



Decision of the Homeowner Housing Committee issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP reference: HOHP/PF/15/0023

Re: Flat 3/1, 29 Winton Drive, Glasgow G12 0PZ ('the property')

The Parties:

Mr James McLaren, residing at 34 Balmaha Road, Drymen, Glasgow G63 0BY ('the homeowner')

Be Factored (formerly Property2) 2a, North Kirklands, Eaglesham Roadd, Glasgow G76 0NT ('the factor')

Decision by a Panel of the Homeowner Housing Panel in an application under section 23 of the Property Factors (Scotland) Act 2011('the Act')

Panel members:

David M Preston (Chairman); Mrs Sally Wainwright

Decision:

The Committee hereby determines that the Property Factor Enforcement Order has not been complied with.

The Committee issued a Property Factor Enforcement Order ("PFEO") on 16 September 2015

In terms of section 23(1) of the 2011 Act, the Committee is required to determine whether the Factor has complied with the PFEO.

The Committee considered the extent to which the PFEO had been complied.

Background:

1. The PFEO provided as follows:

Within one month from the date of service of this PFEO, the factor to send to: HOHP, Europa Building, 450 Argyle Street, Glasgow G2 8LH a revised Complaints Handling

Procedure which specifically provides for situations where a complaint is received which relates to matters in which the factor's Director has been directly involved, and which complies with the Code of Conduct and to publish the revised procedure on their website.

2. Following on service of the PFEO on the factors, a number of revised versions of the complaints procedure were lodged with the Committee for consideration. None of the versions provided comply with the terms of the PFEO.
3. On 22 January 2016 the factors submitted an email to HOHP to which was attached a letter from their solicitors, Levy & McRae. On behalf of the factors they submitted that the Code Of Conduct did not prescribe any set complaint procedure and, in the view of the solicitors, merely required factors to have a complaints procedure in place, which had been the case at the time of the complaint and was still the case.
4. Having considered the submissions made by and on behalf of the factors, the committee found that the factors had failed to comply with the PFEO for the following reasons:
 - a. As narrated in the Decision of the Committee dated 9 July 2015, the Committee determined that the factor was in breach of section 7.1 of the Code of Conduct insofar as it failed to provide a clear written complaints resolution procedure to be followed in the event that a complaint was received in respect of the Director (Mr McEwan) as had happened in this case.
 - b. The fact that the Code of Conduct does not prescribe any set complaint's procedure is immaterial. The Code of Conduct requires homeowners to notify the factor in writing of the reasons why they consider that the factor has failed to carry out their duties, or failed to comply with the Code as a precondition of a homeowner making an application to HOHP. It follows from that precondition that the factors must have in place a procedure to deal with the specific complaints raised by the homeowners and take steps to resolve the complaint. If, as happened in this case and as narrated in the Decision, a complaint is submitted in respect of the actions of the Director and nothing further is done in the absence of a procedure to meet those circumstances, the factors are in breach of the Code.
 - c. The revised complaints procedure produced by the factors makes no provision for dealing with complaints which are made against the Director and as such fails to constitute "a clear written complaints resolution procedure..." In accordance with the Code of Conduct.

The Committee accordingly hereby finds that the factor has failed to comply with the PFEO.

Effect of Decision

Notice of the failure to comply will be sent to the Scottish Ministers in accordance with section 23(2) of the 2011 Act.

Appeals

The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides:

"...(1)An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or a homeowner housing committee.

(2)An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

04-Feb-16

X

CHAIRMAN

Signed by: DAVID MICHAEL PRESTON