



Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP/PF/13/0243

Re: Property at 52 St. Vincent Street, Flat E/8, Glasgow ("the Property")

The Parties:-

Mrs. Danielle Bakayoko ('the homeowner')

Glasgow West Housing Association Ltd ('the property factor'),

("the Parties)

Committee members:

Karen Moore (Chairperson)

Carolyn Hirst (Housing member)

Colin Campbell (Housing member)

Decision

The Committee, having determined that the Property Factor Enforcement Order ("PFEO") as varied and dated 22 December 2014 has been complied with in full, therefore certifies compliance with the PFEO.

Background

1. Following a Hearing into the Homeowner's complaint held on 15 April 2014, the Committee issued a decision dated 13 June 2014 and indicated that the Committee proposed to make a Property Factor Enforcement Order ("PFEO"). Following

representations from both Parties the Committee issued the following PFEO on 5 September 2014 :-

"Within 42 calendar days of the date of this Property Factor Enforcement Order, the property factor must:

- 1. Confirm in writing to the Committee that the revised invoice layout as submitted to the Committee by the property factor on 3 July 2014 has been implemented;*
- 2. Confirm in writing to the Committee that the cleaning programme for the common areas of the Development as submitted to the Committee by the property factor on 3 July 2014 has been implemented;*
- 3. Confirm in writing to the Committee that staff training on complaints handling programme as submitted to the Committee by the property factor on 3 July 2014 has been implemented and*
- 4. Provide the Committee with written evidence that the property factor has :-*
 - 4.1. Taken legal advice on the interpretation and application of the terms of the title deeds of the Property and any relevant legislation in respect of the homeowner's ownership of the various elements of common property;*
 - 4.2. Further to 4.1, ascertained the homeowner's specific liability for the costs attributable to each element of the common property in which the homeowner has an interest and*
 - 4.3. Reviewed their invoicing arrangements to ensure that the correct calculation and apportionment of common charges attributable to the homeowner in terms of the title deeds is applied."*

2. The PFEO was intimated to the Parties on 8 September 2014.
3. On 23 October 2014, a letter was issued to the Parties requesting confirmation that the PFEO had been complied with. The Parties both made representations to the Committee in response. The homeowner advised the Committee that the PFEO had not been complied with. The property factor advised the Committee that the PFEO had been complied with and submitted a representation by email in support of this contention. The Committee considered both the homeowner's and the property factor's representations and, in terms of Section 21(1)(a) varied the PFEO of 5 September 2014 as follows :-

"Within 35 calendar days of the date of this Property Factor Enforcement Order, the property factor must:

- 1. Confirm in writing to the Committee that the revised invoice layout as submitted to the Committee by the property factor on 3 July 2014 has been implemented;*
- 2. Confirm in writing to the Committee that the cleaning programme for the common areas of the Development as submitted to the Committee by the property factor on 3 July 2014 has been implemented;*
- 3. Confirm in writing to the Committee that staff training on complaints handling programme as submitted to the Committee by the property factor on 3 July 2014 has been implemented and*
- 4. Provide the Committee with written evidence that the property factor has :-*
 - 4.1. Taken legal advice on the interpretation and application of the terms of the title deeds of the Property and any relevant legislation in respect of the homeowner's ownership of the various elements of common property;*
 - 4.2. Further to 4.1, ascertained the homeowner's specific liability for the costs attributable to each element of the common property in which the homeowner has an interest and*
 - 4.3. Reviewed their invoicing arrangements to ensure that the correct calculation and apportionment of common charges attributable to the homeowner in terms of the title deeds is applied."*
- 4. The PFEO as varied was intimated to the Parties on 22 December 2014.*
- 5. On 22 January 2015, the property factor wrote to the Committee by email and provided the Committee with written evidence that, following the numbering in the PFEO as varied :-*
 - 1. The revised invoice layout as submitted to the Committee by the property factor on 3 July 2014 has been implemented;*
 - 2. The cleaning programme for the common areas of the Development as submitted to the Committee by the property factor on 3 July 2014 has been implemented;*
 - 3. Staff training on complaints handling programme as submitted to the Committee by the property factor on 3 July 2014 has been implemented and*
 - 4. The factor has:-*

- 4.1. Taken legal advice on the interpretation and application of the terms of the title deeds of the Property and any relevant legislation in respect of the homeowner's ownership of the various elements of common property;
- 4.2. Further to 4.1, ascertained the homeowner's specific liability for the costs attributable to each element of the common property in which the homeowner has an interest and
- 4.3. Reviewed their invoicing arrangements to ensure that the correct calculation and apportionment of common charges attributable to the homeowner in terms of the title deeds is applied.

6. The property factor's response was copied to the homeowner who responded by email on 10 March 2015. The homeowner stated that in her view the cctv service is overstaffed, the concierge service is too expensive and cannot be justified in terms of the title deeds, the invoice format has been changed but, from the homeowner's comment in respect of the implications of the new format, the homeowner may not understand it, the cleaning is not being carried out sufficiently frequently or properly as the estate remains dirty and that the legal advice submitted by the property factor in response to the PFEO does not address the issue of determining the rate of the common charges by reference to a percentage. The homeowner submitted photographic evidence in support of her written representation.

7. The homeowner's response was copied to the property factor who did not respond further.

8. Whilst the Committee were of the view that those parts of the homeowner's response which refer to the cctv service and the concierge service do not relate directly to the PFEO, the homeowner's response taken as a whole refutes the property factor's assertion that the PFEO has been complied with.

9. Taking into account both the property factor's and homeowner's written representations, the Committee were of the view that a Hearing on the compliance of the PFEO should be held.

10. With regard to both the property factor's and homeowner's written representations in respect of the cleaning of the common areas, the Committee were of the opinion that it would be beneficial to them to have an inspection of the common areas before the Hearing and to have sight of the property factor's written record, if any, of the dates on which cleaning has been carried out.

11. Accordingly, the Committee made the following Direction in terms of Rule 13 of the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012:-

Direction 1

A Hearing should be fixed to ascertain the extent to which the property factor has complied with the PFEO.

Direction 2

An inspection of the common areas at the Property should be carried out immediately prior to the Hearing.

Direction 3

The property factor is to provide to the Committee and to the homeowner no later than 7 days prior to the Hearing the property factor's written record, if any, of the dates on which cleaning has been carried out from the date of the PFEO until the date of this direction.

Reasons for Direction 1

As the property factor and the homeowner have submitted written representations expressing opposing views on property factor's compliance with the PFEO, the Committee are of the view that a Hearing on the compliance of the PFEO is necessary.

Reasons for Direction 2

It would be helpful for the Committee to view the common areas in order to assess if the cleaning programme has been adhered to satisfactorily.

Reasons for Direction 3

It would be helpful for the Committee to have sight of the written record, if any, which confirms that the cleaning programme has been adhered to.

13. An Inspection and Hearing were fixed for 27 May 2015 at 9.45 and 10.30 respectively. Prior to the Hearing, the property factor submitted to the Committee copy invoices dated from June 2014 until March 2015 in compliance with Direction 3 as narrated in paragraph 11 above.

14. The Inspection took place at the Property on 27 May 2015 at 9.45. The homeowner and Mr Paul Emil Aka were present. The property factor was represented by Mrs Elaine Travers, Director and Ms Alison Brynes, solicitor. The French language interpreter arranged for the

Inspection failed to attend. The homeowner, however, advised the Committee that the interpreter was not required for the Inspection and so the Inspection proceeded.

15. The Committee inspected the common parts of the Property, namely, the external common areas at the front and rear of the Property and the lift, the entrance hall, the stairs, the landing and the corridor within the block of flats of which the Property forms part.

16. The Hearing took place at the Wellington House, 134-136 Wellington street, Glasgow on 27 May 2015 at 10.30. The homeowner and Mr Paul Emil Aka were present. The property factor was represented by Mrs Elaine Travers, Director and Ms Alison Brynes, solicitor. French language interpreting services were provided by Ms Suzanne Smith.

17. At the Hearing, Mrs Travers on behalf of the property factor addressed the Committee on each of the elements of the PFEO and provided the Committee with additional detail in respect of the written representation submitted by the property factors.

18. Mrs Travers advised the Committee that:-

the revised invoice layout had been implemented and had been further improved upon;

the cleaning programme for the common areas has been implemented;

staff training on complaints handling programme had been carried out and was continuing and

legal advice had been taken on the title deeds and the common charges invoices now reflected the correct apportionment of charges.

19. Mrs Travers advised the Committee that weekly cleaning of the internal common parts was carried out by a cleaning company and that the concierges carried out daily litter picking in the external areas. Mrs Travers advised that a selection of homeowners had been surveyed in respect of the concierge service and all those who had responded that they were satisfied with the service.

20. Ms Brynes advised the Committee that she had provided legal advice on the interpretation and application of the terms of the title deeds of the Property to the property factor.

21. The homeowner and Mr Aka addressed the Committee on the elements of the PFEO which dealt with the revised invoice layout and the cleaning programme for the common areas of the Development.

22. The homeowner advised that Committee that, in her opinion, the invoices were still incorrect as they showed differing percentages of common charges and were still difficult to understand.

23. The homeowner advised the Committee that the cleaning programme for the common areas of the Development was not carried out properly as it was not carried out frequently enough nor to a high enough standard.

24. The homeowner and Mr Aka advised the Committee that, in their opinion, the concierge service at the Development was not necessary and should not form part of the common charges. They advised the Committee further that the cost of the concierge service is excessive.

Findings in Fact.

25. From the Inspection, the Committee found that the common parts of the Development were, on the whole reasonably and satisfactorily clean. Whilst there was some litter in the external areas, the Committee were satisfied with Mrs Travers' assurance at the Hearing that this would be removed.

26. From the Hearing and the written submissions, the Committee found that the property factor is issuing invoices conforming to the revised layout and that, the property factor having taken legal advice in respect of the title deeds, is applying the correct apportionment in terms of the title deeds.

27. The Committee noted the homeowner and Mr Aka's comments in respect of the concierge service. However, the Committee were of the view that they had already determined in their decision of June 2014 that, in terms of the title deeds, the property factor is entitled to provide and charge for the concierge service.

Decision and Reason for Decision

28. The Committee determined that as the property factor had established that they had carried out the actions required to comply with the PFEO, the PFEO has been complied with in full.

29. This decision is unanimous.

Appeals

29. The Parties' attention is drawn to the terms of Section 22 of the 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..."

Chairperson Signature

... Date 15 June 2015