



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

HOHP reference: HOHP/PF/13/0234

Re: Flat 30 Grieve Road, Greenock, PA167LB ('the property')

The Parties:

Mrs Christine Smillie, 30 Grieve Road, Greenock, PA16 ('the homeowner')

River Clyde Homes, Roxburgh House, 102-112 Roxburgh Street, Greenock, PA154JT ('the factor')

Decision by a committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011 ('the Act')

Committee members:

Martin McAllister (Chairperson)

Brenda Higgins (Housing member)

Decision of the committee

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the factor has

(a) Complied with the property factor's duties in terms of the Property Factors (Scotland) Act 2011 ("the 2011 Act") and

(b) Complied with the Code of Conduct for property factors, as required by Section 14 of the 2011 Act

Determined that, in relation to the Homeowner's Application, the factor has complied with the property factor's duties and complied with the Code of Conduct for property factors.

Background

1. The factor's date of registration as a property factor is 12th December 2012.
2. By application dated 26th June the homeowner applied to the Homeowner Housing Panel ("the Panel") for a determination that the factor had failed to comply with the Code of Conduct for property factors and specifically a failure to carry out

repairs and maintenance. The application also contended that the factor had failed to carry out the property factor's duties in failing to include the Property in a common repairs scheme and charging the homeowner a standard factoring fee rather than a nominal one.

3. By Notice of Referral dated 29th November 2013 the President of the Panel intimated that she had decided to refer the application to a Homeowner Housing Committee ("the Committee").

4. Following service of the Notice of Referral, the factor made representations which accompanied a letter of 13th December 2013.

Hearing

5. A hearing took place in respect of the application on 21st February 2014 at Europa Building, 450 Argyle Street, Glasgow. The homeowner was accompanied by her husband Thomas Smillie who is a co proprietor of the property. The factor was represented by Mr Paul Monaghan, Factoring Manager of River Clyde Homes.

Preliminary Issue

6. The parties agreed that the matters to be determined by the Committee were focused and were as follows:

6.1 Whether or not the homeowner was prevented from participating in a programme of common repairs.

6.2 Whether or not it was reasonable for the homeowner to be charged a standard factoring fee.

Findings in Fact

7. The Committee finds the following facts to be established:-

7.1 The applicant and her husband are the heritable proprietors of the property known as 30 Grieve Road, Greenock, PA167LB. The property is registered in the Land Register of Scotland under Title Number REN 77267.

7.2 The property forms a ground floor flat and has a flat above it which is 32 Grieve Road. Both flats are self contained and have individual entrances.

7.3 30 and 32 Grieve Road form part of a block of eight flats. 48 and 50 Florence Street are the mirror images of 30 and 32 Grieve Road and the remaining four flats in the block are at 28 Grieve Road which are situated between 48 and 50 Florence Street and 30 and 32 Grieve Road. The flats at 28 Grieve Road are served by a common close and staircase.

7.4 The proprietor of the property has an obligation to be responsible for sharing the cost of certain common repairs with the proprietor of 32 Grieve Road and has an obligation to be responsible for sharing the cost of certain other common repairs with the six proprietors of the flats forming 28, 30 and 32 Grieve Road.

7.5 Six of the properties in the block of eight flats are owner occupied and River Clyde Homes (the factor) owns two flats in the block. 32 Grieve Road is owner occupied.

7.6 The proprietors of the flats in the block of eight flats have the power to nominate and appoint factors on a majority basis with the proprietors of each flat having one vote.

7.7 The factors initiated a scheme of improvement works to the block of flats. The homeowner was not initially invited to participate but was then sent a letter giving an indicative estimate of costs applicable to the proprietor of 30 Grieve Road. The estimate was for the sum of £7580.90. The estimate included items that were not appropriate to 30 and 32 Grieve Road such as work to stair walls. The proprietors of 32 Grieve Road indicated in writing that they did not want to participate in the scheme of work.

7.8 Prior to receiving the estimate of costs the proprietors of 30 and 32 Grieve Road initiated their own scheme of common repairs for their properties which will be completed when better weather allows. The common roof has been checked and the gutters and downpipes have been replaced. The external paintwork is still to be done. When work is completed, the share of costs applicable to each property will be in the region of £900.

7.9 The factors make a standard factoring charge of £115.95 per annum which is reviewed annually. The charge is levied on each property they factor. The factors do not charge additional administration fees.

7.10 The factors have never carried out any common repairs to the properties at 30 and 32 Grieve Road.

Reasons

8.

8.1 Mr Monaghan said that River Clyde Homes had a duty to bring its properties up to the Scottish Housing Quality Standard. He said that, as a consequence, it had decided to embark on an external investment programme on properties in the Grieve Road/ Florence Street area. He said that proprietors of flats had been written to and he accepted that the proprietors of 30 and 32 Grieve Road had not been written to at that time. It was accepted by parties that Mrs Smillie had attended the meeting of proprietors in March 2013 which she had become aware of because a friend in another property had been invited. It was accepted by parties that Mrs Smillie and

Mr Monaghan had a conversation at the meeting and that Mr Monaghan agreed to obtain estimates to include 30 and 32 Grieve Road in the scheme of work.

8.2 Mr and Mrs Smillie had initiated a complaint to the factor because their property had not been initially included in the programme of investment work.

8.3 On 1st July 2013 the factor sent a letter to the proprietors of 30 and 32 Grieve Road indicating the procedure if they wanted to be included in the scheme of investment work. A Cost Summary sheet accompanied the letter and set out the maximum approved costs for the share of work payable by each proprietor if the works were to proceed. The total sum payable by the proprietors of each of the two flats was stated to be £7,580.90. The Cost Summary sheet detailed the costs for various headings of works including inter alia "masonry paint to stair walls following remedial works" and "general improvements to common footpaths, steps, retaining walls." The latter category had an estimate of costs of £2000. Parties agreed that there are no stairs at 30 or 32 Grieve Road and there could therefore not be stair walls. Mr and Mrs Smillie said that there are no steps or retaining walls and that there is only a small common footpath which had been tarred and could not, in their view, be improved.

8.4 Mr Monaghan said that he had not visited the property prior to the issue of the Cost Summary but that it would have been visited by a member of River Clyde Homes' staff.

8.5 Mr and Mrs McGhee, the proprietors of 32 Grieve Road returned a form which accompanied the letter of 1st July and stated on the form that they did not want to participate in the scheme of works proposed. Mr and Mrs Smillie said that they did not receive the letter until they returned from holiday.

8.6 Mr and Mrs Smillie said that they had agreed with Mr and Mrs McGhee that works would be done to the properties at 30 and 32 Grieve Road. These works involved replacement of gutters and downpipes, checking the roof and carrying out external paintwork. All but the painting has been done and Mr and Mrs Smillie said that it had been done prior to receiving the estimate of costs received from River Clyde Homes. The paint has been purchased and the work will be completed when the weather is better. The total cost of the work being done to 30 and 32 Grieve Road is in the region of £1800 with the homeowner's share being in the region of £900.

8.7 Mrs Smillie said that she and her husband would not get grant assistance for any work.

8.8 The Land Certificate for the Property states that the proprietor of the Property "along with the proprietors of Number 32 Grieve Road shall be responsible for the maintenance and repair of and a one half of the cost of the maintenance and repair of the solum, drying green, common paths, foundations, outside walls, attic roof

space, roof with the hatchway and skylight leading thereto, gutters and the chimney stacks.....and all other common parts pertaining to the said two dwellinghouses and for keeping them in good order condition and repair

8.9 Mr and Mrs Smillie accepted that the works that had been instructed by the owners of 30 and 32 Grieve Road cost substantially less than the proposed works costed by the factor and they conceded that they had not suffered financially as a result of not participating in the scheme of works proposed by the factor.

8.10 Mr Monaghan's position was that, for works to 30 and 32 Grieve Road being carried out by the factor, there would require to be a majority of proprietors authorising the works and that, since there were two properties involved, the majority required to be the proprietors of the two flats.

8.11 Parties agreed that the factoring fee amounted to £115.95 per annum. Mr and Mrs Smillie said that they had owned the Property since 2005 and had never used the factoring service for common repairs. They said that they arranged any common repairs by discussing matters with their upstairs neighbours and instructing the required tradesmen. They considered that the flat rate fee was unfair and that they should not pay as much as other proprietors who might own properties where more common repairs require to be done. By way of example Mr and Mrs Smillie cited 28 Grieve Road which has a common close and common lighting. Mr and Mrs Smillie said that they were not opposed to paying a nominal factoring charge.

8.12 Mr Monaghan said that the Property had been factored by Inverclyde Council until December 2007 when the factoring had passed to River Clyde Homes. He said that with the onset of the Property Factors (Scotland) Act 2011 River Clyde Homes had reviewed matters and commenced charging for factoring services. Prior to that no charge had been levied on the proprietors of 30 Grieve Road. He said that it was not appropriate to continue the situation where tenants of River Clyde Homes were subsidising the factoring service. He said that it was considered that the fairest way for charging for factoring services was to have a standard charge with no additional administration charges. Mr Monaghan said that to try to differentiate between various properties would lead to increased costs.

8.13 The Land Certificate for the Property states inter alia "in the event of the Council ceasing to be the proprietors of any of the said dwellinghouses (the flats at 28,30 and 32 Grieve Road and 48 and 50 Florence Street , the proprietors thereof shall be entitled to nominate and appoint Common Factors as aforesaid on a majority basis, each dwellinghouse having one vote..." It is accepted by the parties that the Council no longer own any dwellinghouses in the block of eight flats.

Discussion

The Committee considered that it was helpful for the parties to agree at the outset of the Hearing what the focused issues were. The Committee did not consider that it had to determine any issues of credibility of witnesses who had given evidence.

The Committee required to consider whether or not the Factor's treatment of the homeowner in relation to the common repairs amounted to a failure to comply with the Code of Conduct. In the particular circumstances of this case, it did not consider that the Factor failed to comply with the Code of Conduct. The homeowner's application referred to the factor's failure to carry out repairs and maintenance but Mr and Mrs Smillie accepted that they had always liaised with their upstairs neighbours when common repairs required to be done and that they had never used the factoring service. It was accepted that the factor had not contacted the homeowner at the same time as other proprietors had been contacted but, when requested to do so, the factor had obtained an estimate of likely costs for completing the works. The Committee considered that, in relation to the obtaining of estimates for common repairs, the factor had not failed to carry out the Property Factor's duties. In coming to its view, the Committee noted that the proprietors of 30 and 32 Grieve Road had carried out the works themselves at substantially lower cost and that the homeowner accepted that she was not financially disadvantaged as a result of not participating in a common scheme of repairs organised by the factor. The Committee also noted that there was not a majority of proprietors of 30 and 32 Grieve Road who wanted to carry out common repairs.

The Committee had some sympathy with the homeowner's position with regard to the factoring fee but it considered that, in making a standard charge for the factoring service, the factor was not failing to carry out the Property Factor's duties or failing to comply with the Code of Conduct. It was accepted by the Committee that it would be unreasonable to expect the Property Factor to differentiate amongst the various properties it factors and that this could lead to increased costs. The Committee's sympathy with the homeowner was because it was clear that the proprietors of 30 and 32 Grieve Road did not use the factoring service. The title of the Property has provisions which allow for the majority of proprietors of the block of eight flats to change factors and the homeowner has the opportunity to initiate the procedure to do this. River Clyde Homes own two of the eight properties.

Although the Committee did not consider that the Factor had failed to carry out the Property Factor's duties or failed to comply with the Code of Conduct, it regretted the terms of the Scheme of Costs which had been sent out to the homeowner. It is accepted that this would have been the maximum sum payable by the homeowner but nevertheless it included costs for works which could not have applied to the Property. In other circumstances the Committee may have considered that to send such information to a homeowner was a breach of the Code of Conduct. In the case before the Committee, the homeowner's complaint regarding failure to comply with

the Code of Conduct was in relation to failure to carrying out repairs and maintenance and not in relation to communications. The Committee also took into account that the homeowner had arranged to carry out the work before the Scheme of Costs was received. The Scheme of Costs was not accurate and it is to be hoped that in future the factor will ensure that such documentation is more carefully drafted.

Decision

The Committee

Determined that, in relation to the Homeowner's Application, the factor has complied with the property factor's duties and complied with the Code of Conduct.

Appeals

The parties ' attention is drawn to the terms of section 21 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 day on which the decision appealed against is made...."

Martin McAllister

Chairperson Signature

Date 26.2.14