



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

Property Factor Enforcement Order

Hohp ref: HOHP/PF/14/0055

Re: 15/5 Hermand Terrace, Edinburgh EH11 1QZ (the property)

The Parties:

Mr Bruce Inglis, 15/5 Hermand Terrace, Edinburgh EH11 1QZ (the homeowner)

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD (the property factor)

Committee members: Sarah O'Neill (Chairperson), Jean Thomson (Housing member).

Background

1. In its decision dated 18 November 2014 ("the decision"), the homeowner housing committee ("the committee") determined that the respondent had failed to comply with its duties as a property factor under section 14 of the Property Factors (Scotland) Act 2011 ("the Act"). The reasons for the committee's determination are set out in full in the decision.
2. In terms of section 19 (2) of the Act, the committee issued a Notice of Proposal to make a Property Factor Enforcement Order (PFEO) on 18 November 2014, and allowed the parties 14 days to make representations to the committee.
3. An email was received from the factor on 5 December 2014, with three attachments. These were: 1) a letter to the homeowner dated 5 December, apologising for the factor's failure to comply with section 2.5, 4.6, 7.1 and 7.2 of the code of conduct for property factors ('the code'), enclosing a cheque for £50 in recognition of the stress and inconvenience caused to the homeowner, and enclosing a copy of its revised complaints procedure; 2) a copy of the said cheque; and 3) a copy of the revised complaints procedure. The email referred to these enclosures as 'proof that all items held within the PFEO have been actioned and completed'. It also stated that a hard copy of these

documents had been sent that day to both the homeowner housing panel and the homeowner.

4. An email was received from the homeowner on 10 December. He stated that he did not agree with the committee's determination that the factor had not failed to comply with section 3.2 of the code. When asked to confirm whether his email was intended to constitute written representations to the committee on the Notice of Proposal to make a Property Factor Enforcement Order, he confirmed that it was.
5. The committee has carefully considered the written representations received from both parties. The committee notes that the factor appears to have misinterpreted the Notice of Proposal to make a Property Factor Enforcement Order as being the PFEO itself, when in fact the purpose behind the Notice was to seek representations from the parties on the terms of the proposed PFEO, before deciding whether to issue such a PFEO and/or its terms.
6. The committee also notes that the homeowner is unhappy with the committee's decision in relation to section 3.2 of the code. As notified in the original decision, the homeowner has a right of appeal on a point of law as regards that decision. This is not a matter which the committee can consider in relation to the Notice of Proposal to make a Property Factor Enforcement Order. The homeowner has made no other written representations as regards the terms of that Notice.
7. The committee notes that the factor has carried out the first two of the three proposed actions set out in the Notice, as it has issued a written apology to the homeowner for its failure to comply with certain sections of the code, and has issued a cheque for £50 to the homeowner. It does not therefore include these matters in this PFEO. The committee is, however, of the view that the amendments which the factor has made to its complaints procedure are not sufficient to comply with the final action set out in the Notice.
8. The committee notes that the amended procedure submitted by the factor includes a reference to the 'second tier' of resolution being addressed to the 'Property Manager's line manager', and states that this person will endeavour to resolve their complaint within 14 days, or propose an alternative timeframe for resolution, if it will take longer than this. In the committee's view, this is not sufficiently clear. The procedure does not clearly state what the 'first tier' of resolution is, or how the homeowner will know the first tier is at an end. While it states that the 'Property manager's Line manager' will deal with the second tier complaint, it is not clear how the homeowner would know the identity of that person. Moreover, the procedure does not clearly state how the outcome

of the second tier will be communicated to the homeowner, or how they will know when the second stage is at an end.

9. The committee therefore issues the following Property Factor Enforcement Order ("PFOE"):

1. Within 28 days of the communication to the factor of this Property Factor Enforcement Order, the factor must amend its written complaints resolution procedure in order to set out clearly the following information:
 - Details of each of the separate stages of its complaints procedure, including what the 'first tier' of resolution is; clear timescales for each stage and clear information about the means by which a complaint should be made.
 - Details of who will deal with the complaint at each stage of the process, and how to identify this person.
 - Details of how, when and by whom the outcome of each stage of the complaint will be communicated to the homeowner.
 - Details of how the homeowner will be informed that each stage of the process is at an end.
2. Provide documentary evidence to the committee of its compliance with this Property Factor Enforcement Order by sending such evidence to the office of the Homeowner Housing Panel by recorded delivery post.

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

Right of appeal

The parties' attention is drawn to the terms of section 22 of the 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 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.

More information regarding appeals can be found in the information guide produced by the homeowner housing panel. This can be found on the panel's website at:

<http://hohp.scotland.gov.uk/prhp/2649.325.346.html>

Sarah O'Neill

Chairperson Signature .

Date .. 23/12/14 ..