

Housing and Property Chamber

First-tier Tribunal for Scotland



Certificate of Compliance: Housing (Scotland) Act 2006, section 21

Chamber Ref: PF /16/0026

The Property: Flat 21, 4 Lindsey Road, Edinburgh EH6 4EP

The Parties:

Jason Dove and levgenia Dove, residing at the Property ('the homeowner')

and

Trinity Factoring Services Ltd, incorporated under the Companies Acts, Company Number SC067354, and having its Registered Office at 209 – 211 Bruntsfield Place, Edinburgh EH10 4DH and having Property Factors ID PF000170. ('the factors')

The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee):

**David Preston (Chairman); and Mrs Elizabeth Dickson (Housing Member)
(‘the tribunal’)**

Decision:

The tribunal Certifies that the factor has complied with the requirements of the Property Factor Enforcement Order (“the PFEO”) issued by the Homeowner Housing Committee (“the HOHC”) dated 7 November 2016.

Parties' representations:

1. By email dated 20 December 2016, the factor submitted the Response Form and advised that in their opinion the actions required by the PFEO had been completed. In particular they advised that they had amended their Debt Recovery Procedure and had provided copies to all the owners at the development on 15 November 2016. They also advised that they had issued a cheque for £350 to the homeowner on 27 October 2016.

2. By email dated 3 January 2017 the homeowner advised that they did not believe that the requirements of the PFEO had been satisfactorily implemented. In particular they referred to paragraph 39 of the Decision of the HOHC that "it would have been reasonable to expect that when instructing their solicitors to proceed, notifications of those instructions could have been given to the homeowners to enable them to make representations". They said that the updated Debt Recovery Procedure did not provide for this and submitted that it did nothing to improve the communication but in fact reduced the number of reminders (not to mention tripling the cost) and introducing vague and unacceptable timescales: e.g. "if no immediate payment is received...". They further submitted that the phrase "would consider instructing legal action without any further notice."

Reasons for Decision:

3. The decision of the HOHC was made in the light of the terms of the Debt Recovery Procedure in force at that time which made no reference to the possibility of a NOPL. In those circumstances no prior notification whatsoever had been provided as to the possibility of a NOPL being applied to a homeowners' title. By amending their Debt Recovery Procedure as they have done, the tribunal is of the view that the possibility of such action has been drawn to the attention of all homeowners. Owners are now informed of the possible consequence of a failure to pay or respond to the invoice and two reminders.
4. With regard to the timescales provided within the Debt Recovery Procedure, the tribunal finds that the minimum period of 42 days from the issue of an invoice before the factor "considers(s) instructing legal action..." as provided in the revised Procedure, is not unreasonable.
5. In coming to this view, the tribunal is mindful of the responsibility of the factors to ensure that sums due by homeowners are recovered efficiently so as to avoid additional expense to those homeowners who pay timeously. Any administrative charge imposed by the factors is a commercial decision for them in respect of which the tribunal makes no comment.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the

decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

D Preston

Chairman Date: 9 January 2017

