



**Decision by a Committee of the Homeowner Housing Panel in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012**

hohp Ref: HOHP/PF/15/00114

Re: Property at Flat 2/2, 139 Queen Margaret Drive, Glasgow, G20 8PD ("the property")

**The Parties:-**

Mr Moazzam Rasul, residing at 79 Queen Margaret Drive, Glasgow, G20 8PA ("the homeowner")

JB& G Forsyth, Property Management Services, 79 West Regent Street, Glasgow, G2 2AS ("the factor"), hereinafter together referred to as "the parties"

**Committee Members**

Karen Moore (Chairperson)

Colin Campbell (Housing Member)

**Decision**

The Committee determined that the factor had not failed to comply with the property factor's duties in terms of Section 17 of the Act.

**Background**

1. The factor's is registered as a property factor under reference PF000187.
2. By application dated 28 July 2015 ("the Application") the homeowner applied to the Homeowner Housing Panel for a determination that the factor had failed to comply with section 7 (Complaints Resolution) at paragraph 7.2 of the Property Factor Code of Conduct ("the Code") as required by section 14(5) of the Act and had failed comply with the property factor's duties in terms

of Section 17 of the Act, both by levying an administration fee of £50.00 plus VAT for providing a letter to the homeowner's lawyer confirming the factoring position.

3. The Homeowner Housing Panel on 21 October 2015 wrote to the homeowner advising that, in its opinion, the factor had not failed to comply with section 7 (Complaints Resolution) at paragraph 7.2 of the Property Factor Code of Conduct ("the Code") as required by section 14(5) of the Act and so the Application would proceed in respect of failure to comply with the factor's duties in terms of Section 17 of the Act, only.

4. The parties both made written representations to and lodged the following documentary productions with the Committee.

On behalf of the homeowner, the following documentary productions were lodged:-

- a) Chain of email correspondence between him and the factor from 1 June to 23 July 2015;
- b) Letter to the factor dated 9 July 2105;
- c) Factor's Written Statement of Services;

On behalf of the factor, the following documentary productions were lodged:-

- d) Factor's Written Statement of Services;
- e) Letter from the factor to the homeowner's lawyer dated 21 April 2015 advising of the administration fee of £50.00 plus Vat for change of ownership work;

Each party's representations and productions were copied to the other party.

#### Hearing

5. A hearing took place on 3 February 2015 at Wellington House, Wellington Street, Glasgow. The homeowner did not appear. The factor was represented by Mr Willie Hutchinson and Mr David Hutchinson both of whom are directors of the factor's organisation. Both addressed the Committee. No other witnesses or parties gave evidence. The Committee had the benefit of the Application and the copy correspondence which accompanied the Application all as submitted by the homeowner and copied to the factor. The Committee had the benefit of the factor's written representations which responses had been copied to the homeowner. The Committee also had benefit of the parties' written representations and the documentary productions.

Evidence on behalf of the factor.

6. Mr Willie Hutchinson advised the Committee that, in his opinion, the homeowner had not followed the factor's complaint procedure in full, but nonetheless, the factor had tried to explain the factor's position to the homeowner. Mr Willie Hutchinson referred the Committee to the Written Statement of Services at paragraph 16 on page 1 and to letter from the factor to homeowner's lawyer dated 21 April 2015, both of which highlighted the administration fee. Mr Willie Hutchinson advised the Committee that neither the homeowner's lawyer nor the homeowner raised an objection to the fee. Mr Willie Hutchinson confirmed to the Committee that the administration fee covered more than just apportioning common charges and that the letter provided to the homeowner's lawyer was a formal letter on which the lawyer for the purchaser could rely in relation to buildings insurance, common charges and proposed common works.

7. In response to the Committee's question in respect of the homeowner's complaint that the factor had not informed him of his right to apply to the Homeowner Housing Panel, Mr David Hutchison advised the Committee that had the homeowner followed the factor's complaint procedure in full, the final letter would have advised of this right and that further, this right is mentioned in the Written Statement of Services.

Factual findings of the Committee.

8. The Committee found that:-

- i) The Property is managed by the factor who had provided the homeowner's lawyer with a formal letter providing information required by the lawyer in respect of the homeowner's sale of the Property;
- ii) The factor charged a fee of £50.00 plus VAT for this letter;
- iii) The factor had given prior notice of a charge, both in the Written Statement of Services and the letter to the homeowner's lawyer dated 21 April 2015 and
- iv) The fee charged was not excessive.

Decision of the Committee

11. The matter between the parties and the matter for the Committee's determination, therefore, is that the factor failed to comply with the property factor's duties in terms by levying an administration fee of £50.00 plus VAT for providing a formal letter to the homeowner's lawyer confirming the factoring position.

12. The Committee, as a consequence of their findings outline above, determined that the factor had not failed to comply with the property factor's duties in terms of Section 17 of the Act.

13. The decision is unanimous

#### Appeals

14. 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..."

Karen Moore

Chairperson

12 February 2016