



Certificate of Compliance and Decision relating to the Property Factor Enforcement Order (“PFEO”) dated 25 February 2022 issued under the Property Factors (Scotland) Act 2011 (“the Act”)

Case reference: FTS/HPC/PF/21/2534

Re:- 35 The Forge, Braidpark Drive, Giffnock G46 6LB

The Parties:-

Mrs Ruth MacNicol, 35 The Forge, Braidpark Drive, Giffnock G46 6LB
("the Applicant")

and

**Hacking & Paterson Management Services, 1 Newton Terrace, Charing Cross,
Glasgow G3 7PL**
("the Respondent")

Tribunal Members:

Richard Mill (legal member) and Ahsan Khan (ordinary member)

Decision

1. The Tribunal unanimously determined that the respondent has complied with the PFEO issued on 25 February 2022, and accordingly the Tribunal determined to issue a Certificate of Completion in confirmation that compliance had been achieved.

Reasons for Decision

2. Following the Tribunal's primary decision dated 17 January 2022, a PFEO was issued on 25 February 2022 in the following terms:-
 - “1. The respondent must consult with the proprietors of the Forge regarding the termination or reinstatement of the warden service and emergency alarm service. Such consultations must be undertaken in accordance with the provisions of the Title Conditions (Scotland) Act 2003 and the Code of Practice for Scotland for Private Retirement Housing.

2. Such consultation must be instigated forthwith and completed within the next 6 weeks, evidenced to the satisfaction of the Tribunal with relevant documentary evidence."

The PFEO was subsequently varied so as to allow the respondent further time to undertake the necessary consultations and work required. In terms of a Variation Decision dated 19 April 2022, the time period was extended.

3. By way of written submissions dated 31 May 2022, the respondent set out the results of voting which had taken place on the relevant management issues at the development. The postal voting process commenced on 5 April 2022. In particular a vote on the existence of the warden has returned 72% of homeowners who do not wish to renew the service. This is more than the two thirds majority which the Tribunal found was necessary to remove the warden service. A vote on the reinstatement of the Chubb/Bield alarm system has returned 77% of homeowners who do not wish to reinstate this. This is more than a simple majority which the Tribunal found was necessary to remove the alarm system.
4. Upon receipt of the respondent's said further submissions a Direction was issued by the Tribunal inviting the applicant to lodge any further submissions in response.
5. By way of email submissions dated 15 June 2022, the applicant's son and representative, Mr Gordon MacNicol lodged submissions advising that it was not accepted that the PFEO had been complied with. It appears that their ultimate complaint is that the warden service has still not be reinstated by the respondent. The Tribunal has already analysed in much detail the acts and omissions of the respondent that the PFEO already issued required consultation with homeowners to be undertaken in relation to both the warden service and emergency alarm service. The Tribunal has been provided with information which discloses that all homeowners have been balloted in respect of these two management issues and that the results of the ballot had returned the necessary votes to confirm that the warden service should not be renewed and that the Chubb Beil alarm system should not be reinstated. The respondent has undertaken the necessary steps as the Tribunal requires in terms of the PFEO. There is no suggestion that the results of the ballots has not been accurately reported.
6. Accordingly the Tribunal resolved that this Certificate of Compliance should be issued.

Appeals

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

Date: 17 June 2022