



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/15/0013

Re: 5 Mortimer Drive, Monifieth, Dundee DD5 4JF (the property)

The Parties:

Mr Douglas McBride, 5 Mortimer Drive, Monifieth, Dundee DD5 4JF (the homeowner)

H and H Properties UK Ltd, 71 Blackness Road, Dundee DD1 5PD (the property factor)

Decision by a committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011 ('the Act')

Committee members: Sarah O'Neill (Chairperson), Elaine Munroe (Housing member), Michael Scott (Housing member).

Background

1. In its decision dated 16 July 2015 and issued on 17 July 2015 ("the decision"), the homeowner housing committee ("the committee") determined that the respondent had failed to comply with its duties as a property factor under section 14 of the Property Factors (Scotland) Act 2011 ("the Act"). The reasons for the committee's determination are set out in full in the decision.
2. In terms of section 19 (2) of the Act, the committee issued a Notice of Proposal to make a Property Factor Enforcement Order (PFEO) on 17 July 2015, and allowed the parties 14 days to make representations to the committee.
3. An email was received on 23 July from George Godsman, Financial Consultant to the property factor. This stated that while the property factor accepted the committee's decision, it requested that the committee amended the wording at Paragraph 54, as this contained factual errors.

4. Paragraph 54 of the decision stated:

"There had been some staffing issues, and after she had come into post in November 2013, it became apparent that the 2011/12 accounts were incorrect. In some instances homeowners had been charged in 2012/13 for work which had been carried out in 2011/12. This meant that they had been charged twice for the same works, and some homeowners had overpaid in the first year."

5. The errors referred to were in the final sentence of that paragraph. Mr Godsman advised that no homeowner had been charged twice and no homeowner had overpaid. He explained that what had happened was that some expenditure was charged on the day the invoice was settled, as opposed to being allocated to the year the expense was incurred (e.g. an expense incurred in July 2012 was only paid and allocated in October 2012, therefore only appearing in the 2012/13 accounts as opposed to the 2011/12 accounts) He further stated that, whilst this was incorrect, there was no double charging. He stated that homeowners did not overpay, and that some were in fact given repayments in 2011/12 when, if the expenditure had been correctly allocated, they would not have been due these repayments.
6. He went on to say that as it stood, this sentence gave a misleading impression as to the effect the allocated expense method had on homeowners. He therefore requested that this paragraph of the decision be amended accordingly and re-issued.
7. An email was received from the homeowner on 27 July. This stated that he had received a letter of apology from Mr Godsman dated 23 July, together with a cheque for £100 and an amended copy of the factor's written statement of services. He also stated that there was no reference to the actions set out at point 2 of the Notice of Proposal to make a Property Factor Enforcement Order (PFO), with regard to the provision of accounts within 3 months of the issue of the PFO. Finally, he queried whether the letter of apology received from the property factor was sufficient to comply with the terms of the proposed PFO. He pointed out that Mr Godsman is a financial consultant to the factor, and is not the responsible person registered on the Property Factors Register. He pointed out that Mr Hassan Al-Saffar, the Managing Director, was the responsible person, and stated that he would therefore have expected the letter to be signed by Mr Al-Saffar.
8. The committee has carefully considered the written representations received from both parties, and by this decision issues a PFO with the following points of clarification in response to the property factor's representations. The

committee acknowledges that there was a lack of clarity on the accounting issues at the hearing, which led to the inclusion of the final sentence of paragraph 54 of its decision. The committee considers that the inclusion or otherwise of the final sentence of paragraph 54 does not have any material impact on its final decision. The committee therefore accepts the property factor's contention that the final sentence of this paragraph of the decision contains inaccuracies.

9. The committee notes that both parties appear to have misinterpreted the Notice of Proposal to make a Property Factor Enforcement Order as being the PFEO itself, when in fact the purpose behind the Notice was to seek representations from the parties on the terms of the proposed PFEO, before deciding whether to issue such a PFEO and/or its terms. While representations have been received from both parties, neither party has indicated that they are unhappy with the terms of the proposed PFEO.
10. The committee also notes that, while the homeowner has advised that the property factor has carried out the actions set out in part 1 of the proposed PFEO (subject to his concerns as to who signed the letter of apology), the committee has been provided with no evidence of this by the property factor. The PFEO which is issued by this decision makes clear that documentary evidence of compliance with all paragraphs of the PFEO must be sent to the committee within the stated timescales.
11. With regard to the homeowner's concerns as to who should sign a letter of apology, the committee will make a decision as to whether the relevant paragraphs of the PFEO have been complied with, once the timescales set out for compliance set out in the PFEO have elapsed. The committee takes the view, however, that, provided such a letter is signed on behalf of the property factor (defined in the decision as H and H Properties UK Ltd) by a staff member or other representative of the property factor, any such letter is likely to be found to be in compliance with the PFEO.
12. The committee therefore issues the following Property Factor Enforcement Order ("PFEO"):
 1. 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 sections 1, 1.1a D (m), 2.5, 3, 3.3 and 5.2 of the code of conduct for property factors.

- b. Make payment to the homeowner of the sum of £100 in recognition of the stress and inconvenience caused to him by the property factor's failure to comply with its duties under the above mentioned sections of the code.
 - c. Amend its written statement of services to include details of the timescales within which it will respond to enquiries and complaints received by letter or e-mail, in order to comply with sections 1.1a D (m) and 2.5 of the code of conduct for property factors
 - d. 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.
2. Within 3 months of the communication to the property factor of this Property Factor Enforcement Order, the property factor must:
- a. Provide clear and accurate accounts to all homeowners within the development for the years 2011-12, 2012-13 and 2013-14, setting out a detailed financial breakdown of charges made and a description of the activities and works carried out which were charged for.
 - b. 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.

Section 19 of the 2011 Act provides as follows:

"... (2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so...

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to them.

(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order..."

Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence.

Right of appeal

The parties' attention is drawn to the terms of section 22 of the 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 homeowner housing committee.
- (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made.

More information regarding appeals can be found in the information guide produced by the homeowner housing panel. This can be found on the panel's website at:

<http://hohp.scotland.gov.uk/prhp/2649.325.346.html>

Chairperson Signature :

Date 17/8/15