



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

hohp Ref: HOHP/PF/13/0018

Re: Properties at Broomhill Court, Stirling, FK9 5AF (collectively "the Property")

The Parties:-

Mr & Mrs AG Smith, 16 Craiglea Road, Perth, PH1 1LA ("the applicants")

Hacking & Paterson Management Services, 1 Newton Terrace, Charing Cross, Glasgow, G3 7PL ("the respondent")

Property Factor Enforcement Order issued following a decision by a Committee of the Homeowner Housing Panel dated 2 August 2013 in terms of s 19(3) of the Property Factors (Scotland) Act 2011

Committee Members:

Maurice O'Carroll (Chairman); Brenda Higgins (Housing Member); Andrew Taylor (Surveyor Member)

Background

1. By application dated 18 January 2013, the applicants applied to the Homeowner Housing Panel for a determination of whether the respondent had failed to comply with the property factor's duties imposed by section 17 of the 2011 Act and failed to comply with the duties set out in sections 6.3, 6.9 and 7.2 of the Code of Conduct imposed by section 14 of the 2011 Act.
2. A hearing was subsequently held at Europa House, 450 Argyll Street, Glasgow on 19 July 2013 before a committee of the Homeowner Housing Panel. It issued a determination with reasons in accordance with Regulation 26(2)(b) of the 2012 Regulations. It found that the respondent had failed in its duties under s 17 of the Act in relation to headings 5, 7 and 8 of the final summary of complaint lodged by the applicants. It also found a failure to comply with s 14(5) of the Act in relation to headings 7 and 8 by reference to section 6.9 of the Code of Conduct.

3. Pursuant to 19(2) of the Act, the Committee gave notice of the proposed Property Factor Enforcement Order as part of its decision and allowed the parties 14 days to make representations to the Committee. The applicants made no representations. By letter dated 16 August 2013, the respondent made a number of representations in relation to the decision of the Committee as well as the proposed Property Factor Enforcement Order. The Committee has carefully considered the respondent's representations and by this decision issues a Property Factor Enforcement Order with the following points of clarification in response to those representations.
4. The failures in duty referred to in the headings of complaint discussed at the hearing held on 19 July 2013 was intimated in advance to the respondent. It was noted at paragraph 7 of the decision dated 2 August 2013 that no issue was taken at that time regarding fair notice of the complaints made further to the application.
5. In relation to heading 5, the complaint clearly related to a changeover in supplier at the end of 2012, going into 2013, from Scottish Power to E.on. Those are the dates upon which the Committee's findings in fact were based by reference to relevant correspondence. Paragraph 8.5 at page 7 of the decision makes reference to another block within Broomhill Court. The decision ought accurately to have narrated that there was more than one stairwell within the single block at the Property. The Property Factor Enforcement Order has been amended accordingly. The applicants, owning two properties within the block, were aware of two different tariffs for communal electricity being supplied. The Committee wished that disparity to be explained by the respondent to the applicants and for the applicants to benefit from the lower of the two tariffs applicable throughout the block if possible.
6. The Committee accepts that the differential tariffs being charged in the two stairwells at the Property was not a matter raised as part of the originating application to the Homeowner Housing Panel. The Property Factor Enforcement Order has accordingly also been modified to take account of that fact. However, the Committee nonetheless considers that issue and the circumstances surrounding the changeover in supplier ought to have been adequately explained to the applicants at the relevant time as part of its factor duties as narrated in its decision of 2 August 2013.
7. In relation to headings 7 and 8, the Committee considered that a general duty of inspection could be inferred from the factors' duties to ensure that workmanship is carried out to an adequate standard and by reference to section 6.9 of the Code of Conduct. It accepts that the works in question at the stairwell and communal fence were carried out some time ago and that therefore there will be some additional wear and tear. However, the accepted evidence heard disclosed that the original repairs carried out in October 2011 had not been carried out to an adequate standard and that this was agreed at the time by Messrs Kingham

and Gifford for the respondent. The Committee also accepted that the workmanship had not been rectified as at the date of the hearing.

8. At paragraph 4, of the Property Factor Enforcement Order it is narrated that the repairs should be carried out to a reasonable standard of workmanship and to the satisfaction of the applicants. The Committee considered that if the work is carried out to a reasonable standard of workmanship then it will be to the satisfaction of the applicants. If after compliance with that part of the Enforcement Order it is alleged that the applicants are unreasonably refusing to accept that the work has been carried out to the requisite standard, the Committee has powers under s 16 to carry out an inspection of the property itself. Thereafter, it has powers to vary or revoke a Property Factor Enforcement Order under s 21 if it considers that it has been complied with, should that become necessary. The Committee considers that the respondent is therefore adequately safeguarded.

The Property Factor Enforcement Order

9. Therefore, the Committee makes the following Property Factor Enforcement Order:

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

1. Provide to the applicants a detailed breakdown of charges including meter readings, unit charges and standing charges applied both prior to and immediately after the changeover in communal electricity charges by Scottish Power and E.on at the Property to demonstrate that there was no unnecessary expenditure at the time of changeover between those two utility providers.
2. Further, to provide to the applicants evidence regarding electricity charges made in relation to the two stairwells within Broomhill Court and to explain the apparent difference in charges between them.
3. To provide documentary evidence of compliance to the Homeowner Housing Panel with Orders 1 and 2 above within 7 days of having done so.
4. At their own expense to instruct remedial works to be carried out in relation to the communal fence and common stairwell to a reasonable standard of workmanship and thereafter to inspect such works upon completion and to confirm to the Homeowner Housing Panel that such works have been carried out to the satisfaction of the applicants within 7 days of having done so.

Appeals

10. The parties' attention is drawn to the terms of s 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 date on which the decision appealed against is made..."

Maurice O'Carroll

Signed
Chairperson

Date 12 September 2013