



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

Hohp ref:HOHP/PF/15/0067

Re: Property at Flat 31, The Monaltrie, Bridge Square, Ballater, AB35 5QJ

The Parties:-

Ms Christine Sleigh, 16 Lagreath Brae, Pitlochry, PH16 5QQ (“the Homeowner”)

The Property Management Company Limited, Little Square, Oldmeldrum, Aberdeenshire, AB51 0AY (“the Factor”)

Decision by a Committee of the Homeowner Housing Panel In an Application under Section 17 of the Property Factors (Scotland) Act 2011

Committee Members:

Patricia Anne Pryce (Chairperson); Andrew Taylor (Surveyor Member)

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for property factors as required by Section 14 of the 2011 Act and complied with the Property Factor’s duties, determines unanimously that, in relation to the Homeowner’s Application, the factor has not complied with the property factor’s duties and has not complied with the Code of Conduct for property factors.

In all the circumstances of the case, the Committee did not consider it necessary to make a Property Factor Enforcement Order.

We make the following findings in fact:

The Applicant is the owner of the flatted dwelling house, Flat 31, at The Monaltrie Development, Bridge Square, Ballater which is situated in a development which was built on or about 2007 and 2008.

The Respondent is the property factor for this development in terms of the said Deed of Conditions.

The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a property factor (1st November 2012).

Following on from the Applicant's application to the HOHP, which comprised of documents received in the period 11th May 2015 until 14th August 2015, the President referred the application to committee on 18th August 2015.

Hearing

A hearing took place at The Credo Centre, 14-20 John Street, Aberdeen on 28 October 2015.

The Applicant attended on her own and gave evidence directly. The Applicant's partner, Mr. Allan Milligan, also attended and gave evidence directly.

The Respondent was represented by Mr. Martin Rochford who is a Director and owner of the Respondent and Mr. Richard Burnett who is a Director of the Respondent.

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the Homeowner Housing Panel (Applications and Decisions)(Scotland) Regulations 2012 as "the 2012 Regulations".

The Committee had available to it and gave consideration to: the Application by the Applicant which comprised of all paperwork submitted by the Applicant in the period of 11 May 2015 to 14 August 2015, letter by the Applicant to the Homeowners Housing Panel received 16 October 2015 together with enclosures contained therein and letter by the Respondent to the Homeowners Housing Panel ("HOHP" hereinafter) dated 18 September 2015 together with enclosures contained therein.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 2.1, 2.2, 2.5, 6.1 and 7.2 of the Code and to a breach of the property factor's duties (as defined by Section 17 subsection 5 of the 2011 Act).

The Code

The elements of the Code relied upon in the application is as follows:-

"2.1 You must not provide information which is misleading or false.

2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).

2.5 You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers).

6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.

7.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel."

The Factual Complaints

These will be addressed in the order of the alleged breach of the Code and the Property Factors' duties:-

1. Breach of Section 2.1

The Applicant went through her application in detail. In short, the Velux window located in the roof of the stairwell outside the front door of her property had been damaged in the heavy snow of the winter of 2010. The Applicant advised that despite complaining for over five years, the window remained damaged and had not been fixed when it should have properly been included in the works carried out by the insurance company who had carried out all of the works in the Monaltrie development as a result of the said heavy snow fall in 2010.

In relation to the alleged breach of this part of the Code, the Applicant advised that when Proserve, the contractor, went out in 2012 to check on the damage to the Velux window which was situated on the roof of the stairwell outside the front door of the Applicant's property, Proserve employed a cherry picker in an attempt to inspect the damage to the window. The Applicant was of the opinion that there is no way that the photograph which Proserve produced could have been from the same Velux window as the one she had complained about being damaged. She stated that she felt that there was no way a cherry picker could access the relevant roofslope in order to be able to see the window in question. The Applicant pointed out that that photograph produced by Proserve was of a different window and she pointed to the slates which surrounded the window which were different from those surrounding the window about which she had complained. The Applicant complained that Mr Burnett, Director of the Respondent, had gone out of his way to convince the other owners that she was delusional. The Applicant accepted that the Respondent had instructed three different roofing contractors to check the window, all of whom had reported back to the Respondent that the window was in proper working order and was not damaged.

Mr Burnett for the Respondent stated in evidence that all of the damage in the storm had been included in the works instructed by the insurance company which indemnified the development at that time. He could not say whether the original works specifically included the Velux window at that time as there were a huge numbers of works carried out but that there was a loss adjuster involved in all of these works so they should have been checked by the loss adjuster. Furthermore, he confirmed that he could not say one way or another whether or not the original contractors employed by the insurance company had carried out the necessary repairs to the Velux. He had nothing in writing.

Mr Burnett disagreed with the Applicant's statement that the cherry picker could not gain access to the side of the building required in order to be able to see the Velux window clearly. His opinion was that there was ample room for the cherry picker to be able to gain access to see the window in question.

The Committee is of the opinion that in light of the above, on balance, there has been no breach of Section 2.1 of the Code. The Committee accepts that from the Applicant's point of view there may be a lack of clarity. However, the Committee is of the view that on balance of the differing evidence provide by parties that the Respondent has not provided information which is misleading or false.

2. Breach of Section 2.2

The Applicant was clear in her evidence that this breach was constituted by the email of 7 April 2015 written to her by Mr. Burnett on behalf of the Respondent. The Applicant also felt that at the Owners Meeting which took place on 22 March 2015, Mr. Burnett had behaved badly towards her by insisting that her concerns, that she raised with him after he had left said meeting, be raised within the meeting and returned to the meeting to ensure that the meeting was made aware of the Applicant's concerns regarding the window. The Applicant advised that she found it difficult to be confrontational with people and that is why she had attempted to speak to Mr. Burnett on his own rather than having to deal with a room full of other owners.

In response to the above, Mr. Burnett advised that his email of 7 April 2015 was not abusive or threatening and that he was simply attempting to report matters as they stood.

In relation to the allegation about his conduct in taking matters raised by the Applicant back into the meeting, Mr. Burnett advised that it would be inappropriate for him to discuss matters directly with an owner like that when it should appropriately be raised with all of the owners at the meeting as this had been a point on the agenda, albeit it had subsequently been removed from the agenda by the Chair of the meeting. Mr. Burnett did not feel that it was appropriate to conduct business in a stairwell when it should appropriately be raised within the meeting.

When questioned by the Committee, Mr. Burnett accepted that he sometimes discussed matters with owners on an individual basis which could also be raised at the Owners Meetings and which could affect the other owners.

On balance, the Committee is of the opinion that there was no breach of Section 2.2 of the Code. The email of 7 April 2015 was not abusive, intimidating or threatening.

However, the Committee is of the opinion that the email of 7 April 2015 by Mr. Burnett to the Applicant is rather patronising. The Committee is of the view that it falls just short of a breach of Section 2.2 of the Code. The Committee is firmly of the view that the email could have been worded in a more appropriate and professional manner.

In relation to the Owners Meeting which took place on 22nd March 2015 the Committee is of the opinion that the conduct of Mr. Burnett did not amount to a breach of Section 2.2. However, the Committee is of the opinion that this situation was poorly handled by Mr. Burnett on behalf of the Respondent. The Committee believes that in all the circumstances there was no requirement for Mr. Burnett to take the Applicant back into the Owners Meeting and that matters could have been resolved at that juncture with a private meeting.

2. Breach of Section 2.5 of the Code

The Applicant advised that she had sent a letter of complaint to Mr. Rochford of the Respondent in December 2012 but did not receive a substantive response to this letter until April 2013 after she had been advised that she would receive a response by 11 January 2013.

Mr. Rochford in evidence helpfully conceded that his response did not go out to the Applicant until April 2013. He further accepted that in this instance the standards of the Respondent had fallen below those expected of a property factor and that he had apologised to the Applicant. In fact, he advised that he had taken tea with the Applicant at her property which the Applicant acknowledged and accepted.

Given the above, the Committee finds that that the Respondent did breach Section 2.5 of the Code but, given that the Respondent fully accepted this and had already apologised to the Applicant, the Committee is of the opinion that no further action is required in relation to this breach of the Code.

3. Breach of Section 6.1 of the Code

The Applicant's evidence was unclear in relation to this alleged breach of the Code. She referred to the Respondent's Statement of Services and confirmed that there was a key person to whom she could report any repairs issues.

In response, Mr. Burnett advised that there is a clear procedure in relation to the reporting of repairs issues. Further, there is a key person for each development and he was the key person for the Monaltrie development. In addition, he advised that there was a report form available on the Respondent's website to allow owners to report any repairs or maintenance issues to the Respondent.

Given the evidence led before it, the Committee is of the opinion that there has been no breach of Section 6.1 of the Code.

4. Breach of Section 7.2 of the Code

The Applicant advised that in her view this part of the Code had been breached as in her opinion the email from Mr. Burnett of 7 April 2015 was a final email which should have advised her of her right to complain to the HOHP. She advised that he had failed to do this.

In evidence, Mr. Burnett advised that he thought that the correspondence with the Applicant and the Respondent was ongoing and therefore there was no requirement at the point of his email to advise the Applicant of the contact details of the HOHP. Furthermore, as this involved ongoing correspondence, Mr. Burnett confirmed that he had not treated this matter as an ongoing complaint as he thought it was just ongoing correspondence.

However, the Committee is of the opinion that after five years of correspondence, the Respondent should have been treating this matter as a complaint. The Committee questions the Respondent's approach that this matter was dealt with as "ongoing correspondence" and wonders at what point matters become a complaint in the view of the Respondent? The Applicant had been complaining about an outstanding repairs issue for some five years and the Respondent never viewed this as an ongoing complaint.

Given that the Applicant had been in protracted correspondence with the Respondent, a lot of which has taken place after the registration of the Respondent as a property factor, the Committee is of the view that the Respondent has breached Section 7.2 of the Code by failing to provide the Applicant with details of the HOHP. The terms of the email of 7 April 2015 by Mr. Burnett were final, particularly in relation to the final paragraph and suggest that matters were seen as at a conclusion by the Respondent. In the opinion of the Committee, that email should have contained the details of the HOHP for the Applicant.

5. Breach of the Property Factor's Duties

The Applicant was of the view that the Respondent had breached its duty in relation to the maintenance of the property and that by not adhering to its obligations to maintain the property as laid down in the Deed of Conditions for the property. The Applicant provided evidence that she had advised that Respondent for some years that Velux, the manufacturer of the specialised window which was giving cause for concern, had confirmed to the Applicant when she approached them with photographs of the damaged window that the window concerned was indeed missing a part. Furthermore, the Applicant confirmed that the Respondent had purchased this part of the window from Velux the manufacturer for fitting on the window.

The Applicant advised that she had provided the information from the Velux manufacturer to the Respondent.

Mr. Burnett for the Respondent advised that the Applicant had only provided him with the information from the Velux manufacturer that there was a missing part in 2014, despite the fact that the Applicant had been in possession of this information from 2012. In response to this, Mr. Burnett confirmed that he bought the alleged missing part of the window which cost £12.

However, parties confirmed to the Committee that despite the low cost of the replacement part, the window in question was very difficult to access and would require scaffolding to do so whether internal or external scaffolding which would cause the cost of any repair to increase hugely.

Mr. Burnett confirmed that since 2010 the Respondent had asked three different roof contractors to check the status of the window in question and all three contractors had confirmed that the window was in good working order and did not require to be fixed.

When questioned by the Committee, Mr. Burnett confirmed that none of these roof contractors were specialist Velux contractors. Furthermore, Mr. Burnett accepted that this window was a specialist manufactured unit and that Velux had confirmed unequivocally that the unit in question was missing a part. However, Mr. Burnett advised that Velux had not physically inspected the unit but was simply making that judgement from photographs provided by the Applicant. He did, however, agree that the language used by Velux was unequivocal in its terms.

The Applicant's view was that the Respondent had breached the property factor's duties by not fulfilling the obligations incumbent upon the Respondent in terms of the Deed of Conditions. In effect, the Applicant is of the view that the Respondent should take charge of all matters in relation to maintenance.

Mr. Burnett advised that he had asked the owners to consider having the window fixed. The owners voted against such an option. The Applicant confirmed that the Respondent did offer the owners this option and that the owners decided against carrying out the necessary works to fix the window.

The Committee is of the opinion that, in light of all of the evidence before it both at the hearing and in the documents produced by both parties, the Respondent has demonstrated a level of intransigence. The Respondent seems to have taken the view that because the three roofing contractors have clearly stated that there is no problem with the window in question, the Respondent seems to have simply refused to have considered the view of the specialist manufacturer of the window unit concerned. Velux is clear that there is a missing part. The photographic evidence produced by the Applicant showing a bar of some description falling down from the window which was not questioned by the Respondent is clear that a part of the window fell off.

The Committee accepts that the Respondent instructed three contractors to inspect the window and that all three determined that there was nothing wrong with the window. The Committee also accepts that the Respondent sought a mandate from the owners to have a specialist inspection carried out by Velux which that other owners refused to allow to happen. To that extent, the Committee accepts that the Respondent has not breached the property factor's duties.

However, the Committee notes that this leaves the Applicant with a source of concern in relation to the window and the potential for long term damage to the property as a result of the outstanding repair to the said window. The Committee, while of the opinion that the Respondent has fulfilled its duties as a property factor, is also of the view that the Respondent could have done more to attempt to persuade the other owners of the necessity to have these works carried out rather than blindly accepting the word of their contractors. It is clear to the Committee that the specialist manufacturer of this window unit are of the unequivocal view that there is a part missing from this window which, if left in its present condition, could lead to long term damage to the wood of the building concerned.

Reasons for Decisions

Section 19(1)(b) affords the committee discretion as to whether or not to make a Property Factor Enforcement Order. The committee concluded that there would be no purpose, justification or necessity to do so in this particular case. The Respondent submitted in evidence that it was presently reviewing its procedures including its complaints handling procedure and would use the learning from the hearing and the HOHP process to inform this review. The committee records that the Respondent did breach the code in relation to its complaints procedure (Section 7.1 of the Code).

Appeals

In terms of Section 22 of the 2011 Act, any appeal is on a point of law only and requires to be made by Summary Application to the Sheriff. Any appeal must be made within 21 days beginning with the day on which the decision appealed against is made.

Patricia Pryce

Signed.....
Patricia Anne Pryce
Chairperson

Date 8 November 2015.....

