



Decision

of the Homeowner Housing Committee

(Hereinafter referred to as “the Committee”)

Under Sections 23 (1) and 21(1) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/15/0058

**Re : Property at –
Flat 2/3, 8 Dixon Road, Glasgow G42 8AY
 (“the Property”)**

The Parties:-

**Andrew Lynn, Flat 2/3, 8 Dixon Road, Glasgow G42 8AY
 (“the Applicant”)**

**Ross & Liddell Limited, 60 St Enoch Square, Glasgow G1 4AW
 (“the Respondents”)**

NOTICE TO THE PARTIES

The Committee decide (1) that the Respondent has complied with part (1) up to and including the words “of the dwellinghouses)”, and parts (2), (3), and (4) of the Property Factor Enforcement Order in respect of the Property dated 22 December 2015; and (2) to revoke part (5) and the remaining part of part (1) of the said Order. The Committee certify that the unrevoked parts of the Order have been complied with.

Reasons

1. By letter to the Homeowner Housing Panel (“HOHP”) dated 30 December 2015 the Respondents enclosed their letter dated 29

December 2015 addressed to the Applicant with its enclosures. The enclosures included a certificate of insurance dated 18 December 2015 which certified that the tenement known as 677/685 Cathcart Road and 8 Dixon Road, Glasgow was insured for the sum of £ 3,810,000 and for property owners' third party liability for £ 5,000,000 for the "co-proprietors and bondholders as per [the Respondents] as required by contract jointly for their respective rights and interests as disclosed to the Company [Zurich]" under policy number CW821365. The figure of £ 3,810,000 corresponds to reinstatement figure given by Wiseman Associates Ltd in their assessment of reinstatement costs for the tenement dated 16 December 2015.

2. By letter to the HOHP dated 13 July 2016 the Respondents confirmed that a search of their records had been carried out in respect of the said tenement and the 15 individual properties within it and that there were no endorsements or requests for endorsement of the interests of any standard security holder or bondholder interested in any individual property onto the said insurance policy.
3. The Committee also received a letter from the Respondents to the Applicant dated 18 December 2015 which confirmed that the revaluations for the purposes of the insurance policy required to be maintained by the Deed of Conditions would take place every 4 years with the next revaluation to be instructed by no later than 15 December 2019. This was confirmed by a further letter to the Applicant dated 27 June 2016 which was copied to all of the proprietors in the tenement.
4. By letters dated 19 February and 27 June both 2016 to the Applicant the Respondents sent revised Service Level Agreements dated December 2015 and May 2016 respectively. However neither document complied with part (4) of the Property Factor Enforcement Order issued by the

Committee dated 22 December 2015. Following a further hearing on 5 July 2016 the Committee issued a further direction dated 7 July 2016 giving the Respondents a final opportunity to comply with part (4) of the Order.

5. Eventually by letter to the HOHP dated 20 July 2016 the Respondents lodged with the HOHP a revised Service Level Agreement also dated May 2016 but with alterations to sections 6 paragraph iv and 9 paragraph iii which complied with part (4) of the Order. In particular the alteration to section 6 paragraph iv made it clear beyond doubt that the Respondents will, where they arrange insurance (as in the present case), also instruct a reinstatement valuation every 5 years or at such lesser intervals as agreed with the majority of the proprietors. In the present case, as noted previously, the revaluation is to take place every 4 years in the absence of an alteration to the frequency by the majority of the proprietors of the tenement.
6. In their letter of 20 July to the HOHP the Respondents enclosed a copy of their letter to the Applicant also of 20 July 2016 enclosing the revised May 2016 Service Level Agreement. They stated also that a letter enclosing this revised Service Level Agreement had been issued to all proprietors of the tenement.
7. The Committee is concerned and disappointed by the apparently misleading terms of the letter of 20 July to the Applicant and proprietors where it states that the alterations in the Service Level Agreement were to “the frequency with which we will consult clients in relation to reinstatement valuations”. The alteration in section 6 paragraph iv was the removal of the Respondents’ previous condition that the reinstatement valuation would be instructed only upon receipt of sufficient funding for the valuation from the proprietors. That condition

required to be omitted because it was in breach of part (4)(b) of the Committee's Order and section 5.8 of the Property Factors' Code of Conduct both of which impose an absolute duty on the Respondents (as the arrangers of insurance) to instruct such revaluations and do not allow for any such pre-condition.

8. Accordingly while the Committee has no power to order the alteration of the covering letter it recommends that the Respondents issue a fresh covering letter to the proprietors of the tenement giving a candid explanation of the alteration of section 6 paragraph iv of the Agreement.
9. In the light of the above, the Committee was satisfied that parts (2), (3), and (4) of the Order had been complied with. It was also satisfied that part (1) of the Order dealing with the obtaining of the insurance had been complied with.
10. Having regard to the lack of any requests for endorsement of the interests of any standard security holder on the common insurance policy, the Committee took the view that such endorsement was not necessary and decided to revoke the last part of part (1).
11. Equally, having regard to the Applicant having expressed in his written representations to the Committee dated 2 March 2016 as no longer having an interest in the Committee's decision, the Committee took the view that part (5) of the Order was no longer necessary. Accordingly the Committee revoked part (5) of the Order.

Court Proceedings

The parties are reminded that except in any appeal, no matter adjudicated on in this decision may be adjudicated on by a court or another tribunal.

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

..... 26 July 2016

David Bartos, Chairperson