



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as "the tribunal")

Issued under Section 19 of the Property Factors (Scotland) Act 2011 ("the Act")

Case Reference Number: HOHP/PF/16/0025

Re: 0/1, 5 Firpark Close, Glasgow G31 2HQ (the property)

The Parties:

Mrs Morag Shaw, 25 Greenhead Road, Lennoxtown G66 7DQ (the homeowner)

Newton Property Management, 87 Port Dundas Road, Glasgow G4 0SF (the property factor)

1. On 29 November 2016, the homeowner housing committee ('the committee', now the tribunal) issued its decision on the merits of the homeowner's application. In terms of that decision, the committee found in favour of the homeowner in respect of a failure by the property factor to comply with its duties under section 14 of the Property Factors (Scotland) Act 2011 in respect of sections 1.1a B.d, 1.1a F.p and 2.5 of the code of conduct for property factors ('the code').
2. As a result, the committee issued on the same date a Notice of Proposal to make a Property Factor Enforcement Order ("PFOE"). This stated:

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

 - a. Issue a formal written apology to the homeowner in respect of the property factor's failure to comply with its duties under section 2.5 of the code of conduct for property factors.
 - b. Make payment to the homeowner of the sum of £150 in recognition of the stress and inconvenience caused to her by the property factor's failure to comply with its duties under section 2.5 of the code of conduct.
 - c. Amend its written statement of services to set out clear information about the circumstances in which it will charge an 'underwriting fee' in respect of larger

works falling outwith its core service, including when, in what circumstances, and to whom, this fee will be charged, in order to comply with section 1.1a B.d of the code of conduct for property factors.

- d. Amend its written statement of services to set out clear information on how to change or terminate the service arrangement including signposting to the applicable legislation, and state clearly any 'cooling off' period, period of notice or penalty charges for early termination, in order to comply with section 1.1a F.p of the code of conduct for property factors.
- e. Provide documentary evidence to the committee of its compliance with the above by sending such evidence to the office of the Homeowner Housing Panel by recorded delivery post.
3. The Notice of Proposal gave notice to both parties that any written representations they wished to make on the terms of the proposed PFEO should be made within 14 days of the date of the decision. No written representations were received from either party within the stated timescale.
4. On 22 December 2016, a copy letter to the homeowner dated 20 December was received from the property factor, together with an amended version of its written statement of services (WSS). Due to the Christmas holiday period, this was not received by the tribunal until 9 January 2017. An email from the homeowner replying to the property factor's letter was copied to the tribunal on 29 December 2016, but again was not received by the tribunal until 9 January 2017.
5. The property factor's letter to the homeowner dealt with each of the points within the proposed PFEO as follows:
 - 1) It included a formal written apology to the homeowner for the property factor's failure to comply with section 2.5 of the code.
 - 2) It stated that the sum of £150 had been credited to the homeowner's bank account in recognition of the stress and inconvenience caused to her by the property factor's failure to comply with its duties under section 2.5 of the code.
 - 3) It stated that the property factor had amended its WSS in order to comply with section 1.1a B.d of the code, and refers to section C, sub clause XIV of the amended WSS.
 - 4) It stated that the property factor had amended its WSS in order to comply with section 1.1a F.p of the code, and refers to section F, sub clause i. of the amended WSS.
 - 5) It stated that the letter had been copied to the panel (now the tribunal).

6. It therefore appeared to the tribunal that the contents of the property factor's letter of 20 December suggest that the property factor had treated the Notice of Proposal as the PFEO itself, and had taken steps to comply with this.
7. In her email of 29 December 2016 to the property factor, the homeowner confirmed that she had received the letter, together with enclosures, and that the payment of £150 had been paid into her bank account. She also said that she was pleased that the WSS was now easier to read and set things out with more clarity.
8. The tribunal agrees with the homeowner that the amended WSS is much clearer and easier to read than the previous version. The tribunal notes that the property factor appears to have taken on board the observations in its original decision regarding the format of the WSS, and very much welcomes the positive improvements which have been made.
9. On 22 January 2017, the tribunal issued a direction (Direction No. 5) to the parties. In its direction, the tribunal noted that the homeowner appeared to be satisfied with the contents of the property factor's letter and the amended WSS. The tribunal was satisfied that the property factor had complied with paragraphs 1), 2) and 3) of the proposed PFEO.
10. Having considered the terms of the amended section F, sub clause i of the amended WSS, however, the tribunal was not satisfied that this fully met the requirements of paragraph 4 of the proposed PFEO. Firstly, there was no reference to the applicable legislation (i.e. the Tenements (Scotland) Act 2004 and/or the Title Conditions (Scotland) Act 2003), as required by section 1.1a F.p of the code of conduct. Secondly, the copy of the amended WSS provided appeared to have been amended such that it applies only to the development within which the homeowner's property is situated. The intention behind part 4) had been that the property factor should amend its WSS in respect of all properties which it manages, in order to comply with section 1.1a F.p.
11. Given the efforts which the property manager had made to comply with the terms of the proposed PFEO, and the improvements to its WSS, the tribunal was not minded to issue a PFEO at that stage. With regard to paragraph 4 of the proposed PFEO, the tribunal directed the property factor to: 1) amend section F (i) of its WSS to signpost homeowners to the applicable legislation, as required by section 1.1a F.p; and 2) clarify whether it intended to amend this section of its WSS as appropriate for all properties which it manages, rather than just the homeowner's development, by 6 February 2017.
12. On 25 January 2017, a letter was received from the property factor setting out the amended wording which had now been included in Section F(i) of its WSS

under the heading 'How to End the Arrangement'. In the letter, the property factor also confirmed that its WSS for all developments which it manages has been updated to include this wording.

13. Having carefully considered the amended wording set out in the letter, and having noted that this has now been included in the WSS for all developments which it manages, the tribunal is satisfied that the property factor has now complied with paragraph 4 of the proposed PFEO.
14. Therefore, in the circumstances outlined above, and bearing in mind the tribunal's overriding objective in terms of regulation 3 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016, the tribunal in its discretion decides not to make a PFEO, as the homeowner's complaint has been resolved and no further remedy is appropriate or necessary under the Act.

Right of Appeal

15. A party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Sarah O'Neill

Signed

.....Date.....14/2/17.....

Sarah O'Neill, Chairperson