



**Statement of Decision
to serve on the Scottish Ministers a Notice of Failure to
Comply with a Property Factor Enforcement Order
under Section 23 of the Property Factors (Scotland) Act 2011**

hohp Ref: HOHP/PF/13/0325

Re: 51 Bannermill Place, Aberdeen AB24 5EB ("the Property")

The Parties:-

Miss Julie Thompson, 51 Bannermill Place, Aberdeen AB24 5EB ("the Applicant"); and

Select Property Management (Aberdeen) Limited, incorporated under the Companies Acts (SC402142) and having its registered office at 28 Broad Street, Aberdeen and having a place of business at Factor's Office, Bannermill Place, Aberdeen AB24 5EG ("the Respondent")

Committee Members:

George Clark (Chairman) and Michael Scott (Housing Member)

On 17 September 2014, the Homeowner Housing Committee ("the Committee") issued a Property Factor Enforcement Order on the Respondent in respect of the Property.

The Property Factor Enforcement Order contained the following provisions:

Within 28 days of the communication to the Respondent of this Property Factor Enforcement Order, the Respondent shall:

- (1) issue to all homeowners within the development the current written Statement of Services relative to the development of which the Property forms part;
- (2) issue to the homeowner and to any other homeowners within the development who have not already received them, notices of factoring charges as at February 2014 and May 2014; and
- (3) provide a written undertaking to the Committee that she will henceforth reply to complaints received by letter or e-mail within the timescale set out in the written Statement of Services.

The time allowed for compliance with the Order expired and, on 5 November 2014, the Homeowner Housing Panel wrote to the Parties, asking them to confirm whether or not the actions required in the Property Factor Enforcement Order had been completed. The Applicant replied on 10 November 2014, stating that she had received a copy of the Respondent's Written Terms of Business but not the written Statement of Services required by the Order. The document the Respondent had sent was incomplete and differed significantly from the original version which had been provided to the Committee with the application. She had, on 1 September 2014, received the notices of factoring charges as at February 2014 and May 2014, but was aware that at least 4 other homeowners (who she named) within the development had not received their notices and, at a meeting of homeowners in the development held on 6 November 2014, 15 of the homeowners present had indicated that they had not received a bill in the previous 6 months. She was not in a

position to know whether the undertaking required of the Respondent in terms of the Order had been complied with. The Applicant did not want the Order to be revoked, even though the Respondent had resigned as factor with effect from 30 November 2014. The correspondence from the Applicant covered other matters which were not included in the Application and these comments were not considered by the Committee.

The respondent replied, on 19 November 2014, to the letter of 5 November. The Respondent stated that a copy of the current statement of service and a further copy of the Terms of Business had been issued to "the clients" (presumably all the homeowners within the development) and that a copy of outstanding factoring fee invoices had been issued to those clients who had not settled their factoring fee invoices for either February or May or both. The Respondent did not comment on the third element of the Order and has not provided a written undertaking to the Committee, as required by the Order.

The Committee has considered the representations made by both parties. Without a further hearing with both parties present, it would not be possible to test the competing versions of events given in the letters of reply, but the Respondent has not complied with the third requirement of the Order and it is not accepted by the Applicant that she has received a copy of the written Statement of Service or that all homeowners have now received the notices of factoring charges as at February and May 2014. Accordingly, the Committee has determined that the Respondent has not complied in full with the terms of the Property Factor Enforcement Order and that, in terms of Section 23(2) of the Property Factors (Scotland) act 2011, the Committee is obliged to serve notice of that fact on the Scottish Ministers.

APPEALS

The parties' attention is drawn to the terms of Section 22 of the 2011 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 a 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..."

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

George Clark
Signed
Chairperson

Date 22 December 2014