

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision

of

the Housing and Property Chamber of the First-tier Tribunal for Scotland

(Hereinafter referred to as "the Tribunal")

Under Section 21 (1) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/16/0009

Re : Property at Flat 18, 15 Simpson Loan, Edinburgh EH3 9GE ("the Property")

The Parties:-

Mr Jason Watson, Flat 18, 15 Simpson Loan, Edinburgh EH3 9GB ("the Applicant")

Quartermile Estates Limited, Estate Office, 9 Simpson Loan, Edinburgh EH3 9GQ ("the Respondents")

The Tribunal comprised:-

Mr David Bartos	- Legal member and Chairperson
Ms Carolyn Hirst	- Ordinary member

NOTICE TO THE PARTIES

The Tribunal decides to vary the Property Factor Enforcement Order dated 1 September 2016 in respect of the Property by omitting parts (4), (5) and (6) of the Order. Otherwise the Tribunal decides not to vary the Order.

Reasons

1. On or about 6 September 2016 the then Homeowner Housing Committee issued a Property Factor Enforcement Order (“PFEO”) dated 1 September 2016 in respect of the Property. There was no appeal against that Order.
2. The Order required the Respondents to carry out certain actions by certain time limits. The actions included the lodging with the Homeowner Housing Panel, or its successor, the Tribunal, of the annual service charge budget. The last of these time limits was one week after the end of December 2016.
3. A hearing in connection with the Respondents’ compliance with the Order was fixed for 23 January 2017 and notified to both parties. There was no appearance by or for the Respondents at the hearing. Following the hearing the Tribunal made a decision dated 30 January 2017 finding the Respondents in breach of the whole PFEO other than on a small part of part (5) of the Order. There was no appeal or even application for permission to appeal against that decision.
4. By letter dated 3 April 2017 sent to the Tribunal the Respondents sought to “respond to the reasons” in the decision of 30 January 2017. The letter contained responses to certain individual paragraphs of the decision of 30 January and concluded with a bald statement that they considered that they had complied with the PFEO. It was accompanied by various other documents.
5. The letter of 3 April 2017 did not seek any particular action by the Tribunal. By letter dated 17 May 2017 the Tribunal wrote to the Respondents’ Paul Curran and separately to their Sarah-Louise Halliday

asking for clarification whether the Respondents sought revocation, or variation (including variation to nil) of the PFEO or no order at all. A response from the Respondents was sought by 31 May 2017.

6. No response was received and by letter from the Tribunal dated 19 June 2017 the Respondents were informed that the Tribunal proposed to take no further action in the matter. By letter of 21 June 2017 the Respondents responded and stated that they sought the variation of the PFEO to nil.
7. By letter from the Tribunal dated 7 July 2017 the Applicant was given an opportunity to make objection to the variation sought and to seek a hearing. By e-mail to the Tribunal dated 24 July 2017 the Applicant objected to the variation sought, giving reasons in relation to parts (1) to (3) and providing further documentation. This was copied to the Respondents by letter of 3 August 2017 which also offered the Respondents the option of a hearing and the opportunity to make written representations in response within 14 days. There being again no response at all from the Respondents the Tribunal gave the Respondents a further opportunity to respond. Only then did the Respondents respond on 4 September 2017 indicating that they did not wish a hearing or to make further representations.
8. Section 21(1) of the Property Factors (Scotland) Act 2011 gives the Tribunal a discretion to vary a Property Factor Enforcement Order in such manner as it considers reasonable.
9. Parts (1) to (3) of the PFEO require at the very least the lodging with the Tribunal of the annual budget calculation with a certain entries in relation to budgeted insurance costs (and possibly "M&E Maintenance Contract" costs) and a supporting insurance quotation if one has been obtained.

10. In their letter of 3 April 2017 the Respondents submitted that the Applicant had prevented the issuing of the budget and compliance with parts (1) to (3) of the PFEO. In his objection to variation the Applicant submitted that this was untrue. He produced an e-mail dated 23 January 2017 from Ms Halliday to himself stating that she believed that the Keith Willis (the Respondents' Estate Manager) was "working on the sinking fund" and that "budget packs" were being prepared to be sent to all residents.
11. The duty to compile a service charge budget is contained in the Respondents' own written statement of services (page 2). This is itself part of the core services being provided by the Respondents. This duty is not made conditional on the approval of any particular homeowner. The Tribunal is unable to see how the actions of a single homeowner or indeed a "block committee" can prevent the Respondents from carrying out their duty to compile and issue the budget. That duty is owed to all homeowners covered by the written statement of services. Accordingly the Tribunal rejected the Respondents' submission.
12. In any event no budget has been lodged with the Tribunal as required by part (3) of the PFEO. There was no evidence before the Tribunal that it has even been issued. The Tribunal found this to be inexplicable. In all of these circumstances the Tribunal did not consider it reasonable to vary parts (1), (2) and (3) of the PFEO to nil. Nor given the unexplained continuing delay of the Respondents in relation to the budget did the Tribunal consider that satisfactory progress had been made in compliance with those parts of the PFEO which would merit an extension of any time limit for compliance.

13. Turning to parts (4)(a), (4)(b), (5), and (6) of the PFEO, these require the provision of various breakdowns of charges and the lodging of such documentation with the Tribunal. With regard to part (4)(a) with their letter of 3 April 2017 the Respondents enclosed their letter of 3 April a purchase order form from window contractors Greig Avinou for block Q18 for the year 2014 for £ 4660 ex VAT and four invoices issued at regular intervals in 2014 for sums also totalling £ 4660 plus VAT. There was no objection by the Applicant to this aspect of the Respondents' letter. The Tribunal found that given the lack of objection from the Applicant, the terms of the purchase order and the invoices, and their coincidence with the annual budgeted figure of £ 4660, a sufficiently clear financial break-down of the window-cleaning charges had been given.
14. With regard to part (4)(b) in their letter of 3 April 2017 the Respondents explained that the £ 335 of £ 4660 budgeted for window cleaning but not used was in fact a credit due to an overpayment by homeowners of that sum in 2013. This explained the Respondents' expenditure figure in their Service Charge Certificate for 2014 of £ 4325 when the actual amount spent was £ 4660 plus VAT. Given this explanation the Tribunal found a further detailed break-down to be unnecessary. The Applicant did not take issue with this explanation. In these circumstances it was reasonable to vary the whole of part (4) of the PFEO to nil.
15. With regard to part (5) of the PFEO, in their decision of 30 January 2017 the Tribunal had found that a breakdown had been given of lighting repairs to the top stairwell landing of £ 124.12. That still left absent a breakdown for the balance under M&E Repairs of £ 361.57. In their letter of 3 April 2017 the Respondents did give a breakdown of that balance under 'Reason 9' to which the Tribunal referred. The Applicant did not take issue with this breakdown. In the circumstances this was sufficient

compliance, albeit belated, with the outstanding element of part (5) of the PFEO. In these circumstances it was reasonable to vary part (5) of the PFEO to nil. Given that part (6) was consequential to parts (4) and (5), it was reasonable for it too to be varied to nil.

16. For these reasons the Tribunal reached the decision set out above. The decision of the Tribunal was unanimous. The Respondents are reminded that a person who without reasonable excuse fails to comply with a property factor enforcement order commits a criminal offence.

Appeals

A homeowner or property factor aggrieved by this 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.

All rights of appeal are under section 46 of the Tribunals (Scotland) Act 2014 and the Scottish Tribunals (Time Limits) Regulations 2016.

David Bartos

Signed

.....6 October 2017

David Bartos, Chairperson