



Property Factor Enforcement Order

Hohp Ref: HOHP/PF/14/0120

Re: Property at Flat 3/1, 2 Moray Court, Rutherglen, Glasgow, G73 1BF
(collectively "the Property")

The Parties:-

Mr Martin McDonald, residing at the Property ("the Homeowner")

Rutherglen & Cambuslang Housing Association, 16 Farmeloan Road, Rutherglen,
Glasgow, G73 1DL ("the Factors")

**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)

Sally Wainwright (Housing Member)

**This Notice should be read in conjunction with the Decision dated 9 December 2014
under reference HOHP/PF/14/0120**

1. On 9 December 2014, the Committee determined that the Respondent breached its duties in terms of s 17(1)(b) of the 2011 Act in that it failed to comply with sections 2.5, 3.3 and 7 of the Code of Conduct for Property Factors as required by s 14(5) of that Act.
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. Before making an Order, to comply with s 19(2) of the Act, the Committee before proposing an Order must give notice of the proposal to the factor and must allow the parties an opportunity to give representations to the Committee. Intimation of the proposal was duly provided to the parties on 9 December 2014.
3. By letter dated 22 December 2014, the Factors provided representations in terms of s 19(2)(b) of the Act. In it they stated that they were not able to provide comparators as between part owners, full owners and full tenants as differing

considerations apply to each. They also stated that the charges applied were not dependent upon the size of the property occupied.

4. The Decision of 9 December 2014 requires the Factors to rectify the inability to differentiate according to mode of tenure by re-drafting their internal documentation as necessary. This is required in order to provide full transparency as to the charges applied in respect of each of the possible types of tenure of properties which they are responsible for managing. Their failure to do so lies at the heart of the complaint made by the Homeowner.
5. The Committee has taken account of the representations made and has revised the proposed PFEO accordingly.
6. Therefore, the Committee makes the following Property Factor Enforcement Order:

Within 28 days of the communication to the Factors of the present Property Factor Enforcement Order, the Factors must:

1. Provide the Homeowner with a written apology for its failures to comply with the Code in respect of the breaches which are the subject matter of the application.
2. Make payment to the Applicant of the sum of £100 in recognition of the inconvenience and distress that the Factors' breaches of the Code have caused to the Applicant.
3. Reimburse the overpayment in service charges paid by the Applicant to the Respondent during the years 2012, 2013 and 2014 amounting to £90 in total.
4. Provide the Homeowner with a revised Written Statement of Services comprising a single document which specifies in one place what services are provided under each applicable heading (whether as shared owner or as tenant) and what the Homeowner is being charged for those services. The Statement should provide clarity as to what range of services are being provided, what the charges are for them and what the Homeowner is receiving for his payment.
5. Produce a written statement to the Homeowner confirming to him that they have reviewed all charges made since 1 April 2012 and that he is not paying an amount in excess of that applied to a full owner or full tenant for the services he receives overall. In particular, the statement requires to demonstrate that there is no differentiation in the charges applied to the Homeowner when compared to either full owners or full tenants for the services provided, all as narrated in the Decision of 9 December 2014.

6. 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..."

Maurice O'Carroll

Signed

M O'Carroll
Chairperson

Date 5 January 2015