



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

hohp Ref: HOHP/PF/15/0090

The Parties:-

Aylmer Millen, 30/5 Eyre Crescent, Edinburgh EH3 5EU ("the Applicant")

Property Factor: James Gibb Residential Factors, 4 Atholl Place, Edinburgh EH3 8HT ("the Respondent")

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

Re: Property at 30/5 Eyre Crescent, Edinburgh EH3 5EU ("the Property")

Committee Members:

John McHugh (Chairman) and Sara Hesp (Surveyor Member).

Decision

The Committee hereby determines that the Property Factor Enforcement Order has been complied with.

The decision is unanimous.

Reasons for Decision

The Committee issued a Property Factor Enforcement Order on 2 November 2015 ("the PFEO").

In terms of section 23(1) of the 2011 Act, the Committee is to determine whether the Respondent has complied with the PFEO.

The PFEO

The PFEO was in the following terms:

“Within 28 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must ensure that it puts in place adequate measures to ensure that records are kept of all documents provided to third parties in the course of inviting tenders for works in relation to the Development such that it will be able to comply with its duties under Paragraph 6.6 of the Code of Conduct for Property Factors.”

The Parties’ Representations

We considered the Applicant’s representations dated 5 January 2016 and the Respondent’s representations dated 23 December 2015 which referred to the Respondent’s earlier correspondence dated 24 November 2015.

The Respondent believes that it has complied with the PFEO and refers to its new internal operating procedure for dealing with quotations and tenders, of which it has provided a copy. It explains that a copy of this policy is available to all of its property managers.

The policy recognises that tender related documentation is to be made available to homeowners upon request.

The Applicant is not satisfied that the PFEO has been complied with. He directs his criticism at two aspects. The first is the detail of the Respondent’s new policy where he observes areas in which he considers the policy is lacking and which he considers could reasonably be improved to provide greater clarity.

The second is that, at the moment, he may only assess compliance or otherwise by reference to the policy and he has some reservations that the policy will, in practice, be followed by the Respondent. He cites difficulties which he perceives to exist in a current tender process being administered by the Respondent.

Decision

We have decided that the Respondent has complied with the terms of the PFEO. The PFEO is quite narrow in its terms and it appears that the policy introduced by the Respondent meets the terms of the PFEO.

However valid any comments or criticism the Applicant may make in relation to the policy, it does meet what the PFEO requires. Similarly, the Committee are not in a position to consider actual performance by the Respondent as that is not relevant to the decision regarding compliance with the PFEO.

It is likely that the Respondent will be careful in future to ensure compliance with its new policy and its other obligations as it is evident that the Applicant will take an interest in future tender procedures.

Appeals

The parties' attention is drawn to the terms of section 22 of the 2011 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 day on which the decision appealed against is made...”

Signed.....

Date8/2/16.....

JOHN M MCHUGH

Chairman