



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

Hohp ref: HOHP/PF/15/0141

Re: Property at Flat 2/1, 90 Barrland Street, Glasgow, G41 1RJ

The Parties:-

Mr. Craig Gibson ("the Homeowner")

**MXM Property Solutions Limited, 50 Wellington Street, Glasgow,
G2 6HJ ("the Factor")**

**Decision by a Committee of the Homeowner Housing Panel In an Application
under Section 17 of the Property Factors (Scotland) Act 2011**

Committee Members:

Patricia Anne Pryce (Chairperson); Sara Hesp (Surveyor Member)

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Factor has complied with the Code of Conduct for Property Factors as required by Section 14 of the 2011 Act and complied with the Property Factor's duties, determines unanimously that, in relation to the Homeowner's Application, the Factor has complied with the Code of Conduct for Property Factors and has complied with the Property Factor's duties.

We make the following findings in fact:

The Applicant was the owner from February 2013 until April 2016 of the flatted dwelling house, Flat 2/1, 90 Barrland Street, Glasgow which is situated within a development consisting of two buildings.

The Respondent is the Property Factor for the two blocks and has been so appointed since June 2013.

The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor (7 November 2012).

Following on from the Applicant's application to the HOHP, which comprised of documents submitted in the period of 13 October 2015 to 6 June 2016, the Convener with delegated powers under Section 96 of the Housing (Scotland) Act 2014 referred the application to Committee on 15 June 2016.

Hearing

A hearing took place at Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL on 19 October 2016.

The Applicant did not attend.

The Respondent was represented by Mr. Mark Allan, Managing Director of the Respondent and Mr. Tim Allan, Technical Manager employed by the Respondent.

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the Homeowner Housing Panel (Applications and Decisions)(Scotland) Regulations 2012 as "the 2012 Regulations".

The Committee had available to it and gave consideration to: the Application by the Applicant which comprised of all paperwork submitted by the Applicant submitted in the period of 13 October 2015 to 6 June 2016, together with email by the Respondent to the Homeowners Housing Panel ("HOHP" hereinafter) dated 22 August 2016, together with enclosures contained therein.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 2.3, 2.5, 3.3 and 7.1 of the Code.

The Code

The elements of the Code relied upon in the application are as follows:-

Section 2.3

You must provide homeowners with your contact details, including telephone number. If it is part of the service agreed with homeowners, you must also provide details of arrangements for dealing with out-of-hours emergencies including how to contact out-of-hours contractors.

Section 2.5

You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).

Section 3.3

You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.

Section 7.1

You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

Preliminary Issues

1. The Committee on its own initiative issued a Direction dated 12 July 2016 under Regulation 13 of the 2012 Regulations requiring the Applicant to confirm the identity of the proprietor of the property. The Committee confirmed that the Respondent had complied fully with this Direction, confirming that he had been the proprietor of the property until April 2016.
2. The Committee on its own initiative issued a Direction dated 9 August 2016 requiring the Respondent to produce their written Statement of Services. The Committee confirmed that the Respondent had fully complied with this Direction.
3. By email of 22 August 2016, the Respondent requested an adjournment of the hearing set down for 30 August 2016 due to Mr. Mark Allan's absence on annual leave. The Committee acceded to this request and granted this request in terms of its Direction issued in terms of Regulation 21 of the 2012 Regulations and dated 29 August 2016. The Applicant did not object to the Respondent's request for the adjournment.
4. Thereafter, another hearing was set down for 17 October 2016. However, the

Applicant advised that this was not convenient for him as he would just be back from annual leave and requested a different date. The Respondent did not object to this request. The Committee acceded to this request and granted it in terms of its Direction issued in terms of Regulation 21 of the 2012 Regulations and dated 7 September 2016.

5. Thereafter, another hearing was set down for 19 October 2016 commencing at 1030 am at Wellington House, 134/136 Wellington Street, Glasgow. The Applicant confirmed by his response to the Panel dated 10 September 2016 that he was content with this new date.
6. The hearing took place on 19 October 2016. The Applicant did not attend the hearing. The Committee decided that it could continue with the hearing in the absence of the Applicant and would consider the written submissions made by the Applicant. The Respondent offered no objection to this course of action.

The Factual Complaints

These will be addressed in the order of the alleged breaches of the Code:-

1. Breach of Section 2.3

Mr. Mark Allan advised that the Applicant had access to all of the contact information through the portal which was set up for and provided to all of the owners of the properties in the development of the two buildings where the Applicant's property was situated. The owners had been able to access the information in that format since the Respondent took over factoring in June 2013. He referred the Committee to the screen shots of the Southgate Owners Association portal which proved that the Applicant had accessed this portal and that all of the contact information was available to the Applicant through this portal. Out of 157 owners in the development, only 9 or 10 chose not to use the portal, preferring paper based communications which the Respondent was happy to provide. However, from the screen shots provided, it was clear that the Applicant had made use of this facility on several occasions and was easily able to access all of the required contact information including emergency contact details.

Mr. Allan further explained that the Respondent set up a new portal which the Applicant first accessed in March 2015 and continually thereafter.

Given the foregoing, the Committee is of the opinion that there is no breach of Section 2.3 of the Code.

2. Breach of Section 2.5

Mr. Allan explained that the Respondent had complied with this part of the Code as he and Mr. Tim Allan had both gone above and beyond when trying to address the Applicant's concerns. He explained that when the Applicant had contacted them in February 2015 after the Applicant had slipped in the flood water in the car park, they had not only responded to the Applicant's emails but met with him on site at the car

park of the building where the property was located to discuss the flooding problem from which the car park suffered. Both Misters Allan explained that they advised the Applicant that the flooding of the car park was a latent defect of the construction of the building and that it was the subject of a complaint to the NHBC. They advised the Applicant to make a formal complaint to the NHBC and also provided him with the details of the original builders, Westpoint Homes, so that he could complain directly to them. Mr. Tim Allan confirmed that only one of the 157 owners in the development had made a formal complaint to the NHBC and that the Applicant was not the owner who had taken this step.

The Committee noted that the correspondence which the Applicant produced did not demonstrate that there had been any failure by the Respondent to respond to the Applicant's complaints.

Given the foregoing, the Committee is of the opinion that there is no breach of Section 2.5 of the Code.

3. Breach of Section 3.3

Mr. Allan Watt confirmed that full financial information is provided by the Respondent at the AGM which takes place every year. Furthermore, there is financial information available through the portal and that owners are provided with monthly bills through the portal.

The Committee noted that the Applicant had not provided any evidence in relation to this alleged breach of the Code.

Given the foregoing, the Committee is of the opinion that there is no breach of Section 3.3 of the Code.

4. Breach of Section 7.1

The Committee accepted that the Respondent had a clear and simple Complaints Procedure which was easy for homeowners to follow.

Mr. Mark Allan advised that as a result of the Applicant not paying his factoring bills, the Respondent had required to register a Notice of Potential Liability against the Applicant's property. He confirmed that they had halted litigation when the HOHP process had been commenced by the Applicant. He confirmed that they had been agreeable to mediation taking place. He advised that the Applicant had owed them £1645 which included late payment fees to the Respondent totaling £158.40. The Respondent agreed to remove the late payment fees of £158.40. In return, the Applicant agreed to end the HOHP process and withdraw his application but that he failed to do this.

The Committee had no information from the Applicant in relation to any proposed agreement about withdrawing his application. However, the Committee noted that the Respondent has a clear written two stage complaints procedure for homeowners to follow which also includes consideration of complaints against contractors. Mr. Mark Allan confirmed that this was in place when the Applicant owned his property.

Given the foregoing, the Committee is of the opinion that there is no breach of Section

7.1 of the Code.

Failure to carry out the property factor's duties

The Applicant had several complaints under this heading as follows:-

- (a) He complained that the Respondent had failed to maintain the safety of the car park following flooding. The Respondent had already covered this earlier in the hearing advising that Applicant that this was a latent defect and that the NHBC was involved in tackling the builders.
- (b) The Applicant complained that the Respondent had failed to adequately secure the building resulting in a large number of vehicle break ins. Mr. Tim Allan advised that the Respondent had attempted to arrange for CCTV coverage of the car park following advice obtained from Police Scotland. However, they were three votes short of approval of this expenditure from the homeowners, with the Applicant being one of the owners who had refused to agree to the installation of CCTV.
- (c) The Applicant complained that the Respondent had failed to respond to his concerns about cleaning up glass after the break in to his own vehicle, however, the Committee noted that in terms of the title deeds of the property which the Applicant had supplied, the car space disposed to the Applicant did not form part of the common parts and therefore did not require to be managed by the Respondent.
- (d) The Applicant complained that the Respondent had failed to advise homeowners that the lock to the disabled access door had been changed. Mr. Mark Allan explained that this had been an emergency repair which required to be carried out and as soon as the Respondent had been provided with the keys to the new lock, these had been provided to the owners. He explained that the inability to access this particular door had lasted about two days. He further explained that there were two further means of access and egress to the property which were available to the Applicant.
- (e) The Applicant complained that the Respondent had failed to respond to his concerns about the health and safety of the lift when he had become stuck in it twice. Both Misters Allan explained that the lift was subject to a maintenance contract which included emergency call out and contact if someone became stuck in the lift. In essence, if someone, including the Applicant became stuck in the lift, by pushing the emergency button, the lift contractor was required to attend within an hour and free the occupant. This is what occurred on these two occasions. Furthermore, the lift company reported every incident to the Respondent. In terms of legislation, the lift was also subject to six monthly checks and any repairs identified at these checks were required to be carried out. Mr. Mark Allan did accept that he had not replied to the Applicant in relation to this specific matter as, by this point, the Applicant had become abusive and extremely difficult to deal with.

Given all of the foregoing, the Committee is of the opinion that the Respondent did not fail to carry out the property factor's duties.

Observations

The Committee does note that the Respondent did not reply to the Applicant in relation

to the matter of the lift. The Committee does have some sympathy for the Respondent in this particular matter as the actings of the Respondent otherwise in relation to the present application have been beyond reproach. However, the Committee would simply remind the Respondent that not responding to correspondence from homeowners in other circumstances could be viewed as a breach of Section 2.5 of the Code.

Appeals

In terms of Section 22 of the 2011 Act, any appeal is on a point of law only and requires to be made by Summary Application to the Sheriff. Any appeal must be made within 21 days beginning with the day on which the decision appealed against is made.

Sign:

Patricia Anne Pryce
Chairperson

Date 19 October 2016.....