

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 23 (1) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/16/0010

Re : Property at Flat 10, 25 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:-

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| Mr David Bartos | - Chairperson |
| Ms Carolyn Hirst | - Ordinary member |

NOTICE TO THE PARTIES

The Tribunal decides that (1) the Property Factor Enforcement Order in respect of the Property dated 1 September 2016 is varied by in part (3) of the Order between "breakdown of the charges" and "comprised under" inserting "of £ 118 net of value

added tax"; and (2) the Respondents have failed to comply with the Order as above varied.

Reasons

1. By e-mails and posted correspondence issued on or about 3 October 2016, the Applicant and Respondents were invited to indicate whether the Property Factor Enforcement Order dated 1 September 2016 and issued by recorded delivery post and e-mail on 6 September 2016, had been complied with. By written response dated 5 October 2016 the Applicant submitted that no part of the Order had been complied with. By written response dated 12 October 2016 the Respondents submitted that the Order had been complied with. In support of this they relied on an e-mail which pre-dated the Order together with its attachment.
2. Other than the written response of 12 October the Respondents have not lodged any documentation with either the Homeowner Housing Panel or its successor, the Tribunal. In particular they have not lodged the annual service charge budget which, following the precedent of previous years, was expected by the end of December 2016.
3. By letters dated on or about 7 November 2016 the parties were informed that the question of compliance with the Order would be considered at a hearing at George House, 126 George Street, Edinburgh EH2 4HH on 23 January 2017 at 10.00 a.m. On 1 December 2016 the Committee of the Homeowner Housing Panel which had issued the Order became the Tribunal with the same membership.
4. At the hearing on 23 January the Applicant appeared accompanied by Mr Derek Hamilton. There was no appearance by or on behalf of the Respondents. The Tribunal heard the factual evidence of the Applicant which it accepted and which is reflected in the following findings in fact:
 - (a) The Order was notified to the Respondents on or about 6 September 2016.
 - (b) No annual service charge budget has been issued by the Respondents to the Applicant or lodged with either Homeowner Housing Panel or the Tribunal since the notification of the Order. No explanation for this has been given to either the Applicant, the HOHP or the Tribunal. Despite this the Applicant has been issued with an invoice for the first quarter of the period to be covered by the budget.
 - (c) The Respondents charged the owners of flats in the block of which the Property forms part £ 1,327.92 for "M&E Repairs" to cover the whole of 2014. They have not provided a detailed break-down of the charges comprised under £ 118 net of VAT of those charges.
5. Parts (1) and (2) of the Order relate to the content of the Respondents' annual budget calculation. This is something which they are required to provide to

Homeowners in terms of their Written Statement of services. When the Order was made the next budget was due by the end of December 2016. Accordingly parts (1) and (2) required to be complied with by the end of that month.

6. The Applicant told the Tribunal that there had been a meeting between Q11 block owners and the Respondents in November 2016. On the basis of previous years the annual service charge budget would have been issued by December. Instead in mid-December he received an invoice for charges with no supporting budget. The Tribunal finds it inexplicable why the Respondents have failed to issue a budget at all given the practice in previous years and particularly given the terms of the Order. In these circumstances the Tribunal finds the Respondents to have breached parts (1) and (2) of the Order.

7. Part (3) of the Order requires a detailed break-down of the M&E Repairs charges of £ 1,327.92 for the year 2014. In their e-mail of 22 August 2016 the Respondents broke these down to :

- Replacement of emergency lighting parts supported by a copy invoice from Spie Ltd dated 12 August 2014 for £ 1,209.92 net of VAT in respect of "Q11 repair replace lighting"
- Replacement of two broken light fittings supported by a copy invoice from Spie Ltd dated 8 September 2014 for £ 118 net of VAT in respect of "relamping Q11".

The Applicant told the Tribunal that the emergency light fittings in the common landings of the block had required to be replaced, there being 4 floors in total. Apparently the whole system had required replacement. He was therefore content not to insist on a decision of failure to comply in relation to the £ 1,209.92. However that was not the case for the two broken light fittings.

8. Part (3) of the Order requires a detailed break-down of charges including a description of the activities and works including the obtaining of materials charged for. In neither element put forward by the Respondents did they provide such a detailed break-down. The reader is left in the dark as to the amount and cost of materials and labour and the location of the works. The Tribunal would have been minded to find a failure to comply in respect of both elements. However, very fairly the Applicant did not insist on a failure to comply finding in relation to the emergency lighting element, given that he had since found out about the extent of the work. Accordingly the break-down for that element no longer being necessary the Tribunal varies Order as set out above. Otherwise it finds that there has been a failure to comply in respect of the two broken light fittings and a breach of part (3) of the Order. As a consequence of this finding there has been a breach of part (4) of the Order also.

9. The decision of the Tribunal was unanimous.

10. Notice of the decision will be served on the Scottish Ministers. The Respondents are reminded that a person who without reasonable excuse fails to comply with a property factor enforcement order commits a criminal offence.

11. Both parties are also reminded that no matter adjudicated on by the Tribunal in this decision may be adjudicated on by another court or tribunal.

Right of Appeal

The the parties may seek permission to appeal on a point of law against this decision to the Upper Tribunal by means of an application to the First-tier Tribunal made within 30 days beginning with the date when this decision was sent to the party seeking permission. 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

.... 30 January 2017

David Bartos, Chairperson