

Housing and Property Chamber First-tier Tribunal for Scotland



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

Property Factors (Scotland) Act 2011 (“the Act”)

Property Factor Enforcement Order (“PFEO”) Section 23

The First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure)

Amendment Regulations 2017 (“the regulations”)

Chamber Ref: FTS/HPC/PF/21/0459

Re.: 18 Silvertrees Wynd, Bothwell, G71 8FH (“the property”)

The Parties:-

Ms Caroline Adams, 18 Silvertrees Wynd, Bothwell, G71 8FH (“**the homeowner**”)

Miller Property Management Limited, Suite 2.2 Waverley House, Caird Park, Hamilton ML3 0QA (“**the property factor**”)

Tribunal Members: - Simone Sweeney (Legal Member) Andrew Taylor (Ordinary Member)

Decision:

The Tribunal determines that the property factor has failed to comply with the Property Factor Enforcement Order (“PFEO”) of 15th February 2022 in terms of section 23 of the Act and proceeds to serve notice of the failure on the Scottish Ministers.

Background:

1. Reference is made to earlier procedure, including an appeal to the Upper Tribunal by the homeowner and permission to appeal by the property factor.
2. Particular reference is made to the decision of the Tribunal of 15th February 2022 in which the Tribunal determined that the property factor has failed to comply with the Code of Conduct for Property Factors (“the Code”) as required by section 14 of the Act and issued a PFEO.
3. The PFEO of 15th February 2022 was in the following terms:

Within 21 days from the date of issue of this order, for the property factor to:-

- *Make payment to the homeowner the sum of £200 in recognition of the inconvenience arising from the failures of the property factor and the time incurred in bringing the application.*
- *(In respect of the insurance for plant and machinery at the development) provide to the homeowner clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing the insurance cover and the terms of the relevant insurance policy.*
- *Provide to the Tribunal's administration evidence that the property factor has complied with the order.*

4. The consequences for the property factor, should he fail to comply with the terms of the PFEO, were set out within the document.

5. The Tribunal's decision and PFEO were issued to parties by email.

6. Thereafter, the property factor pursued a complaint through the Tribunal's administration. That process has now concluded. Therefore, the Tribunal proceeds to determine whether the property factor has complied with the PFEO.

7. **Reasons for decision**

8. Parties were requested to complete and return compliance forms issued by the Tribunal's administration. No documentation was received from either party.

9. However, the Tribunal received an email from the homeowner dated 16th March 2022 indicating that the property factor had not undertaken any of the actions required in terms of the PFEO. The email, insofar as is relevant, provides:

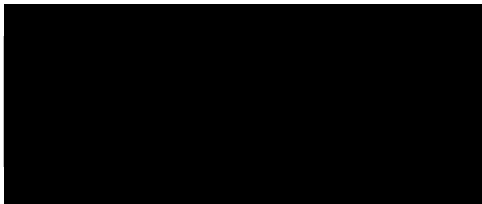
“I refer to the PFEO made by the FTT and the subsequent Court Order issued to MPM Ltd on appeal. I write to advise that, although the time limit stipulated on both Orders has now lapsed, the factor has taken no action as specified within the Orders to comply.”

10. The homeowner’s email was intimated to the property factor. The property factor has never responded indicating anything which contradicts the homeowner’s position.

11. As required by the PFEO, the property factor has failed to provide to the Tribunal evidence that he has complied with the terms of the PFEO. In the absence of same the Tribunal is satisfied that the property factor has failed to comply with the terms of the PFEO.

12. Appeals

13. 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 within 30 days of the date the decision was sent to them.



.....Legal chair, at Glasgow on 5th August 2022