



Property Factor Enforcement Order following upon a Decision of the Homeowner Housing Committee on an Application under Section 17 of the Property Factors (Scotland) Act 2011

HOHP Reference: HOHP/PF/13/0294

Re: Subjects at 4 Muir Street, Renfrew, 805 Dalmarnock Road, Glasgow and 278B London Road, Glasgow

HOHP Reference: HOHP/PF/14/0093

Re: subjects at 278B London Road, Glasgow

THE PARTIES

Mr Dale Hughes, residing at 59 Braid Road, Edinburgh, EH10 6AR ("the applicant")

And

Grant and Wilson Property Management Limited, being a company registered in Scotland and having their place of business at 65 Greendyke Street, Glasgow G1 5PX ("the respondent")

The document should be read in conjunction with the committee's decision of the same date.

The committee makes the following Property Factor Enforcement Order (PFEO)

Within 28 days of the date of the communication to the respondent of this PFEO, the respondent must:-

1. Make a payment of £350 to the applicant in compensation with regard to the respondent's continuing and continued failures to act in accordance with the Property Factor's Code of Conduct.
2. Confirm that all members of staff within the respondents will be made aware of the terms of the complaints procedure set out in the respondent's written Statement of Services and to ensure that all complaints are actioned in accordance with the Written Statement of Services and that no further responses are sent to any complainer requiring them to complete a "complaints form".
3. The respondent will ensure that all correspondence to homeowners is addressed to homeowners at the correspondence address which they hold for them and not sent to the property address when it is clear that the homeowner does not reside within the property.

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 factors; 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 factors' duties or, as the case may be, to comply with the Section 14 duty, the committee must make a Property Factor Enforcement Order."

The intimation of the committee's decision and this proposed PFEO to the parties should be taken as notice for the purposes of Section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under Section 19(2)(B) reach the Homeowner Housing Panel's office by no later than 14 days after the date that the decision and this proposed PFEO is intimated to them. If no representations are received within that timescale then the committee is likely to proceed to make a PFEO without seeking further representations from the parties.

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

Signed.....
Chairperson

Date..... *8 March 2016*



Supplementary Decision of the Home Owner Housing Committee issued under the Home Owner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP Reference: HOHP/PF/13/0294

Re: Subjects at 4 Muir Street, Renfrew, 805 Dalmarnock Road, Glasgow and 278B London Road, Glasgow

HOHP Reference: HOHP/PF/14/0093

Re: subjects at 278B London Road, Glasgow

Parties

Mr Dale Hughes residing at 59 Braid Road, Edinburgh, EH10 6AR ("the Homeowner")

Grant and Wilson Property Management Limited, being a company registered in Scotland and having their place of business at 65 Greendyke Street, Glasgow, G1 5PX ("the Factors")

SUPPLEMENTARY DECISION BY THE COMMITTEE OF THE HOMEOWNER HOUSING PANEL IN RESPECT OF APPLICATIONS UNDER SECTION 17 OF THE PROPERTY FACTORS (SCOTLAND) ACT 2011

The Committee, having conducted a hearing into the applications made by the homeowner, and having issued a Decision and a draft Property Factor Enforcement Order subsequent to a hearing, and having considered further written submissions made by the parties have determined that the factors as property factors have failed to comply with the Code of Conduct for Property Factors as required by section 14(5) of the Act and accordingly the Committee have determined to issue a Property Factor Enforcement Order.

DECISION

1. The Committee refer to the decision dated 18th November 2015 setting out the background to the matter, confirming their decision and issuing parties a draft Property Factor Enforcement Order.
2. In accordance with the provisions of section 19 of the Property Factors (Scotland) Act 2011, the Committee notified parties of their proposal to make the Property Factor Enforcement Order and allow parties an opportunity to make representations.
3. Both parties have submitted representations to the Committee. The property factors submitted their representations by letter from their solicitors dated 1st December 2015. The homeowner submitted his representation by emails dated 6th December 2015 and 17th December 2015.
4. The committee has noted the terms of the representations made by the parties.
5. The Committee notes that the property factor (Grant and Wilson Property Management Limited) has ceased to have responsibility for any factoring issues arising after 3rd March 2015. The committee, however, have noted that the said company continues to exist and continues to be shown as registered on the Register of Companies.

6. The Committee notes that the homeowner seeks a further direction from the Committee asking that the Property Factor Enforcement Order is made binding against a different company namely James Gibb Property Management Limited who have now become the factors of this property after Grant and Wilson Property Management Limited transferred their business to them.
7. The Committee have carefully considered the representations from both parties. The Committee take the view that they cannot make any order against a company which is not a party to the applications. The property factor named in the application is Grant and Wilson Property Management Limited. Accordingly, any Property Factor Enforcement Order must be made only against that respondent. It is not appropriate for the Committee to make any orders against any other organisations or companies who are not party to the action.
8. The Committee also considered the terms of the property factors' submissions submitted via their solicitors. It was submitted that paragraphs number 2 and 3 of the Property Factor Enforcement Order as proposed were redundant as the property factor no longer trades and cannot give effect to paragraphs 2 and 3. The Committee took the view that the property factor (Grant and Wilson Property Management Limited), remains as a live company on the Register of Companies and whether it is currently trading or not any order which is made by the Committee will apply to them.
9. However, the committee accepted that Grant and Wilson Property Management Limited is no longer a registered property factor and, whilst that remains the position, ongoing compliance with the Code of Conduct is not a requirement. Accordingly, the PFEO is amended accordingly.
10. The Committee decided that, with the exception of the original paragraph 2 and a minor wording alteration to the original paragraph 3, the Property Factor Enforcement Order which had been proposed in draft should be made as a final order and accordingly the Committee now determine to issue such an order as at today's date. A copy of the terms of the Property Factor Enforcement Order as made will be issued separately.

APPEALS

11. The parties' attention is drawn to the terms of section 22 of the Act regarding the right to appeal and the time limit for doing so. That section provides:
 - (1) Any appeal on a point of law may only be made by summary application to the Sheriff against a decision made by the President of the Home Owner Housing Panel or a Home Owner Housing Committee.
 - (2) Any appeal under subsection (1) must be made within a period of 21 days beginning with the day on which the decision appealed against is made.

Signed.....
Chairperson

Witness.....

CATHERINE MCQUARRIE
SOLICITOR
7 WEST GEORGE STREET
GLASGOW

Date..... 8 March 2016

Date..... 8 March 2016