



Variation of 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 Hawkhillock, Ardallie, Aberdeenshire, AB42 0TS ("the Factors")

Decision by a Committee of the Homeowner Housing Panel in an application under section 21 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 dated 24 October 2014 and the Property Factor Enforcement Notice, dated 6 October 2015, 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. The Factors appealed that decision in the Sheriff Court. By interlocutor dated 11 August 2015, the Factor's appeal was dismissed. After canvassing the further views of the parties, the Committee issued a following Property Factor Enforcement Order ("PFEO") dated 6 October 2015.
3. By letter dated 18 November 2015, the Committee received notification from the Homeowner that she did not consider that the PFEO had been complied with. In particular the annual accounts produced by the Factors further to the PFEO lacked detail and she had as at that date received the monetary compensation ordered by the Committee. The sum of £250 was subsequently received by her on 20 November 2015, which was after the deadline ordered by the Committee.

4. By letter dated 27 November 2015, the Factors wrote to the Committee accepting that they had failed to pay compensation to the homeowner timeously. They also including a revised financial account running from the year 1 December 2013 to 30 November 2014 further to the PFEO dated 6 October 2015. Within that letter, the Factors thereafter sought a variation to the PFEO issued.
5. The Committee accepts that in view of the fact that the Factors are no longer managers of the Property or the Development of which it forms part, it is not appropriate for the financial account to be issued to all residents within the Development, apart from the Homeowner. It therefore agrees to vary the PFEO to that extent. It also agrees to waive any enforcement action in relation to the late payment of the sum of £250 ordered in order to compensate the Homeowner for the distress and inconvenience caused by the Factors' failure to comply with their property factor duties. The Committee therefore hereby varies the terms of the PFEO to that extent.
6. However, the Committee notes the following:
 - (i) the heading of expenditure "Facilities Charge" is absent from the accounts provided by the Factors. This was a head of charge made of residents within the Development during the time the Factors acted as such, all as discussed in the said decision. The relevant items of expenditure under the heading of the Facilities Charge might possibly now be included in the accounts provided. However, this is not clear on the face of the financial accounting now provided and does not provide a ready basis for comparison with previous years. In the interests of transparency therefore, the Factors are required to provide an accounting which details that heading and which provides a breakdown of it, all as previously required by the PFEO of 6 October 2015;
 - (ii) the insurance charge has increased approximately £2,500 from the previous year. The PFEO required the accounts to shown the premium actually paid, when it was paid and whether any commission was obtained by the Factors. This requirement stands and must be complied with;
 - (iii) information relating to the contractors used by the Factors for works carried out during the relevant period normally may be requested by the Homeowner in accordance with Section 3.3 of the Code. However, in this instance, in view of the prior history between parties as narrated in the Decision and in view of the fact that the factoring relationship has terminated, the Committee has taken the view that this level of detail is appropriate in the circumstances and so order it. The requirement to provide the level of detail already provided for in the PFEO therefore stands and must be complied with; and
 - (iv) although outwith the scope of the present variation, the Committee further notes that factors' legal costs are not normally a legitimate communal charge to be levied against homeowners as part of their factoring fees in the absence of specific agreement. Homeowners should not be held responsible as part of their normal communal maintenance obligations for the legal fees incurred by the

Factors by their own choice. In this case, as presently indicated, legal charges purport to amount to nearly 30% of the total charges levied on all homeowners in the Development within the relevant period.

7. Therefore, in light of the above, the Committee has now determined that within 28 days of the communication to the Factors of the present Property Factor Enforcement Order as varied, the Factors must:

1. Provide the Homeowner 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 from 1 December 2013 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.

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, when it was paid and separately, whether any commission was obtained by the Factor.

2. 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.

8. **Offences**

The Factors are reminded that in terms of section 24 of the 2011 Act, it is a criminal offence not to comply with a PFEO without reasonable excuse. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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..."

M O'Carroll

Signed

M O'Carroll
Chairperson

Date 14 December 2015