



Property Factor Enforcement Order

Hohp Ref: HOHP/PF/14/0140

Re:

**Property at Flat 1/1, 11 Rhindmuir Gate, Baillieston, Glasgow, G69 6EW
("the Property")**

The Parties:-

Mr Desmond Mowat, residing at the Property ("the Homeowner")

**First Stop Properties Limited, trading as Pfams, 37 Cadzow Street, Hamilton, ML3 6EE
("the Factors")**

**Decision by a Committee of the Homeowner Housing Panel in an
application under section 17 of the Property Factors (Scotland) Act 2011**

Committee Members:

Maurice O'Carroll (Chairman)
Elaine Munroe (Housing Member)

**This Notice should be read in conjunction with the decision and Proposed Property
Factor Enforcement Notice dated 31 July under reference HOHP/PF/14/0140**

1. By decision dated 31 July 2015, the Committee determined that the Factors had breached their duties in terms of section 17(1)(b) of the 2011 Act in that they had failed to comply with Sections 3.3, 4.6, 4.8, 4.9, 6.1 and 6.4 of the Code of Conduct for Property Factors as required by s 14(5) of that Act.

2. In accordance with s 19(3) of the 2011 Act, having been satisfied that the Factors have failed to carry out the property factor duties, the Committee must make a Property Factor Enforcement Order ("PFEO"). Before making a PFEO, to comply with section 19(2) of the Act, the Committee must give notice of the proposed PFEO to the factor and must allow the parties an opportunity to give representations to the Committee. Intimation of the proposed PFEO was provided to the Factors on 4 August 2015. A period of 14 days was provided in order to allow representations to be received.

3. The Factors made representations to the HOHP by email dated 17 August 2015 which were therefore timeous. The Committee took account of the representations so made in making the present PFEO.
4. In particular, and further to paragraph 21 of the decision, the Factors provided a summary of payments made by the Homeowner, dated 14 August 2015 and produced by Messrs Walker Love at the Factor's request after the decision had been issued to them. Albeit produced late and only as a result of the decision of the Committee, the statement so produced appeared to indicate that the Homeowner had been credited with the sum of £4,716.29 against his outstanding factoring charges. In the light of that new information, the Committee decided to amend the proposed PFEO to the extent that it sought repayment of the sum of £400 from the Factors to the Homeowner.
5. In relation to the Notice of Potential Liability ("NOPL") registered against the Property in June 2014, the Factors indicated that the Homeowner had in fact defaulted on his repayments in February and June 2014 (having also missed other unspecified repayments). The Factors also indicated that the reasons for registering the NOPL were explained to the Homeowner by letter dated 21 April 2014. That date is incorrect. The Committee was in fact provided with a letter from the Factors to the Homeowner dated 21 April 2015 setting out their reasons for registering the NOPL at paragraph 7 thereof, which is to say, almost a year after registration and not prior to it. Accordingly, based upon the evidence provided to the Committee, the Factors did not provide adequate warning to the Homeowner of their intended action contrary to the requirements of Section 4.8 of the Code. Moreover, as indicated in the decision, that action was not in fact necessary given the clear and demonstrated willingness on the part of the Homeowner to pay off his outstanding factoring debts, and the other means of enforcement open to the Factors. It is not therefore minded to amend its proposal in relation to the registration of the NOPL.
6. Finally, in relation to paragraph 24 of the decision, and for the avoidance of doubt, the Factors are required to indicate as part of their account statement ordered as requirement 6 below whether any or all of the sum of £592.88 was in fact collected from all or any of the other homeowners in the Development further to the schedule circulated to them in July 2014 as described in the decision.

7. Therefore, the Committee makes the following PFEO:

Within 28 days of the communication to the Factors of the Property Factor Enforcement Order, the Factors must:

1. Make payment to the Homeowner of the sum of £250 in recognition of the time spent, distress and inconvenience that the Factors' breaches of the Code have caused to the Homeowner.

2. Reimburse the management fees (equating to £10 per month) paid by the Homeowner to the Factors during the period from its date of registration of 8 January 2013 to the cessation of its services on 30 September 2014 in recognition of its failure to comply with its factor duties during that period.
3. Reimburse to the Homeowner the whole sum of £132 being the charge levied in terms of invoice number PF18524 dated 25 July 2014 in respect of the Notice of Potential Liability registered against the Property contrary to the requirements of the Code.
4. At its own expense, carry out all steps necessary to draft and register with the Registers of Scotland a non-statutory discharge or letter in unambiguous terms discharging in full the alleged obligation underlying the extant Notice of Potential Liability registered against the Homeowner's Property.
5. Once the payments above mentioned have been set off against the factoring debt due to the Factors, provide the Homeowner with a refund of all debt repayments made further to the factoring debt payment plan referred to in the said decision from the date of the hearing, 9 July 2015. Said payment to be made in full and free of any deductions made in respect of collection charges or any other expenses.
6. Following compliance with the above requirement, provide the Homeowner with an account statement showing all debt arrears to have been cleared and the resulting amount to be paid to him following upon implementation of the foregoing in terms of this PFEO and to make such payment.
7. Provide documentary evidence of compliance to the Homeowner Housing Panel with the above Orders within 7 days of having done so by recorded delivery post.

6. Appeals

The parties' attention is drawn to the terms of s 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 date on which the decision appealed against is made..."

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Signed

M O'Carroll
Chairperson

Date 19 August 2015