



Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

Ref: HOHP/PF/14/0203

Re: 23 Scotsraig Apartments, Boat Road, Newport-on-Tay, Fife, DD6 8EU ("the Property")

Parties: Mr William Docherty residing at 23 Scotsraig Apartments, Boat Road, Newport-on-Tay, Fife, DD6 8EU ("the Homeowner")

Sheltered Housing Management Ltd, a Company incorporated under the Companies Acts and having their Registered Office at 13 Ward Road, Dundee ("the Factor")

Decision by a Committee of the Homeowner Housing Panel in an application under section 21 of the Property Factors (Scotland) Act 2011 ('the Act')

Committee members:

Mr E K Miller (Chairperson and Legal Member); Ms Sara Hesp (Surveyor Member); and Ms Carolyn Hirst (Housing Member).

Decision

1. The Committee has decided to vary the Property Factor Enforcement Order ("PFEO") dated 2 October 2015 and now requires compliance with the Order within the timescale as varied.
2. The Decision is unanimous.

Reasons for Decision

3. By a decision dated 2 October 2015, the Committee determined that the Factors had breached their duties in terms of Section 17(1)(b) of the Act in that they had failed to comply with sections 3.1 and 3.3 of the Code of Conduct for Property Factors (the Code) as required by Section 14(5) of the Act.
4. As required by the Act, the Committee issued a PFEO after providing the parties with an opportunity to provide comment on a draft PFEO. The

Committee issued a PFEO on 2 October 2015 and a copy of that PFEO is annexed to this decision for information.

5. The PFEO required the Factor to produce termination accounts following the termination of the Factor's appointment on 30 April 2014 compliant with the terms of Section 3.1 of the Code. The PFEO also required annual accounts to be produced by the Factor following their registration as Factor on 13 March 2013 in terms of Section 3.1 of the Code. The PFEO gave the option, should the Factor so elect, to consolidate the annual and termination accounts into one consolidated account. The Factor elected to take up this option.
6. On 30 December 2015 the Factor provided the Homeowner with the statement of account for the relevant consolidated period. A copy of that correspondence is also annexed hereto for information.
7. The Homeowner was very firmly of the view that the accounts did not meet the requirements of the PFEO. The accounts, in the view of the Homeowner, looked as if they had been "thrown together on the back of a fag packet". The Homeowner pointed out that the expenditure did not add up. The Homeowner highlighted that in terms of the Code the account required to be "a detailed financial breakdown of charges made and a description of the activities and works carried out which you are charged for. In response to reasonable requests, you must supply supporting documentation and invoices or other appropriate documentation for inspection or copying". The Homeowner also highlighted that the purpose of Section 3 of the Code was to provide clarity and transparency in all accounting procedures.
8. In response the Factor's solicitors stated that their clients maintained that the accounts that were produced were accurate and issued timeously, that they disclosed the relevant detail upon which the various sums had been expended on. The Factor did not think that they required to provide any further information in relation to "contribution to company central costs" as this was simply the charge made by the Company. Individual costs that the Factor bore as part of their business did not need to be broken down.
9. The Committee considered matters. The Committee considered that it was very clear in terms of the Code that the breakdown that was to be provided in the accounts was to be detailed and set out a description of the activities and works carried out which were charged for. Some of the items listed in the expenditure were small enough that they need not be broken down any further, i.e. telephone costs. However items such as warden's salaries, whilst not disclosing individuals salaries, would normally specify the elements that make up this such as salary, national insurance and pension contributions. Repairs, in particular, should be itemised into individual costs in order that Homeowners are aware of the works that have been carried out to their building. It is not inappropriate for the Factor to provide supporting invoice and documentation to the Homeowner in this regard. Accordingly the Committee was not satisfied that the accounts met the requirements of sections 3.1 and 3.3 of the Code. The Committee had stated in their decision that the accounts would require to set out clearly all transactions that had occurred and what

sums related to works that had been carried out. The accounts simply did not do this. Accordingly, the Committee was satisfied that the Factor was in breach of the Property Factor Enforcement Order.

10. The Committee did consider that the Factor did not need to break down the "contribution to company central costs". Whilst this was a large figure, as had been highlighted in the previous decision, the Factor benefitted from a benign Deed of Conditions that allowed them to set a monthly charge and provided they met the required services under that to retain the balance for themselves. There was no obligation on them to break down this charge and it was not the norm for any factoring company to break down the payments that were made to them. It was only payments that were made out to other parties and on the various services that required to be broken down.
11. The Committee considered what steps should be taken here. In terms of Section 21 of the Act the Committee has the power to vary any Property Factor Enforcement Order. The Committee was keen for this matter to be resolved and for the information to be provided to the Homeowner which, he was entitled to see. Accordingly the Committee was of the view that a further period of one month would be appropriate for the Factor to produce accounts in line with the Committee's requirements.
12. The Committee would highlight to the Property Factor that in terms of Section 23 of the Act, where a Property Factor has failed to comply with a PFEO the Committee must serve notice of the failure on the Scottish Ministers. The Committee also has the power under Section 24 to report a failure to comply with a Property Factor Enforcement Order to the police for consideration for prosecution. As, on this occasion, the Committee had extended the terms of the PFEO, the terms of Section 23 and 24 have not been breached. The Committee would, however, highlight their dissatisfaction with the Factor's effort at the accounts. The Committee fully expected the Factor to produce a proper set of detailed accounts with all the relevant items broken down where appropriate. Should the Factor fail to produce accounts in line with the appropriate standards set out in the Code then the Committee would have no hesitation in carrying out the further steps it was entitled to do in terms of Section 23 and 24 of the Act.

Decision

13. In all the circumstances narrated above the Committee decided to vary the PFEO dated 2 October 2015 by extending the timescale for compliance by a period of one month.
14. Accordingly the Committee VARIES the PFEO as follows:-
Within 1 month from the date of communication to the Factor of this Variation of the PFEO, the Factor must:
 - a. Produce termination accounts following the termination of the Factor's appointment on 30 April 2014 compliant with the terms of Section 3.1 of the

Code of Conduct for Property Factors. The said termination accounts must be provided to the Homeowner.

- b. Produce annual accounts for the period of the Factor's appointment following their registration as Factor on 13 March 2013. The said termination accounts must be provided to the Homeowner.
- c. Should the Factor so elect, the Committee do not object if the Factor wishes to produce one consolidated set of accounts for the period from 13 March 2013 to 30 April 2014 to comply with the obligations set out and (a) and (b) above. The said consolidated accounts must be provided to the Homeowner.

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 ..."

Ewan Miller
Chairperson Signature .<

Date... 22/3/16