



**Certificate of the Homeowner Housing Committee issued
under the Homeowner Housing Panel (Applications & Decisions) (Scotland)
Regulations 2012**

Ref: HOHP/PF/15/0089

Re: 11 Overdale Gardens, Flat 2/2, Glasgow, G42 9QG ("the Property")

Parties: Mrs Angela Wilson, residing at 11 Overdale Gardens, Flat 2/2, Glasgow, G42 9QG ("the Homeowner")

Hacking & Paterson Management Services, 1 Newton Terrace, Charing Cross, Glasgow, G3 7PL ("the Factor")

Certificate of Compliance with Property Factor Enforcement Order previously issued by the Committee dated 14 April 2016 in terms of Section 19(3) of the Property Factors (Scotland) Act 2011 ("the Act")

Committee members:

Ewan K Miller (Chairman and Legal Member); Mr David Hughes-Hallett (Housing Member).

The Homeowner Housing Committee, having determined that the Notice of Property Factor Enforcement Order ("PFEÖ") relating to the Property (dated 14 April 2016) and issued following a decision of the Committee on 20 January 2016 has been complied with, now certifies that the Factor has complied with the said PFEÖ.

Decision

1. By Decision dated 20 January 2016, the Committee determined that the Factor had breached its duties in terms of Section 17(1)(b) of the 2011 Act in that it had failed to comply with Section 5.3 of the Code of Conduct for Property Factors, all as specified further within the said Decision. The Committee issued a Notice of Proposed PFEÖ on the same date with a proposed requirement for the Factor to make payment to the Homeowner of £250.

2. Following representations from the parties, the Committee issued the PFEO as originally drafted on 14 April 2016. The Factor confirmed on 23 May 2016 that they had forwarded the cheque for £250 to the Homeowner on 29 January 2016. They advised that the Homeowner had confirmed in an email of 8 February and letter of 9 February 2016 that the cheque had been received. The Homeowner confirmed on 29 May 2016 that the actions required in the PFEO had been completed.
3. The Property Factor sought revocation of the PFEO in terms of sub-section 21(1) of the Act. The Homeowner did not wish such a revocation and was firmly of the view that the PFEO should remain in place. The Homeowner cited the example of *Hacking & Paterson –v- Milne* in which she said a revocation had taken place and was a bad example of letting the factor “off the hook”.
4. The Committee considered the appropriate course of action here. The Committee did not think that a revocation under 21(1) was appropriate. The circumstances envisaged in Section 21(1)(b) is where the Committee consider the action required by the Order is no longer necessary. In the view of the Committee this envisaged a situation where there had been some change of circumstances that had occurred that materially altered the position rather than simply the required action having been carried out. Revoking the Order would suggest that there had been no breach or a material change and so the Committee was not prepared to revoke the Order. However, whilst the Committee understood the Factor’s logic in looking for a revocation, they also understood the view of the Homeowner. There should be some public record of the PFEO. Similarly, however, there should be a public record that the Factor had complied with the terms of the PFEO properly and timeously. Accordingly the Committee determined that the appropriate course of action was to issue a Certificate of Compliance confirming that the Factor had complied.
5. The Committee was satisfied that the Factor had complied with the terms of the PFEO. It therefore issues this Certificate of Compliance. No further action is therefore required by the Factor in terms of the PFEO.

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 date on which the decision appealed against is made ... "

Chairperson Signature ..

Date.....1/17/16