



Property Factor Enforcement Order

hohp Ref: HOHP/PF/14/0058

Re: Property at 15 Larchfield Neuk, Balerno, Edinburgh, EH14 7NL
(collectively "the Property")

The Parties:-

Mrs Yvonne Williamson, 15 Larchfield Neuk, Balerno, Edinburgh, EH14 7NL ("the Homeowner")

Sheltered Housing Management Ltd, South Hawkhilllock, Ardallie, Aberdeenshire, AB42 0TS ("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)
Ann MacDonald (Housing Member)

This Notice should be read in conjunction with the Decision and Proposed Property Factor Enforcement Notice, both 24 October 2014, under reference HOHP/PF/14/0058

1. By decision of 24 October 2014, the Committee determined that the Factors had breached their duties in terms of s 17(1)(b) of the 2011 Act in that they had failed to comply with sections 2.5, 3.3, 6.1 and 6.9 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 Factors have 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 Factors and must allow the parties an opportunity to give representations to the Committee. It duly did so on 27 October 2014.
3. In response to the Notice, the Factors submitted detailed representations which were received by the Committee on 11 November 2014. However, prior to the issue of the final Property Factor Enforcement Notice, the Committee's decision was appealed to the Sheriff Court by the Factors in terms of section 22 of the Act. This had the effect of suspending the procedure set out above.

4. By interlocutor dated 11 August 2015, the Factor's appeal was dismissed. The Committee therefore issued a Direction to the parties inviting representations on the Proposed Property Factor Enforcement Notice on 1 September 2015. The Homeowner did not lodge any representations. The Factors submitted further representations dated 14 September 2015 which in addition, maintained the comments made on their behalf on 11 November 2014.
5. An important material change of circumstances which occurred since the time of the hearing on 9 October 2014 was that the Factors had been dismissed by the residents within Larchfield Neuk. The Factors therefore ceased to manage the Property with effect from 30 November 2014 and new property managers had taken over as factors since that date.
6. Accordingly, any of the actions stipulated in the Proposed Property Factor Enforcement Order which required ongoing obligations on the Factor to provide records or to maintain the Property beyond 30 November 2014 are in these circumstances inappropriate.
7. It is, however, appropriate that certain parts of the original Order as proposed remain, insofar as they apply to the period when the Factors were managers of the Property.
8. Therefore, the Committee makes the following Property Factor Enforcement Order:

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

1. Provide the Homeowner and residents of the Development with a detailed financial breakdown of charges made and a description of the activities and works carried out which were charged for the year prior to their termination as Factors for the Development, which is to say, the accounting year covering 2013/2014 to a date as near as possible to 30 November 2014. Said detailed financial breakdown is to be in accordance with the terms of section 3.3 of the Code of Practice for Property Factors as discussed in the decision of the Committee dated 24 October 2014.
2. In particular, and for the avoidance of doubt, the said detailed financial breakdown is to include as a minimum the following in relation to the applicable financial year referred to above:
 - (i) A statement of the sums received from the residents and how that money was spent on their behalf.
 - (ii) Said financial statement requires to provide a detailed breakdown of each of the following items:

(a) Repairs and Maintenance, showing the cost of all contractors by name and invoice amount;

(b) The Facilities Charge to show in detail all of the items of actual expenditure which it covered in the applicable year; and

(c) The Insurance Charge, to show the premium actually paid and when it was paid and separately, whether any commission was obtained by the Factor.

3. Make payment to the Homeowner of the sum of £250 in recognition of the inconvenience and distress that the Factors' breaches of the Code as found by the Committee have caused to the Homeowner.

4. 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.

9. **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..."

Signed

M O'Carroll
Chairperson

Date 6 October 2015