



Decision

of

the Homeowner Housing Committee

(Hereinafter referred to as "the Committee")

Under Sections 23 (1) and 21 of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/14/0086

Re : Property at 51 Bannermill Place, Aberdeen AB24 5EB ("the Property")

The Parties:-

Julie Thomson, 51 Bannermill Place, Aberdeen AB24 5EB ("the Applicant")

Select Property Management Services (Aberdeen) Limited (company number SC402142), 28 Broad Street, Peterhead, Aberdeenshire AB42 1BY ("the Respondent")

NOTICE TO THE PARTIES

The Committee decide that the Respondent has failed to comply with the Property Factor Enforcement Order dated 16 April 2015 in respect of the Property. The Committee decide not to vary the said Property Factor Enforcement Order.

Reasons

1. By e-mails and posted correspondence issued on or about 13 May 2015 from the Clerk to the Committee, the Applicant and Respondent were invited to indicate whether the Property Factor Enforcement Order dated 16 April 2015 and issued by recorded delivery post and e-mail on 20 April 2015 had been complied with. In a separate e-mail the Respondent's representative was reminded that any response should be addressed to and sent directly to, the HOHP office. By written response dated 22 May 2015 the Applicant's representative submitted

that no part of the Order had not been complied with. The Respondent has not responded to any of the communications of 13 May 2015.

2. By e-mail dated 12 May 2015 sent to the Applicant's then representative and copied to the HOHP office, the Respondent's representative and managing director Ms Carline Stevens enclosed a letter dated 11 May 2015 from her to the Applicant and her representative. The letter purported to attach "Income and Expenditure for Bannermill Development" covering the period from July 2011 to June 2014. In a further e-mail of 12 May were attached various documents covering the period July 2011 to June 2012. The documents comprised numerous lists of individual items of income and expenditure together with untitled statements of "transactions". They lacked any order or structure. They did not comprise annual statements of account.

3. The letter dated 11 May 2015 did not contain the name, address or contact details of the accountant who produced or verified the annual statements of account. This is not surprising given that no statements of account were produced. Instead the letter claimed,

"We did employ the services of a chartered accountant in Aberdeen to produce and verify the Bannermill accounts however the works completed were not what we requested of them. They were asked to produce an income and expenditure account and instead produced a set of profit and loss accounts."

It also claimed that the Respondents had requested their accountants in Kent to complete a full review and verification of the income and expenditure for the development over all three years. The Kent accountants are not named.

4. The Committee find it inexplicable why the accounts have still not been provided together with the name of the accountant who prepared them. This is particularly so against the background where the Committee found in its decision of 13 March 2015 that the Respondent, acting through Ms Stevens had provided false and misleading excuses for not having produced accounts which had been requested by the Applicant as long ago as in December 2013. Those excuses, made in February and March 2014 had involved Ms Stevens claiming that the accounts were with an accountant in the course of preparation. The Respondent had also ignored the Direction of the Committee of 21 November 2014 seeking production of the accounts failing which a letter from the accountant preparing them. The current failure and excuse appears to be part of a pattern of behaviour on the part of the Respondent and their director Ms Stevens.

5. The letter of 11 May 2015 also purported to attach bank statements for "both Bannermill development bank accounts" for the three year period from July 2011 to June 2014, claiming that they were named "BRES" and "BUSB". No such documents were attached. The nearest documents to a bank statement which were attached contained a heading "Transactions" a number, perhaps an

account number, but with no indication of the name of the account holder, the bank, or the branch sort code. No bank statements were produced.

6. In these circumstances the Committee were clear that the letter of 11 May 2015 and its enclosures did not amount to compliance with the Property Factor Enforcement Order dated 16 April 2015 and that the Respondent was in breach of the whole Order. No contention to the contrary has been made by the Respondent in response to the communications made to Ms Stevens by the HOHP office set out above.

7. The Applicant in her response of 22 May 2015 also sought a variation of the Order in order that both parts (1) and (3) be made to require the production of the relevant documents up to 30 November 2014 being the last date when the Respondent acted as factor in the development. The principal reason for the request to vary is to allow an independent accountant to "explain and justify" the basis upon which the Respondent has charged the Applicant and 322 other homeowners a "Development debt right off" of £ 231. 84 and refused to refund the Applicant's float deposit of £ 300. This charge was disclosed in an invoice dated 19 March 2015 which the Respondent sent to the Applicant.

8. Section 21(1) of the Property Factors (Scotland) Act 2011 gives the Committee a discretion to vary a Property Factor Enforcement Order in such manner as they consider reasonable. The Committee appreciates the Applicant's concern about the invoice and the apparent writing off of a debt due to the Respondent of £ 74 884. 32. The application was made originally at a time when the Respondent was still the factor and so did not cover activities up to the time the Respondent ceased to have that role. However the Respondent has failed to comply with the Order as currently made. A variation could require the fixing of a hearing on it and be the possible cause of further delay in the criminal enforcement of the current Order. In addition the Applicant also founds on a duty of the Respondent under the Deed of Conditions. That was not part of the current application and has not been relied on by the Applicant in it. Finally, it must be noted that there may be a civil court-based remedy available for the Applicant in respect of her float for which she may wish to obtain independent advice. For all of these reasons in the exercise of its discretion the Committee refuse the application for variation.

9. The decisions of the Committee were unanimous. Notice of the decision of failure to comply with the Order will be served on the Scottish Ministers. The Respondent is reminded that a person who without reasonable excuse fails to comply with a property factor enforcement order commits a criminal offence.

Right of Appeal

The parties are given a right of appeal on a point of law against these decisions by means of a summary application to the Sheriff made within 21 days beginning with the date on which this decision is made. All rights of appeal are under section 22(1) of the Property Factors (Scotland) Act 2011.

Signed

..... 3 June 2015

David Bartos, Chairperson