

1. In the Tribunal’s decision of 5 January 2018 it proposed to make a PFEO as follows:

“The Factor shall, within 2 weeks of the notification of this Order :

(1) in respect of the invoice No. 505768119 issued to the Homeowner and Mr A. Martin dated 27 January 2017 issue a credit note to the Homeowner and Mr A. Martin to the value of £1,076.32 back-dated to 27 January 2017;

(2) pay to the Homeowner the sum of seven hundred and fifty pounds sterling (£ 750.00).”

2. The Tribunal’s decision was intimated to the parties on or about 15 January 2018. Neither party have appealed the decision. The Factor made representations to the Tribunal to the effect that the Tribunal should order that the sum of £ 750 should be set off by the Factor against the sum outstanding under the invoice dated 27 January 2017 which the Factor had issued to the Homeowner, after the credit note for £ 1076.32 had been taken into account. No response to the Factor’s representations has been received from the Homeowner.

3. The Tribunal remained satisfied that the Factor had failed to comply with sections 1 and 2.5 of the Code of Conduct for Property Factors and their duty under section 14(5) of the 2011 Act. The Tribunal was required to make a PFEO.

4. The Tribunal took the view that there was no prejudice to the Homeowner in the proposed set-off of the £ 750 from the Factor’s invoice. It also took the view that the best means of ensuring the set-off was to add that sum to the value of the credit note to be issued by the Factor to the Homeowner in respect of the outstanding invoice.

Property Factor Enforcement Order

The First-tier Tribunal hereby makes the following PFEO:

“The Factor shall within two weeks of the notification of this Order:

in respect of the invoice No. 505768119 issued to the Homeowner and Mr A. Martin dated 27 January 2017 issue a credit note to the Homeowner and Mr A. Martin to the value of £1,826.32 back-dated to 27 January 2017.”

Under Section 24(1) of the Property Factors (Scotland) Act 2011, a person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.

Appeals

A homeowner or property factor 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.

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_(sgd) David Bartos _____ Legal Member and Chair

11 May 2018 _____ Date