

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision: Property Factors Act 2011; Section 23(2)

Chamber Ref: HOHP/PF/16/0079

The Property:

11 Bogbeth Road, Kemnay, Aberdeenshire AB51 5RJ

The Parties:-

Mr Andrew Snowie, residing at 11 Bogbeth Road, aforesaid.

("the homeowner")

and

**The Property Management Company (Aberdeen) Limited, Little Square,
Oldmeldrum, Aberdeenshire AB51 0AY**

("the factors")

The Tribunal:

David Preston (Legal Chairman); and Angus Anderson, Surveyor (Ordinary Member).

Decision

The tribunal hereby determines that the factor has not complied with Property Factor Enforcement Order dated 17 March 2017.

Reasons:

1. The tribunal issued a Property Factor Enforcement Order ("PFEO") dated 17 March 2017 which was served on the factors by recorded delivery post on 21 March 2017 and copied to the homeowner by first class post on that date. Said PFEO required the Factors, within one month of the date of service to:

- 1) Provide to Mr Snowie details of the tendering process in relation to the ground maintenance contract for the development at Parklands, Kemnay which they advised they would carry out following the tribunal's Decision dated 30 January 2017.
- 2) Arrange a meeting of owners at Parklands, Kemnay to include discussion of: a proposal to change property managers for the development; and the fixing of a level of delegated authority above which the factors will consult with owners before incurring expenditure as items of business to be discussed.

- 3) Issue a letter of apology to all properties in the development at Parklands, Kemnay to which their letter of 8 December 2015 was sent retracting the terms of that letter and for their handling of the issue of the proposed change of property manager at that time.
 - 4) Refund to Mr Snowie from their own funds such sum as is equivalent to his share of the cost of replacing the faulty car park light fitting.
 - 5) Pay to Mr Snowie from their own funds the sum of £250 as compensation to him for the strain and anxiety caused to him and for the inconvenience and time occasioned by the application process.
2. By letter dated 31 March 2017 the factors said that they had:
- a. Provided all owners with full details of the tendering process in relation to the Grounds Maintenance Contract at the Owners Meeting, held on 21 March 2017.
 - b. Arranged a meeting of owners of Parklands on 21 March at which there was a discussion about a change of Property Managers. They explained that this was documented in the Minutes which had been sent to all owners with a further opportunity for written comment. They advised that the meeting was not quorate it and that a decision could not be taken on a level of delegated authority spending which was therefore dealt with in writing to all owners.
 - c. Previously sent a letter of apology to the homeowner as required in terms of the Proposed PFEO. As the tribunal subsequently required in the final PFEO that a letter of apology be sent to all homeowners, such a letter had been issued to all owners at Parklands.
 - d. Previously refunded to the homeowner his share of the lighting repair.
 - e. Previously paid sum of £250 to the homeowner.
3. A copy of the letter of 31 March 2017 was sent to the homeowner for information.
4. By email dated 13 April 2017, the homeowner responded to the factors' representations and said that
- a. Although the meeting of 21 March 2017 and the Minutes thereof referred to copies of quotations relative to the tendering process for the Grounds Maintenance Contract neither he nor one of his neighbours to whom he had spoken had received such copies.
 - b. Although the issue of the change of Management Company was included in the Agenda of the meeting, the matter of a delegated level of authority was neither included nor discussed and he denied having received any correspondence in regard to that.

5. A copy of the email of 13 April 2017 was sent to the factors on 19 April 2017 for information. On that date the parties were also provided with a Compliance Check form to be completed and returned by 3 May 2017, being the deadline for compliance with the PFEO.
6. The factors returned the Compliance Check dated 25 April 2017 stating that they agreed that the actions required in regard to the PFEO had been completed and stating that they did not wish the tribunal to consider a variation or revocation of the PFEO. They made no comment about the homeowner's representations.
7. In relation to the issue of the change of Management Company the tribunal was mindful of the fact that the factors maintained in their written and oral submissions that the homeowner had failed to follow the correct procedure by using an agency to canvass support for such a change. The tribunal therefore had regard to the procedure for such a change as set out in the Deed of Conditions and indeed, expected that the factor would follow the procedure in the conduct of the required meeting.
8. The Deed of Conditions ("the Deed") provides for the calling and holding of meetings in Paragraph 7 (page D15 of the Land Certificate). The tribunal noted that the Deed is badly drafted and it is difficult to follow the numbering of paragraphs. For the present purposes, the relevant provisions are found in Part II:
 - i. Paragraph 7(1)(ii)(c) (at page D14) requires a meeting to be called by Notice served on all proprietors not later than seven days before the day fixed for the meeting stating the business to be transacted at the meeting.
 - ii. Paragraph 7(2)(i) provides: "A meeting is not to begin unless there is present or represented a quorum, that is to say, one third of the Proprietors."
 - iii. Paragraph 7(2)(ii) provides: "If there is still no quorum thirty minutes after the time fixed for the meeting then: (a) the meeting is to be postponed until such time (being no less than seven nor more than twenty eight days later) as may be specified by the factor (or, if the factor is not present, by majority of the proprietors present or represented) and (b) the factor (or the Proprietor) is to send to each proprietor notice stating the date and time fixed for the postponed meeting and the place where it is to be held:
 - iv. Paragraph 7(iii) provides: "A meeting may be postponed only once; and if at a postponed meeting the foregoing provisions as respects a quorum are not satisfied, then the proprietors who are present or represented are to be deemed a quorum:..."
9. The tribunal considered the correspondence and Deed of Conditions as outlined above and has determined that whilst the factors have complied with paragraphs

3, 4 and 5 of the PFEO but they have failed to comply with paragraphs 1 and 2 in the following regards:

- a. The factors have not properly complied with paragraph 1 of the PFEO for the following reason: In the absence of any response from the factors to the homeowner's representations in his email of 13 April 2017, the tribunal accepted that he has not received the details of the quotations relative to the tendering process in relation to the Grounds Maintenance Contract. Full details of the tendering process have not therefore been provided as required by the PFEO.
- b. The factors have not properly complied with paragraph 2 of the PFEO for the following reasons:
 - i. The Notice of Meeting did not accord with 7(1)(ii)(c) in that the matter of setting the level of delegated authority was not included on the agenda prior to the meeting.
 - ii. The conduct of the meeting did not follow the procedure in 7(2)(i) to (iii), in as much as since the meeting was not quorate, a postponed meeting should have been arranged and notified at which the issues would be considered. The Deed of Conditions states that meeting is not to begin until a quorum is present and in the event that a quorum is not present, the meeting is to be re-arranged to an alternate date between seven and twenty-eight days later. As the meeting was not properly constituted, the matter of the change of property manager and level of delegated authority could not be competently dealt with, to properly comply with the PFEO.

10. Accordingly the tribunal hereby finds that the factors have failed to comply with the PFEO.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

D Preston Chairman 17 May 2017