



Property Factor Enforcement Order

hohp Ref: HOHP/PF/14/0024

Re: Property at Flat 1/1, 183 Craighall Road, Glasgow, G4 9TN (collectively "the Property")

The Parties:-

Mr Emmanuel Egbuka, 1/1, 183 Craighall Road, Glasgow, G4 9TN ("the Applicant")

Grant & Wilson Property Management Ltd, 65 Greendyke Street, Glasgow, G1 5PX ("the Respondent")

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

Committee Members:

Maurice O'Carroll (Chairman) and Carolyn Hirst (Housing Member)

This Notice should be read in conjunction with the Decision of 10 June 2014 under reference HOHP/PF/14/0024

1. By decision of 10 June 2014, the Committee determined that the Respondent had breached its duties in terms of s 17(1)(b) of the 2011 Act in that it had failed to comply with sections 2.1, 2.5, 5.2 and 5.5 of the Code of Conduct for Property Factors as required by s 14(5) of that Act. It also determined that the Respondent had breached its duties in terms of s 17(1)(a) of the 2011 Act in that it had failed properly to communicate with the Applicant and to supply him with the information which he requested by email dated 27 November 2012 and on subsequent dates.
2. In accordance with s 19(3) of the 2011 Act, having been satisfied that the respondent has failed to carry out the property factor duties, the Committee must make a Property Factor Enforcement Order (PFEO). In terms of s 19(2) of the Act, the Committee before proposing this Order gave notice of the proposal to the factor and allowed the parties an opportunity to give representations to the Committee within 14 days of the proposed Order. It did so on 10 June 2014.
3. No representations having been received, the Committee confirmed its PFEO on 3 July 2014 in similar terms to those proposed on 10 June 2014 which was then intimated to the parties.

4. The Factors appealed the Committee's decision and PFEO to the Sheriff Court in terms of s 22 of the 2011 Act. By decision dated 29 January 2015, Sheriff Swanson affirmed the decision of the Committee. She, however raised concerns regarding requirements 3 and 5 of the PFEO. Her decision in that regard was confirmed by decision dated 30 April 2015, following a continued hearing on 14 April 2015.
5. The Sheriff's decision indicated that the appeal had interrupted the process provided for in terms of s 19(2) of the Act whereby the parties are entitled to make representations in relation to the proposed PFEO. As noted above, the period of time permitted for representations following the Committee's original decision dated 10 June 2014 was allowed to pass without comment being made with the result that a final PFEO was issued on 3 July 2014.
6. In terms of section 21(1)(a) of the 2011 Act, the Committee which makes a PFEO may vary the Order in such manner as it considers reasonable. Having considered the Sheriff's decisions of 29 January and 30 April 2015, the Committee therefore varies the PFEO issued on 3 July and substitutes therefor a PFEO in the following terms, which is to say, under deletion of requirements 3 and 5 as contained within the original PFEO of 3 July 2014 as discussed in those decisions:

Within 28 days of the communication to the respondent of the Property Factor Enforcement Order (unless otherwise provided), the respondent must:

1. Provide the Applicant with copies of all receipts and vouchings which underlie the charges contained in the quarterly invoices sent to the Homeowner on 23 August and 21 November, both 2012 under reference numbers 633165 and 644797 respectively.
2. Provide the Applicant with a copy of the insurance claim form sent to the insurers of the common property on behalf of the Applicant in respect of water ingress damage to the Applicant's property during 2012, together with a response to that claim made by the common insurers under the applicable insurance policy. For the avoidance of doubt, the application and response require to be supplied in full and not by way of excerpted extracts.
3. Make payment to the Applicant of the sum of £250 in recognition of the inconvenience and distress that the Respondent's breaches of the Code and factor's duties have caused to the Applicant.
4. Provide documentary evidence of compliance to the Homeowner Housing Panel with the above Orders within 7 days of having done so by recorded delivery post.

7. Appeals

The parties' attention is drawn to the terms of s 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 date on which the decision appealed against is made..."

Signed

M O'Carroll
Chairperson

Date 6 May 2015