



PROPERTY AT 59/5 HESPERUS BROADWAY, EDINBURGH EH5 1FW

The Parties:-

The homeowner – Mr Mark & Mrs Gillian Coyle (“the applicants”)

The property factor – Dunedin Canmore Enterprise t/a Dunedin Canmore Property Management (“the respondent”)

PROPERTY FACTOR ENFORCEMENT ORDER

1. On 7 April 2015 Notice was given to the parties in terms of Section 19 of the 2011 Act, of the terms of a proposed Property Factor Enforcement Order and allowed parties an opportunity to make written submissions in relation to the proposed Order.
2. The homeowner has made further submissions following upon intimation of the proposed Property Factor Enforcement Order. Email representations were received on 17 April 2015. The committee have had regard to and considered these further representations.
 - i. The defects identified with the common door and buzzer entry system are the financial responsibility and obligation of the homeowners. Whilst the property factor failed in their duties to rectify the problems their delay has not added to the required costs to resolve the difficulties nor have the difficulties worsened.
 - ii. The committee have set out within their full determination their findings and reasons in respect of the property factor's resolution of the difficulties encountered with the refuse collections. The committee have nothing further to add.
3. The property factor has made no representations following intimation of the proposed Property Factor Enforcement Order.
4. The committee, having resumed consideration of the reference, makes the Order in the following terms:-

Upon receipt of the Order the respondent must:-

Within 12 weeks of intimation hereof this Decision being issued to the parties, the respondent must:-

1. Issue an accurate and comprehensive Written Statement of Services which fully conforms to the Code of Practice for Property Factors,

ensuring that all information is contained within the Written Statement itself and not within Appendices unless necessary; in particular ensuring that the following matters which are currently not accurately referred to within the existing Written Statement of Services are remedied, making reference where necessary to the relevant provisions within the Deed of Conditions which sets out the Property Factor's responsibilities and duties.

- i. their authority to act.
 - ii. the homeowners' method of terminating the respondent's appointment.
 - iii. the extent of their delegated authority, in terms of their responsibilities and also their financial authority, all in relation to their core service.
 - iv. the procedure in place for consultation to seek written approval before providing services or incurring charges or fees in addition to those relating to the core service.
 - v. the basis upon which the insurance for individual properties is calculated.
 - vi. the basis of charging administration fees to third party supplier invoices.
 - vii. setting out with clarity the various fractions (1/20, 1/42, 1/81 and 1/120) which apply to charges within the Development and why.
2. To remedy the respondent's previous failure to apportion buildings insurance for the Development and in particular:-
 - i. to accurately calculate the proportion of all homeowners' liability in the Development in accordance with the Deed of Conditions;
 - ii.
 - to return any overpaid premiums to those homeowners affected by the respondent's failure to calculate insurance premium proportions from the commencement of their instruction as Property Factor to date;
 - to bear, at their sole cost, due to their initial failing and continuing failure, all extra premiums which would have required to have been paid by those homeowners, including the applicants, who have been undercharged by virtue of the respondent's failings until the end of the last insurance premium period, namely 31 December 2014.
 3. To write in detail to all homeowners within the Development to explain the difficulties in respect of the refuse collections, setting out all

possible options for long-term resolution, and to convene a meeting of homeowners to discuss the options available and to obtain a mandate to proceed accordingly.

4. To instruct a reputable landscape gardener to survey, assess and recommend an upgrade to the common garden ground around 59 Hesperus Broadway seeking to ensure that such upgrade works have longevity, the costs involved in the surveying and implementation to be met by the respondents at their sole cost.
5. To instruct a reputable contractor to assess and survey the common door at 59 Hesperus Broadway and the buzzer entry system there and obtain advice regarding replacement of the door and buzzer entry system and to instruct the replacement works required, unless the costs involved exceed the respondent's delegated authority in which instance they will write to all affected homeowners and convene a meeting to discuss and to seek approval for the necessary common repairs to be carried out; all associated costs to be met by the homeowners.
6. To have prepared at their sole cost, a fire safety plan approved by the Scottish Fire & Rescue Service, for the common block 59 Hesperus Broadway and for the plan to be displayed at the site of the fire alarm control panel. The plan should be affixed in a permanent and presentable manner.
7. Prepare a schedule of proposed staff training to ensure that all staff are fully aware of the respondent's obligations:-
 - i. to have detailed knowledge of the terms of the Code of Practice and to ensure that they comply with it;
 - ii. to comply with their duties arising from the Deed of Conditions;
 - iii. to ensure adequate customer relations and to communicate effectively;
 - iv. to ensure all staff are fully aware of the respondent's complaints procedure and when to implement this;including details of the provider of the training and timescales for the provision of delivery of the training.
8. To make payment to the applicants of:-
 - i. reimbursement of the standard management charges which the applicants have paid to the respondent since taking up occupation of their property up to 31 March 2015;

- ii. the sum previously paid by the applicants to the respondent in respect of the provision and installation of barriers around the bins in the underground parking area;
- iii. the sum of £220 representing the outlay paid by the applicants to install noticeboards in all six blocks of the development in terms of the agreement previously reached between the parties;
- iv. £500 in recognition of the anxiety, stress and inconvenience caused to them as a result of the respondent's failings;

the respondent being entitled to offset the monies to be paid to the applicants against any other outstanding charges due to be paid by the applicants.

9. Issue a written apology to the applicants for having breached the Code and for having failed in their duties as established by the Committee.

The property factor should note that failure without reasonable excuse to comply with the Property Factor Enforcement Order is a criminal offence in terms of Section 24 of the 2011 Act. Additionally Scottish Ministers can take any failure into account in respect of the future registration of the respondent on the register of property factors.

In terms of Section 22 of the 2011 Act, any Appeal is on a point of law only and requires to be made by Summary Application to the Sheriff. Any Appeal must be made within 21 days beginning with the day on which the Decision appealed against is made.

Chairperson signature

Date 12 May 2015