



Decision

of

the Homeowner Housing Committee

(Hereinafter referred to as “the Committee”)

Under Section 23 (1) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/14/0098

Re : Property at 146 Bannermill Place, Aberdeen AB24 5EG (“the Property”)

The Parties:-

**Alice Hepburn, 146 Bannermill Place, Aberdeen AB24 5EG (“the Applicant”)
represented by Robert Hepburn, “The Crossways”, 33 Charlotte Street,
Helensburgh, West Dunbartonshire G84 7SE**

**Select Property Management Services (Aberdeen) Limited (company
number SC402142), 28 Broad Street, Peterhead, Aberdeenshire AB42 1BY
 (“the Respondent”)**

NOTICE TO THE PARTIES

The Committee decide that the Respondent has failed to comply with parts (2) to (6) of the Property Factor Enforcement Order reference HOHP/PF/14/0098 in respect of the Property dated 16 April 2015 and has complied with part (1) of the said Order.

Reasons

1. By e-mails and posted correspondence issued on or about 13 May 2015 from the Clerk to the Committee, the Applicant and Respondent were invited to indicate whether the Property Factor Enforcement Order dated 16 April 2015 and issued on 20 April 2015 by recorded delivery post and e-mail had been complied with. In a separate e-mail the Respondent’s representative was reminded that

any response should be addressed to and sent directly to, the HOHP office. By written response dated 20 May 2015 the Applicant's representative submitted that only part (1) of the Order had been complied with. The Respondent has not responded to any of the communications of 13 May 2015.

2. By e-mail dated 12 May 2015 sent to the Applicant's representative and copied to the HOHP office, the Respondent's representative and managing director Ms Carline Stevens enclosed a letter dated 11 May 2015 from her to the Applicant and her representative. The letter did not address the requirements of part (1) of the Order. Instead it purported to give an apology where none was sought. Notwithstanding this, the Applicant's representative appears to have received the relevant information, presumably through some other source.

3. With regard to part (2) of the Order, the letter contained no indication of balance in the Bannermill Residents' Association account. However it appears from the Applicant's representative's response of 20 May that the Respondent has advised of a balance of "£ 6 937.53 in the BRES bank account" but also that there was a second Residents' Association account called a "BUSB" account, the balance of which appears not to have been disclosed. The purpose behind part (2) of the order was to obtain information on how much of residents' money was held in the account in the name of the Residents' Association. The Committee were unaware of the number of accounts held in the Association's name. In these circumstances having regard to the purpose of part (2) of the Order, the words "the Bannermill Residents' . . . account" must be interpreted reasonably as "any Bannermill Residents' . . . account. On that basis, information as to all balances held in the name of the Residents' Association's name is still being withheld and there has not been compliance with part (2).

4. With regard to part (3) of the Order the purported explanation for the contradictory answers given by Ms Stevens is that Ms Stevens misunderstood question BB8 and that she should have "explained [her] answer fully at that point", presumably meaning in her e-mail to the Applicant's representative of 15 November 2013. The difficulty with this explanation is that in her e-mail of 15 November Ms Stevens' answer was "No" but in her group communication e-mail of 13 February 2014 her answer was in substance "Yes". It is difficult to see how there could have been a fuller explanation of the "No" response. In these circumstances the purported explanation is really no explanation at all and the Committee finds there to have been no compliance with part (3).

5. With regard to part (4), the letter of 11 May purported to attach the accounts for years 1, 2, and 3. What was attached were various documents covering the period July 2011 to June 2012. The documents comprised numerous lists of individual items of income and expenditure together with untitled statements of "transactions". They lacked any order or structure. They did not comprise annual statements of account. There was no compliance with part (4) of the Order.

6. With regard to part (5) of the Order, in her letter the Respondent, in apparent disregard of the decision of the Committee of 6 March 2015, and in particular paragraphs 62 to 65 and finding in fact (u), still claimed to have supplied the contract of appointment and purported to attach a copy. No copy was attached. Neither an original nor a true copy of the contract of appointment has ever been supplied. There has been no compliance with part (5) of the Order.

7. With regard to part (6) of the Order, in the letter of 11 May 2015 only element (e) has been complied with. The Committee having been given no other evidence of compliance find that there has been no compliance with part (6) of the Order. The terms of the apology at paragraph 6 of the letter of 11 May are in flagrant disregard of the terms of part (6) of the Order.

8. In these circumstances the Committee were clear that the letter of 11 May 2015 and its enclosures did not amount to compliance with parts (2) to (6) of the Property Factor Enforcement Order dated 16 April 2015. No contention to the contrary has been made by the Respondent in response to the communications made to Ms Stevens by the HOHP office set out above. Given the Applicant's representative's response in his letter of 20 May 2015 to the effect that part (1) has been complied with, the Committee are content to so find.

9. The decision of the Committee was unanimous. Notice of the decision will be served on the Scottish Ministers. The Respondent is reminded that a person who without reasonable excuse fails to comply with a property factor enforcement order commits a criminal offence.

Right of Appeal

The parties are given a right of appeal on a point of law against this decision by means of a summary application to the Sheriff made within 21 days beginning with the date on which this decision is made. All rights of appeal are under section 22(1) of the Property Factors (Scotland) Act 2011.

Signed

..... 3 June 2015

David Bartos, Chairperson