

Housing and Property Chamber

First-tier Tribunal for Scotland



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

NOTICE OF VARIATION OF A PROPERTY FACTOR ENFORCEMENT ORDER:

under section 21(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”) following upon a decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application made under section 17(1) of the Act.

Chamber Reference: FTS/HPC/PF/20/2432 & FTS/HPC/PF/21/0476

Property address: 27 Dempsey Court, Queens Lane North, Aberdeen, AB1 54DY (“the House”)

The Parties

Mr David Gordon, 27 Dempsey Court, Queens Lane North, Aberdeen, AB1 54DY (“the Homeowner”)

James Gibb, 2 Thistle Street, Aberdeen, AB10 1XZ (“the Property Factor”)

Decision

The Tribunal has decided to vary the Property Factor Enforcement Order (“PFEO”) dated 7th March 2022 and now requires compliance with the Order within the timescale as stated.

Reasons for Decision

1. By decision dated 9th February 2022, the Tribunal determined that the Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraphs 2.1, 2.5, 3.3, 5.7 and 6.1 of the Property Factor Code of Conduct (“the Code”). The Tribunal determined that the Factor also failed to carry out the Property Factor’s duties.
2. As required by the Act, the Tribunal issued a PFEO after giving parties an opportunity to make representations on the terms of a proposed PFEO. The PFEO was in the following terms:

“Within 28 days of intimation to them of the PFEO, the Property Factor is required to:

1. Pay to the Homeowner the sum of £1000 from their own funds to compensate the Homeowner for the distress, frustration and inconvenience caused as a result of the Property Factor’s failure to

comply with the Code of Conduct for Property Factors and for failing to carry out their property factor duties;

2. Provide documentation to the Homeowner in relation to the electrical testing tendering process, excluding any commercially sensitive information.
 3. Provide to the Homeowner the missing utility bills in relation to the communal services, or, in their absence, refund from their own account charges set against the Homeowner for the missing periods. Provide an explanation of the basis for the allocation of these charges made to the Homeowner.
 4. Confirm to the Homeowner the amount of commission (in cash terms) received by the Property Factor in respect of the property insurance for this development, for each of the past five years.
 5. Provide documentation to the Homeowner in relation to the insurance selection process, in particular the alternative quotes available, the excesses applicable thereto, any special terms and the levels of broker commission, (excluding any commercially sensitive information).
 6. At the Property Factor's own cost, rectify the damage to the paintwork caused by the flooding of the lift shaft.”
3. By email dated 9th May 2022, the Homeowner stated that paragraph 3 of the PFEO had not been complied with.
 4. By email dated 9th May 2022, the Property Factor stated that invoices were not available to comply with paragraph 3 and it was proposed that refunds would be made to the Homeowner in respect of the missing invoices.
 5. By email dated 15th June 2022, the Homeowner stated that no refunds had been made to him in respect of the missing invoices.
 6. By emails dated 22nd and 27th June 2022, the Property Factor stated that further time was required to comply with paragraph 3.
 7. By email dated 1st July 2022, the Property Factor stated that an offer of repayment of charges had been made to the Homeowner, and his response regarding the payment method was awaited.

The Tribunal considered the representations made by parties and considered what steps should be taken in this case. Section 21(1)(a) of the Act provides that the Tribunal may, at any time, vary the order in such manner as it considers reasonable. Accordingly, the Tribunal decided to vary the PFEO to allow further time for the Factor to comply with the PFEO by making payment of the sums due.

Decision

In all the circumstances as hereinbefore narrated, the Tribunal hereby varies the PFEO by extending the timescale for compliance by 14 days.

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.

Right of Appeal

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 from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member

Helen Forbes
Legal Member and Chairperson

3rd July 2022