



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

**In Application**

**By**

- 1. Roger Merchant, 8 Fairmount Drive, Sauchie, Clackmannanshire FK10 3HN**
- 2. Russell Bowen, 27 Clepington Road, Dundee DD4 7EL**
- 3. Murray Philips, 51/11 Rattray Drive, Edinburgh EH10 5TH**
- 4. Lorraine Findlater, 29 Rosehill Road, Montrose, Angus DD10 8ST**
- 5. Deirdre Langton, The Cottage, Mannings Opening, Strand Street, Sherries, County Dublin, Republic of Ireland.**
- 6. Jill Sim, Flat 17, Royal Apartments, 15 Union Street, Dundee DD1 4BN**
- 7. Fiona Taylor, 24 Flass Road, Wormit, Newport-on-Tay, Fife DD6 8NL ("the Applicants")**

**Property Factor: Be-Factored Ltd, 2a North Kirklands, Eaglesham Road, Glasgow G76 0NT ("the Respondent")**

**hohp Ref: HOHP/PF/15/0037/38/49/59/70/86 & 91**

**Re: Property known as Royal Apartments, Union Street, Dundee DD1 ("the Property")**

**Committee Members:**

John McHugh (Chairman) and David Hughes Hallett (Housing Member).

**This document should be read in conjunction with the Committee's Decision of 16 December 2015.**

**DECISION**

We are of the view that we should make a property factor enforcement order in the terms originally proposed by us.

Our decision is unanimous.

## REASONS FOR DECISION

In our decision we indicated that we proposed to make a property factor enforcement order (“PFEO”).

We indicated that prior to making a property factor enforcement order, we would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

Our decision was intimated to the parties on 24 December 2015. The Respondent requested an extension of the period to respond to the proposed PFEO until 19 January 2015 and this extension was granted to all parties.

The Respondent sent representations on 18 January 2016. These representations indicated partial compliance with the terms of the draft PFEO and offered no commentary upon the appropriateness (or otherwise) of the draft PFEO.

Mr Philips and Mr Marchant have each made written representations regarding the Respondent’s actions towards compliance with the draft PFEO. Again, these offered no commentary upon the appropriateness (or otherwise) of the draft PFEO.

We consider that, having decided that there has been a failure to carry out the section 14 duty, we are obliged by section 19(3) of the Act to make a property factor enforcement order.

Nothing in the parties’ correspondence has persuaded us that the proposed property factor enforcement order ought to be amended.

Parties should note that they will have the opportunity to make representations on whether they consider there to have been compliance with the PFEO in due course.

## Property Factor Enforcement Order

We hereby make the following Property Factor Enforcement Order (“PFEO”):

Within 28 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

1 Make payment of the sum of £50 to each of the Applicants. For the avoidance of doubt, an actual payment (as opposed to a credit to the Applicants’ accounts) is required.

2 Provide to the Applicants a document containing a full accounting reconciliation of all intromissions by the Respondent with funds relating to the Development during the full period of its acting as property factor..

The reconciliation document must be accompanied by a copy of all financial records relating to the Development and, in particular, should include all invoices (paid or unpaid), all receipts, all bank statements and should demonstrate the extent to which funds relating to Nos 5 and 15 Union St have been dealt with separately. It should include opening and closing balances.

Such reconciliation document must be accompanied by a certificate signed by a chartered accountant who is independent of the Respondent. The certificate should confirm the name, contact details and professional qualifications of the accountant. The certificate should contain confirmation by the accountant:

- a) that he has been provided with: (i) a copy of the Committee's Decision and the PFEO and (ii) a copy of all invoices, receipts, accounts, bank statements or financial records which he reasonably requires; and
- b) that he is reasonably satisfied that the reconciliation presents an accurate record of the Respondent's handling of the funds relating to the Development.

3 Provide to each of the Applicants a separate statement of account particular to that Applicant showing the opening balance, all payments received by the Respondent from the Applicant, all charges levied or other credits applied to the Applicant's account and the remaining balance.

4 Provide a copy to the office of the HOHP of all documents produced in satisfaction of paragraphs 2 and 3 of this PFEO together with confirmation that the payments required by paragraph 1 of this PFEO have been made.

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

## 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 day on which the decision appealed against is made..."

Signed .....

Date 11 February 2016

JOHN M MCHUGH

Chairperson