



Variation of Property Factor Enforcement Order under Section 21 of the Property Factors (Scotland) Act 2011

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

The Respondent is provided with a period of a further 6 weeks to complete the consultation process required by the Property Factor Enforcement Order ('PFEO') made by the Tribunal which is dated 25 February 2022.

Reasons

1. In terms of the said PFEO the Respondent was required to 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. A period of 6 weeks was provided to the Respondent to undertake the process and evidence it to the Tribunal.

2. By letter dated 7 April 2022 the Respondent lodged submissions detailing the steps carried out to date. Copy correspondence including a ballot of homeowners has been provided to the Tribunal. It is noted that correspondence was not issued to homeowners until 21 March 2022 to initiate the voting process. The delay is unexplained and is unfortunate. It is further noted that not all homeowners have yet cast their vote. It is noted that a reminder letter was issued on 4 April 2022.
3. The Tribunal further notes that there is reference in the correspondence issued by the Respondent to homeowners regarding previous votes cast on the issue of the warden suggesting that if homeowners have previously voted they do not require to do anything. This approach does not satisfy the requirements of the Tribunal's PFEO. A fresh ballot of all homeowners on both the warden and alarm system has to be undertaken.
4. The Tribunal is satisfied that a further period of time requires to be afforded to all homeowners to cast their votes on both matters and that the Respondent requires a period to take active steps to encourage all homeowners to vote or at least to confirm that they wish to abstain. The Respondent is expected to engage personally with the homeowners to collect all votes possible.
5. The Tribunal is concerned from the terms of the Respondent's submissions that there continues to be a fundamental misunderstanding on the part of the Respondent regarding the relevance of the Title Conditions (Scotland) Act 2003 and the Code of Practice for Scotland for Private Retirement Housing. The Tribunal's primary decision dated 17 January 2022 sets out at great length the way in which they apply. The Respondent should ensure that the Tribunal's decision is read and understood by a senior member of the organisation and / or seeks legal advice. Failure by the Respondent to secure the necessary votes will mean that the Respondent is under a legal obligation to reinstate the warden service and / or emergency alarm service. There appears to be no appreciation on the part of the Respondent that if the situation was allowed to rest as currently presented – less than two thirds of homeowners voting not to renew the warden service and less than a simple majority of homeowners voting to terminate the alarm system then both services will require to be reinstated.
6. The Tribunal had decided that it is most likely that an oral hearing will be necessary to determine whether the Respondent complies with the PFEO made and accordingly a hearing date will be now be fixed for this purpose. The Respondent should note that the Tribunal will require full documentary evidence, indexed and paginated, to prove compliance with the PFEO.

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: 19 April 2022