

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision

of

the Housing and Property Chamber of the First-tier Tribunal for Scotland

(Hereinafter referred to as “the Tribunal”)

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

Case Reference Number: HOHP/PF/16/0009

Re : Property at Flat 18, 15 Simpson Loan, Edinburgh EH3 9GB (“the Property”)

The Parties:-

Mr Jason Watson, Flat 18, 15 Simpson Loan, Edinburgh EH3 9GB (“the Applicant”)

Quatermile Estates Limited, Estate Office, 9 Simpson Loan, Edinburgh EH3 9GQ (“the Respondents”)

The Tribunal comprised:-

Mr David Bartos	- Chairperson
Ms Carolyn Hirst	- Ordinary member

NOTICE TO THE PARTIES

The Tribunal decides that the Respondents have failed to comply with the Property Factor Enforcement Order in respect of the Property dated 1 September 2016.

Reasons

1. By e-mails and posted correspondence issued on or about 3 October 2016, the Applicant and Respondents were invited to indicate whether the Property Factor Enforcement Order dated 1 September 2016 and issued by recorded delivery post and e-mail on 6 September 2016, had been complied with. By written response dated 5 October 2016 the Applicant submitted that no part of the Order had been complied with. By written response dated 12 October 2016 the Respondents submitted that the Order had been complied with. In support of this they relied on an e-mail which pre-dated the Order together with its attachment.

2. Other than the written response of 12 October the Respondents have not lodged any documentation with either the Homeowner Housing Panel or its successor, the Tribunal. In particular they have not lodged the annual service charge budget which, following the precedent of previous years, was expected by the end of December 2016.

3. By letters dated on or about 7 November 2016 the parties were informed that the question of compliance with the Order would be considered at a hearing at George House, 126 George Street, Edinburgh EH2 4HH on 23 January 2017 at 10.00 a.m. On 1 December 2016 the Committee of the Homeowner Housing Panel which had issued the Order became the Tribunal with the same membership.

4. At the hearing on 23 January the Applicant appeared accompanied by Mr Derek Hamilton. There was no appearance by or on behalf of the Respondents. The Tribunal heard the factual evidence of the Applicant which it accepted and which is reflected in the following findings in fact:

- (a) The Order was notified to the Respondents on or about 6 September 2016.
- (b) No annual service charge budget has been issued by the Respondents to the Applicant or lodged with either Homeowner Housing Panel or the Tribunal since the notification of the Order. No explanation for this has been given to either the Applicant, the HOHP or the Tribunal. Despite this the Applicant has been issued with an invoice for the first quarter of the period to be covered by the budget.
- (c) The block of flats Q18 of which the Property forms part has over five floors. Windows on the north and south elevations are cleaned via a "cherry picker" vehicle. Those on the east and west elevations below the fifth floor are cleaned by a 'reach and wash' method. From the fifth floor upwards they require to be cleaned by abseiling. No such cleaning through abseiling has been carried out since June 2014. The cleaning under the different methods took place on different dates.
- (d) The Respondents charged the owners of flats in the block £ 4,325 for window cleaning to cover the whole of 2014. They have not

provided a detailed break-down of the charges comprised under the £ 4,325, nor of any work amounting to £ 335 budgeted for the window cleaning but not carried out.

- (e) The Respondents have provided a detailed breakdown of the charges amounting to £124.12 within the expenditure of £485.69 for M&E Repairs for the whole of 2014. They have not provided such a detailed breakdown for the balance of said M&E Repairs expenditure.

5. Parts (1), (2) and (3) of the Order relate to the content of the Respondents' annual budget calculation. This is something which they are required to provide to Homeowners in terms of their Written Statement of services. When the Order was made the next budget was due by the end of December 2016. Accordingly parts (1) and (2) required to be complied with by the end of that month.

6. The Applicant told the Tribunal that there had been a meeting between Q18 block owners and the Respondents' Sarah-Jane Halliday in November 2016 when a revised draft budget was promised. On the basis of previous years this would have been by December. Instead in mid-December he received an invoice for charges with no supporting budget. The Tribunal finds it inexplicable why the Respondents have failed to issue a budget at all given the practice in previous years and particularly given the terms of the Order. In these circumstances the Tribunal finds the Respondents to have breached parts (1) to (3) of the Order.

7. Part (4) of the Order requires the provision of a detailed breakdown of window cleaning charges and budgeted expenditure. With regard to the window cleaning charges, before the Order had been made the Respondents had lodged their e-mail of 22 August 2016 stating that the works were the quarterly or six-monthly cleaning of windows and cladding with four dates when they alleged that the works had been carried out by Greg Avinou. They did not provide any break-down of Greig Avinou's charges. No detail was given as to what work had been carried out on the four dates. On the basis of what it were told by the Applicant the Tribunal finds that the breakdown was not detailed. In these circumstances the Tribunal finds that part (4)(a) of the Order has not been complied with.

8. In respect of part (4)(b), the Respondents in their invoice stated, "The credit of £ 335 relates to the cancellation of an accrual made in respect of works in 2013 and for which no invoice was ever received. It does not relate to any works in 2014.". The difficulty with this is that the £ 335 was part of the window cleaning budget for 2014. If it related to 2013 only, one would not have expected it to appear in that budget. There may be an explanation for this but the Respondents failed to appear at the hearing to give it. The Tribunal finds part (4)(b) of the Order has not been complied with.

9. Part (5) of the Order required a detailed break-down of the M&E Repairs charges of £ 485.69 for the year 2014. The Respondents did provide an

explanation of lighting repairs to the top stairwell landing costing £ 124.12 with a copy invoice to follow. No such invoice did follow. Nevertheless the Tribunal finds that this was sufficient compliance with a part of part (5). However inadequate information is given in relation to the balance of £ 361.57. While the e-mail specifies a lock repair and a replacement of a failed emergency lighting unit, the invoice makes no such reference and instead bears to be for nothing more than "varous call-outs". There is no break-down of charges for these within the invoice. The reader of the invoice is left in the dark as to even the division between the lock repair and the lighting unit replacement, assuming that these were the "call-outs". This is not compliance with the Order. The Tribunal is disappointed that the Committee's reasons within the Order have been disregarded in this respect. It would have expected more from the factors of such a prestigious development. It follows that part (5) of the Order has not been complied with.

10. The decision of the Tribunal was unanimous.

11. Notice of the decision will be served on the Scottish Ministers. The Respondents are reminded that a person who without reasonable excuse fails to comply with a property factor enforcement order commits a criminal offence.

12. Both parties are also reminded that no matter adjudicated on by the Tribunal in this decision may be adjudicated on by another court or tribunal.

Right of Appeal

The the parties may seek permission to appeal on a point of law against this decision to the Upper Tribunal by means of an application to the First-tier Tribunal made within 30 days beginning with the date when this decision was sent to the party seeking permission. All rights of appeal are under section 46 of the Tribunals (Scotland) Act 2014 and the Scottish Tribunals (Time Limits) Regulations 2016.

David Bartos

Signed,..... 30 January 2017

David Bartos, Chairperson