



**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/13/0243**

**Re: Property at 52 St. Vincent Street, Flat E/8, Glasgow**

The Parties:-

Mrs. Danielle Bakayoko ('the homeowner')

Glasgow West Housing Association Ltd ('the property factor')

Committee members:

Karen Moore (Chairperson)

Carolyn Hirst (Housing Member)

Colin Campbell (Housing Member)

**This document should be read in conjunction with the Committee's Decision dated 13 June 2014 under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act")**

**Preliminary Matter**

The Committee are aware that the homeowner sent a communication to the Homeowner Housing Panel on 16 April 2014. The Committee decided to disregard this communication as it was received after the close of the Hearing and so did not form part of the Hearing procedure nor had it been notified to the property factor.

**Decision of the Committee**

The Committee's Decision indicated that the Committee proposed to make a Property Factor Enforcement Order ("PFEKO"). The Committee indicated that prior to making a PFEKO, the Committee would provide the Parties with a period of fourteen days within which to make representations under Section 19(2)(b) of the Act.

The Committee's decision was intimated to the Parties on 17 June 2014.

The Parties both made representations to the Committee.

## **The Parties' Representations**

On 3 July 2014, the property factor submitted a representation by email. The email comprised six attachments as follows:-

- i) Covering letter containing an apology to the Committee for the property factor's lack of clarity at the Hearing and expressing an intention on the part of the factor to review and improve procedures;
- ii) Detailed response in tabular format addressing each element of the proposed PFEO;
- iii) Revised and proposed template invoice;
- iv) Template of invoice in use at time of the homeowner's application and the Hearing;
- v) Copy of quote from cleaning contractor detailing cleaning specification and
- vi) Copy of letter of apology sent by the property factor to the homeowner, which letter made an ex gratia payment of compensation of £100.00 to the homeowner.

The property factor's representation was copied to the homeowner.

The homeowner sent a detailed letter of representation dated 8 July and received by the Homeowner Housing Panel on 9 July both 2014. In that letter the homeowner, rehearsed the arguments which she had put forward at the Hearing and made representations in respect of each element of the Committee's proposed PFEO.

The homeowner sent a further letter of representation dated 9 July and received by the Homeowner Housing Panel on 10 July both 2014. The homeowner indicated that she wished the Committee to be aware of the property factor's offer of an ex gratia payment which she would not accept until the outcome of her application and indicated that she wished the property factor to comply with the Committee's proposed PFEO.

The homeowner's representations were copied to the property factor.

The property factor made a further representation on 29 July 2014 which representation responded to some of the homeowner's representations. This representation was copied to the homeowner.

As no new further representations were made, on 1 August 2014, the Committee indicated to the Parties that the Committee would proceed, in terms of Section 19(3) of the Act, to take account all of the representations before them.

## **The Committee's Consideration of the Representations.**

The Committee took account of the property factor's representations of 3 July 2014. In respect of the covering letter, the Committee noted and accepted the property

factor's apology. In respect of the property factor's detailed response to the proposed PFEO, the Committee noted that the property factor had set out and evidenced ways in which the property factor intended to comply with the proposed PFEO. The Committee were satisfied that the property factor was committed to service improvement in these respects. However, in respect of the property factor's representation on how the apportionment of the homeowners common charges has been calculated, the Committee are concerned that the property factor has deviated from what is set out in the title deeds without any sound basis for doing so. The Committee consider that it would be appropriate for the property factor to take legal advice to ensure the correct apportionment is applied in the future.

The Committee took account of the property factor's representations of 29 July 2014.

The Committee noted that the property factor clarified points raised at the Hearing and by the homeowner in her representations of 8 July 2014, which representations are dealt with in the following paragraph, and did not raise any new matters.

The Committee took account of the homeowner's representations of 8 July 2014. The Committee noted that the homeowner, in the main part, advanced the arguments which she put forward at the Hearing. In particular, the homeowner reasserted her views on the property factor's power and authority to employ a concierge service, the necessity for that service and the qualifications of those employed factor's failings. The Committee considered that they had already made a finding in respect of these matters at the Hearing and that there was no further evidence to alter that that finding. The homeowner disputed that the property factor had improved the invoice layout and provided a copy of an invoice date May 2014. The Committee took the view that this invoice predated the date on which the Committee's Decision was issued and that it would be unfair to criticise the property factor in this regard. The Committee noted that the homeowner stated that the common parts of the building still remain dirty. The Committee noted the homeowner's view that the title deeds restricted the property factor's powers in respect of incurring common charges in excess of £2,000.00. The Committee agreed with the property factor's representations of 29 July 2014 that this restriction applies to major works and not to the concierge service. The Committee were of the view that the homeowner misinterpreted the title deeds in this respect.

With regard to the property factor's letter of apology and ex gratia payment to the homeowner, the Committee considered that, as this course of action had not been raised at the Hearing and as the Committee had not proposed an order in this respect, it was not for the Committee to comment. However, the Committee noted the position of both Parties.

The Committee are of the view that although efforts have been made by the property factor to address the matters which are the subject of the homeowner's application, these matters are not yet resolved.

## **The Committee's Decision on a Property Factor Enforcement Order and Reason Therefor**

The Committee, having received and taken account of the representations of both Parties in terms of Section 19(3) of the Act, are satisfied that the property factor had failed in its property factor duties and in its Section 14 duty.

Therefore, being so satisfied, the Committee are obliged by Section 19(3) of the Act to make a Property Factor Enforcement Order.

### **The Property Factor Enforcement Order**

The Committee hereby make the following Property Factor Enforcement Order:-

Within 42 calendar days of the date of this Property Factor Enforcement Order, the property factor must:

1. Confirm in writing to the Committee that the revised invoice layout as submitted to the Committee by the property factor on 3 July 2014 has been implemented;
2. Confirm in writing to the Committee that the cleaning programme for the common areas of the Development as submitted to the Committee by the property factor on 3 July 2014 has been implemented;
3. Confirm in writing to the Committee that staff training on complaints handling programme as submitted to the Committee by the property factor on 3 July 2014 has been implemented and
4. Provide the Committee with written evidence that the property factor has :
  - 4.1. Taken legal advice on the interpretation and application of the terms of the title deeds of the Property and any relevant legislation in respect of the homeowner's ownership of the various elements of common property;
  - 4.2. Further to 4.1, ascertained the homeowner's specific liability for the costs attributable to each element of the common property in which the homeowner has an interest and
  - 4.3. Reviewed their invoicing arrangements to ensure that the correct calculation and apportionment of common charges attributable to the homeowner in terms of the title deeds is applied.

### **Effect of Failing to Comply with the Property Factor Enforcement Order**

The property factor should note that failure to comply with a property factor enforcement order without reasonable excuse is a criminal offence in terms of Section 24 of the Act. In addition, the Scottish Ministers can take any failure to comply with a property factor enforcement order into account in respect of the future registration of the property factor on the register of property factors.

## **Appeal**

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

Karen Moore

Chairperson Signature .....

Date *5<sup>th</sup> September 2014*