



## **Property Factor Enforcement Order**

**of**

**the Homeowner Housing Committee**

(Hereinafter referred to as "the Committee")

Under Section 19 (3) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/15/0058

**Re : Property at 2/3, 8 Dixon Road, Glasgow G42 8AY ("the Property")**

**The Parties:-**

**Andrew Lynn, 2/3, 8 Dixon Road, Glasgow G42 8AY ("the Applicant")**

**Ross & Liddell Limited, 60 St Enoch Square, Glasgow G1 4AW ("the Respondents")**

### **NOTICE TO THE PARTIES**

Whereas in terms of their decision dated 12 November 2015, the Homeowner Housing Committee decided that the Respondents had failed to comply with the Property Factor Code of Conduct and had failed to exercise reasonable care to arrange buildings insurance for a sum necessary to secure the rebuilding or reinstatement of the tenement in which the Applicant resides, all as stated in said decision; the Committee make a property factor enforcement order in the following terms:

- (1) The Respondents shall, by no later than 8 January 2016 insure the tenement at 8 Dixon Road Road, Glasgow G42 8AY and any outhouses against loss or damage by fire, storm damage and property owners' third party liability by a policy with an established insurance company in the joint names of the proprietors of the premises in the said tenement (including the Applicant) for a sum to include the reasonable cost of reinstatement or rebuilding of the said tenement and any outhouses (including the whole of the parts of the tenement owned in common by the proprietors of the dwellinghouses), with the said policy of insurance being endorsed with the interest of any standard security holder or bondholder interested in any such premises;
- (2) The Respondents shall, by no later than 2 weeks of the insurance cover in terms of paragraph (1) above coming into force, issue to the Applicant an insurance certificate or certificates certifying that such insurance has been put into force.
- (3) The Respondents shall, by no later than 5 weeks from the notification of this Order inform the owners of properties in the tenement of which the Property forms part, including the Applicant, of the fixed frequency with which property revaluations will be undertaken for the purposes of the insurance mentioned in the Deed of Conditions by Mary Halliday Earnshaw recorded G.R.S. (Glasgow) on 27 April 1961 referred to in the Land Certificate for title number GLA8454.
- (4) The Respondents shall, by no later than 5 weeks of the notification of this Order issue to the Applicant and other proprietors in the said tenement an amended Service Level Agreement which incorporates a written statement of services under section 1.1a of the Code of Conduct for Property Factors under the Property Factors (Scotland) Act 2011 in which:

- (a) under the heading "DEBT RECOVERY" all debt recovery procedures proposed to be followed are specified;
  - (b) under the heading "INSURANCE" the paragraphs beginning with "Please note that each proprietor" are omitted and replaced by wording explaining that if the Respondents arrange a common buildings policy they will at periodic intervals arrange for building reinstatement valuations and will inform proprietors of those intervals.
- (5) The Respondents are prohibited from issuing any letter under their debt recovery procedure bearing a label or title which does not correspond with the description of the letter given in the written procedure for debt recovery as stated in their Service Level Agreement or other document.

#### **Further Reasons**

- i) These reasons are further to those in the decision of 12 November 2015 and should be read with them. The Committee have taken account of the letters to the Homeowner Housing Panel from the Applicant dated 25 November 2015 and from Respondents dated 4 December and 17 December 2015, including the letter from the Respondents to the Applicant dated 2 December 2015 and the Assessment of Reinstatement Costs form Wiseman Associates, chartered surveyors dated 16 December 2015. They have not taken account of the letter from the Respondents to the Applicant dated 2 September 2015 as this is new evidence which could have been presented before the Committee made its decision. As indicated in paragraph 69 of the decision the opportunity to comment on the decision is not an opportunity to present fresh evidence.

- ii) On the basis of the letter of 2 December to the Applicant the Committee took the view that the breach of section 5.3 had been remedied. The Respondents are reminded that section 5.3 requires disclosure of the actual commission and not merely an upper level of a range.
- iii) In their letter of 4 December 2015 the Respondents undertook to alter their Service Level Agreement within 5 weeks. Parts (3) and (4) of the Order seek to reflect that undertaking.
- iv) In paragraph 53 of the decision the Committee expressed the view that section 5.8 of the Code required revaluation at fixed intervals and not merely within a range of dates at a time to be selected by the factor. If the frequency requires to be varied, that is for the appropriate majority of homeowners to instruct. Accordingly the Committee has clarified the wording of part (3) of the Order.
- v) In his letter of 25 November the Applicant criticised the Committee for raising the issue of the Deed of Conditions delegating powers to the factor, which issue had not been raised by the Respondents. The Committee (unlike a court) has an inquisitorial jurisdiction. It was not restricted to the arguments presented by the parties. There was an adjournment in the course of the hearing to allow both parties to consider the issue of delegation. Neither party sought further time to deal with it. The Applicant's criticism was rejected.
- vi) After the issue of delegation had been raised the Applicant was given the opportunity to clarify the remedies that he sought. On being questioned about compensation the Applicant did not seek it and did not give any evidence in support of it. Any criticism of the omission of an award of compensation was rejected.

vii) In all other respects the Committee were not persuaded that the terms of the proposed Order should be altered and made the Order as set out above. The Committee noted that the Respondents had obtained advice from Wiseman Associates as to the reinstatement value of the tenement for buildings insurance purposes. While part (2) of the Notice of Proposal is no longer necessary, the Committee has still to see evidence of the insurance being put into place. It is clear that the level of £ 3 million mentioned at the hearing is inadequate.

### Court proceedings

The parties are reminded that except in any appeal no matter adjudicated on in the decision of 12 November 2015 and in this decision and Order may be adjudicated on by a court or another tribunal.

### Appeal

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

**The Respondents are reminded that should the Committee decide that that the Respondents have failed to comply with this Order, failure to comply with the Order without reasonable excuse is a criminal offence under section 24 of the Act rendering the Respondents liable on summary conviction to a fine not exceeding level 3 on the standard scale.**

David Bartos

Signed .....

.....22 December 2015

David Bartos, Chairperson



## **Decision of the Homeowner Housing Committee**

(Hereinafter referred to as "the Committee")

Under Section 19 (1)(a) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/15/0058

**Re : Property at 2/3, 8 Dixon Road, Glasgow G42 8AY ("the Property")**

### **The Parties:-**

**Andrew Lynn, 2/3, 8 Dixon Road, Glasgow G42 8AY ("the Applicant")**

**Ross & Liddell Limited, 60 St Enoch Square, Glasgow G1 4AW ("the Respondents")**

### **The Committee comprised:-**

Mr David Bartos	- Chairperson
Mr Ian Mowatt	- Surveyor member

### **Decision**

The Applicant's complaints of failure to comply with section 14(5) of the 2011 Act through breach of sections 5.2, 6.1, 6.9 of the Code of Conduct for Property Factors and the breach of an agreement with the Respondents in respect of not carrying out repairs to broken slabs at the back door of the tenement of which the Property forms part, are refused.

### **Background:-**

1. By application received on 5 May 2015, the Applicant applied to the Homeowner Housing Panel ("HOHP") for a determination that the Respondents had failed to ensure compliance with the Property Factor Code of Conduct as required by section 14(5) of the Property Factors (Scotland) Act 2011 ("the 2011 Act") and that the Respondents had breached certain other duties allegedly owed to him.

2. The application alleged that the Respondents had failed to comply with the Code of Conduct in the following respects:
  - a. Written Statement of Services - Section 1.1b, B of the Code
  - b. Debt Recovery – Section 4.1
  - c. Insurance - Sections 5.2, 5.3, and 5.8 of the Code
  - d. Carrying out Repairs and Maintenance - Sections 6.1 and 6.9 of the Code.
3. It also alleged that the Respondents had breached duties owed to the Applicant in respect of:
  - i. not carrying out repairs to broken slabs at the back door of the close as agreed;
  - ii. arranging buildings insurance not in accordance with the deed of conditions covering the Property.

The application related to the matters which had been raised in various letters by the Applicant to the Respondents dated 4 March and 14 March 2015. The Respondents' Managing Director, Mrs I. Devenney had responded with her letter to the Applicant dated 27 March 2015. The Applicant sent further letters of complaint dated 2 April 2015 to the Respondents' Mr Clements but there was no further response from the Respondents and his complaints were not resolved to his satisfaction.

4. The President of the HOHP decided under section 18(1) of the 2011 Act to refer the application to a Homeowner Housing Committee. The Committee comprised the persons stated above. The intimation of the Notice of Referral to the Respondents included a copy of the Applicant's application to the Panel.
5. Following intimation of the Notice of Referral, the Applicant lodged written representations. He also lodged productions with an inventory of documents. The Respondents lodged a letter dated 29 July 2015 with representations on some but not all of the complaints. They also provided their copies of their letters to the Applicant. The Applicant also lodged a list of four witnesses.
6. A hearing was fixed to take place at Wellington House, 134/136 Wellington Street, Glasgow G2 2XL on 22 October 2015 at 10.30 a.m. The date and times were intimated to the Applicant, and the Respondents.
7. By letter dated 28 August 2015 the Respondents requested a postponement of the hearing fixed for 22 October on the grounds that their director Mr Fulton was about to depart for annual leave and was not due to

return until 15 September 2015. They also requested an extension of the period for lodging (further) written representations. By direction dated 30 September 2015 the Committee refused the request for the postponement and granted the request for an extension of the period for lodging further representations. They extended the period for the lodging of these by the Respondents to 12 October 2015.

8. The Committee also noticed that the Applicant's complaint under section 5.2 of the Code involved an issue raised in another case against the Respondents namely HOHP/PF/14/0076 which the Respondents had appealed to Glasgow sheriff court and which appeal had not yet been decided. In these circumstances, in their direction the Committee directed that the hearing on 22 October would not extend to the complaint under section 5.2.
9. In the event there were no further representations from the Respondents following the issue of the direction.
10. The Committee held the hearing and issued a decision dated 12 November 2015. That dealt with the Applicant's complaints under all of the complaints except for those under sections 5.2, 6.1, 6.9 of the Code of Conduct and the breach of a property factor's duty owed the Respondents in respect of not carrying out repairs to broken slabs at the back door of the tenement of which the Property forms part.
11. The omission of these matters was due to (a) the issue under section 5.2 being due to be considered by Glasgow sheriff court in another case in 2016 and (b) the absence of a witness, Mr Colin Johnstone of the Respondents, at the hearing. A hearing in respect of these was to be fixed for 2016 at an opportune time.
12. In a letter to the HOHP dated 25 November 2015 the Applicant stated "I have no wish to proceed with those matters not covered at the original hearing."

### **Reasoning**

13. Given the Applicant's position as stated in his letter of 25 November the Committee can see no overriding reason to continue to consider those matters in this application. Accordingly it refuses the Applicant's complaint in respect of those matters.

### **Outcome**

14. This decision completes the Committee's consideration of the application under section 19(1)(a) of the Property Factors (Scotland) Act 2011. It is without prejudice to the Committee's decision of 12 November 2015 and the Property Factor Enforcement Order that the Committee has made consequent to that decision.

**Rights of Appeal**

15. Parties are given a right of appeal against this decision to the Sheriff by summary application within 21 days beginning with the date when this decision is "made".

David Bartos

Signed ..... 22 December 2015

David Bartos, Chairperson