



2023UT15

Ref: UTS/AP/22/0023

DECISION OF

Tony Kelly

ON AN APPEAL

IN THE CASE OF

Mr John Blair, Flat 3/2, 87 Dunlop Street, Glasgow, G1 4ET

Appellant

- and -

James Gibb Property Management Limited t/a James Gibb Residential Factors, Bellahouston
Business Centre, 423 Paisley Road West, Glasgow, G51 1PZ

per BTO Solicitors LLP,

48 St Vincent Street, Glasgow, G2 5HS

Respondent

FtT Case Reference: FTS/HPC/PF/22/0023

Glasgow, 22 March 2023

Decision

The Upper Tribunal upholds the appeal and remakes the decision of the First Tier Tribunal in respect of the Property Factor Enforcement Order in the following terms:

- “1. By 8 September 2023 the Factor will provide to the Homeowner an insurance statement as specified in section 5.3 of the 2021 Code for the period November 2022 to November 2023.
2. By no later than 8 September 2023, the Factor will apportion the insurance costs for the Property as required by the Written Statement of Services that is in accordance with the Deed of Conditions registered on 22 December 2005.
3. By no later than 8 September 2023, the Factor will calculate, in accordance with the Deed of Conditions registered on 22 December 2005, the amount due by the Homeowner in respect of insurance costs for the development of which the Property forms part, for the periods November 2019 to November 2020; November 2020 to November 2021; November 2021 to November 2022 and November 2022 to November 2023. Thereafter any resultant overpayment will be refunded by the Factor to the Homeowner or any resultant underpayment will be invoiced to the Homeowner by the Factor.”

Reasons

[1] By decision dated 1 March 2023 I explained why the appeal in this case was to be upheld. Before remaking the decision I invited parties to submit submissions as to the terms of the Property Factor Enforcement Order (“PFEO”) to be made by the Upper Tribunal (“UT”). Parties availed themselves of that opportunity. The appellant indicated that he was agreeable to a fresh order being made. The property factor made detailed submissions about the terms

of the order.

[2] The decision made on 21 September 2022 by the FtT was to make the following PFEO:

1. By 28 February 2023 the Factor will provide to the Homeowner an insurance statement as specified in section 5.3 of the 2021 Code for the period May 2020 to May 2021 [November 2020 to November 2021].

(changed by correction on 20 October 2022)

2. By no later than 31 January 2023, the Factor will apportion the insurance costs for the Property as required by the Written Statement of Services that is in accordance with the Deed of Conditions registered on 22 December 2005.

3. By no later than 31 January 2023 the Factor will calculate, in accordance with the Deed of Conditions registered on 22 December 2005, the amount due by the Homeowner in respect of insurance costs for the development of which the Property forms part, for the period May 2020 to May 2021 [November 2020 to November 2021] and May 2020 to May 2023 [November 2021 to November 2022]. Thereafter any resultant overpayment will be refunded by the Factor to the Homeowner or any resultant underpayment will be invoiced to the Homeowner by the Factor.

(changed by correction on 20 October 2022)

[3] In connection with the first part of the Order to be made, it was agreed that insurance statement complying with the code of practice ought to be provided for the period November 2020 to November 2023. The property factors suggested a period to 8 September 2023 for compliance. The appellant said this was too generous in light of the fact that the factor is already aware of what was required and that this matter required to be attended to.

[4] In light of the concession by the appellant regarding the building insurance statement and what requires to be provided in terms of the order, I will limit the term from November 2022 to November 2023. This should be provided by 8 September 2023.

[5] It is submitted on behalf of the property factor that compliance with the PFEO will involve a great deal of administrative work. The appellant points out that no further work is

required in connection with the communication between home owners. A lengthy period is not justified.

[6] I agree that this will take some work by the property factor and that it may have significant consequences for those affected by it. In all the circumstances I consider that a period until 8 September 2023 is justified.

[7] A similar period will apply in relation to part 3.

In his further submission the appellant sought an order from the Upper Tribunal making the factor liable for payments of adjusted premiums. The property factor, referring to section 20 of the Property Factors (Scotland) Act 2011, submitted that this was incompetent.

[8] The appellant in his form UTS-1 and in the permission granted by the FtT to appeal, makes reference to the alteration of the commencement date for the PFEO alone. It is not open to him to seek to widen the scope of the appeal after the hearing in relation to that ground of appeal in supplementary submissions. The Upper Tribunal's powers in an appeal such as this are circumscribed by the powers of available to the First Tier Tribunal. The order sought by the appellant is not one that could be pronounced by the First Tier Tribunal and in the circumstances it would be overreaching of the Upper Tribunal's powers to make such an order. I refuse to do so.

Conclusion

[9] The Upper Tribunal upholds the appeal and makes a fresh Property Factor Enforcement Order.