



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

Property Factor Enforcement Order

HOHP ref: HOHP/PF/13/0295

Re: 18 Strathclyde Gardens, Drumsagard G72 7ET ('the property')

The Parties:

Mrs Natalie Holms, 18 Strathclyde Gardens, Drumsagard G72 7ET ('the homeowner')

PFAMS (a division of First Stop Properties Limited), 37 Cadzow Street, Hamilton ML3 6EE ('the factor')

Committee members:

Sarah O'Neill (Chairperson)

Thomas Keenan (Housing member)

Background

1. In its decision dated 13 June 2014 ("the decision"), the homeowner housing committee ("the committee") determined that the respondent had failed to comply with its duties as a property factor under section 17 (5) of the Property Factors (Scotland) Act 2011 ("the Act"). The reasons for the committee's determination are set out in full in the decision.
2. In terms of section 19 (2) of the Act, the committee issued a Notice of Proposal to make a Property Factor Enforcement Order on 13 June 2014, and allowed the parties 14 days to make representations to the committee.
3. Written representations were received from the homeowner in an email to the homeowner housing panel ("the panel") dated 19 June 2014. The homeowner stated that she did not consider that the proposed level of compensation was sufficient, given the inconvenience and stress which she had been caused as a result of the factor's failure to comply with its duties as a property factor. She indicated that she believed the level of compensation awarded should be increased to reflect this.

4. A letter from the factor dated 24 June 2014 was received by the panel on 25 June 2014. This stated that the factor had issued the homeowner with a credit note for £25, and enclosed a copy of this, requesting confirmation that the matter was now closed. The letter was sent to the homeowner, who sent a further email to the panel on 30 June again stating that she did not consider that the proposed compensation of £25 was sufficient give the stress, inconvenience, time and energy she had been caused as a result of the factor's failure to comply with its duties. She also stated that the factor should not have made changes to her account until a final decision on the PFEO had been made by the committee.
5. An email was then received from the factor on 12 July, explaining that it had misinterpreted the terms of the Notice of Proposal to make a PFEO, and thought this was itself a final decision which had to be complied with. The factor apologised for this misunderstanding, and stated that it would like to reiterate that it genuinely thought it was doing the right thing by not invoicing homeowners in respect of incorrect utility bills.
6. The committee has carefully considered the written representations received from both parties. The committee notes that the homeowner does not consider the proposed level of compensation to be sufficient, given the stress and inconvenience which was caused to her. It also notes the factor's argument that it was acting in the best interests of homeowners by not invoicing them in relation to incorrect bills. As stated in the decision, the committee notes that, while the factor should not have expected the homeowner to pay this bill in one lump sum - or even over a three month period as it had offered - the homeowner nevertheless had a responsibility to pay for her share of the communal energy use.
7. In terms of section 20 (1) (b) of the Act, the committee has the power to make a PFEO requiring a property factor to make such payment to the homeowner as it considers reasonable. In this case, having considered the written representations received from the parties, the committee considers that a payment of £25 is reasonable in all the circumstances.
8. The committee therefore issues the following Property Factor Enforcement Order ("PFEO"):

Within 28 days of the communication to the factor of this Property Factor Enforcement Order, the factor must:

1. Credit the sum of £25 to the applicant's account in recognition of the stress and inconvenience caused to her by the factor's failure to comply with its duties as a property factor with regard to the communal electricity relating to the property.

2. Provide documentary evidence to the committee of its compliance with this Property Factor Enforcement Order by sending such evidence to the office of the Homeowner Housing Panel by recorded delivery post.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

Right of appeal

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 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.

More information regarding appeals can be found in the information guide produced by the homeowner housing panel. This can be found on the panel's website at:

<http://hohp.scotland.gov.uk/prhp/2649.325.346.html>

Sarah O'Neill

Chairperson Signature : .

Date.....20/7/17....