



Decision by a Committee of the Homeowner Housing Panel in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP/PF/15/0064 and 0065

Re: Properties at 9 and B1, 11 Baliol Street Glasgow, both G3 6UT ("the properties")

The Parties:-

Baliol Properties Limited, 10 West Chapleton Crescent, Bearsden, G61 2DE per one of their Directors, David Chaplin ("the homeowner")

Ross + Liddell, 60 St Enoch Square, Glasgow, G1 4AW ("the factor"), hereinafter together referred to as "the parties"

Committee Members

Karen Moore (Chairperson)

David Hughes Hallet (Housing Member)

Decision

The Committee determined that the factor had not failed to comply with section 2 (Communication and Consultation) at paragraph 2.1 and Section 5 (Insurance) at paragraph 5.2 of the Property Factor Code of Conduct.

Background

1. The factor's date of registration as a property factor is 13 August 2013.

2. By application dated 6 May 2015 ("the Application") the homeowner applied to the Homeowner Housing Panel for a determination that the factor had failed to comply with section 2 (Communication and Consultation) at 2.1 by providing misleading or false information in an email sent by one of their employees and Section 5 (Insurance) at 5.2 by failing to provide clear information in respect of the buildings insurance policy and that in terms of the Property Factor Code of Conduct ("the Code") as required by section 14(5) of the 2011 Act.

3. The parties both made written representations to and lodged the following documentary productions with the Committee.

On behalf of the homeowner, the following documentary productions were lodged:-

- a) Email from the factor dated 10 June 2014;
- b) Chain of email correspondence from 15 December 2014 to 28 January 2015;
- c) Letter from the factor dated 25 February 2105;
- d) Factor's service level agreement;
- e) Excerpt from lease to Rhona Nicol and another;
- f) Excerpt from lease to Esther Johns and another;
- g) Excerpt from lease to Katherine Feldinger;
- h) Excerpt from lease to Patrizio Lecca ;
- i) Email correspondence with Esther Johns;

On behalf of the factor, the following documentary productions were lodged:-

- j) Factor's service level agreement;
- k) Letter from the factor dated 19 August 2013;
- l) Letter from the factor dated 29 April 2014;
- m) Spring 2014 Newsletter;
- n) Email correspondence and attachments dated 4 June 2014;
- o) Email from the factor dated 10 June 2014;
- p) Allianz insurance document 2013/14;
- q) Zurich insurance document 2014/15;
- r) Land certificate GLA113205;
- s) Letter from the factor dated 25 February 2105;
- t) Letter from homeowner dated 1 June 2015;
- u) Email from I.C. Devenny dated 26 June 2015 and
- v) Chain of email correspondence from 15 December 2014 to 27 February 2015;

Each party's representations and productions were copied to the other party.

Hearing

4. A hearing took place on 14 October 2015 at Wellington House, Wellington Street, Glasgow. The homeowner did not appear. The factor was represented by Mr. Ritchie of Hardy MacPhail, solicitors, Glasgow. Mrs. Rita Glendenning, Insurance Manager, and Mr. Stephen Bell, Property Manager, both of whom work within the factor's organisation gave oral evidence to the Committee. No other witnesses or parties gave evidence. The Committee had the benefit of the Application and the copy correspondence which accompanied the Application all as submitted by the homeowner and copied to the factor. The Committee had the benefit of the factor's responses to the Directions which responses had been copied to the homeowner. The Committee also had benefit of the parties' written representations and the documentary productions.

Homeowner's written representations

5. The Committee took note of the homeowner's written representations submitted by one of its directors, Mr. Chaplin, and in particular, noted that the written representations dated 8 October 2015 stated that the many of the material facts of the cases, namely,

- i) the change of buildings insurance provider;
- ii) the extent of cover;
- iii) the provision by the factor to the homeowner of documentation advising of that change of buildings insurance provider and extent of cover;
- iv) the fact that the homeowner not having opted to acquire additional loss of rent cover and
- v) the fact that the homeowner had made an unsuccessful claim for loss of rent on the policy were not in dispute.

The dispute, therefore, was :-

(firstly) was Mr Bell's email of 10 June 2014 in breach of Section 2 (Communication and Consultation) of the Code at paragraph 2.1?

and

(secondly) was the information sent by the factors to the homeowner in respect of the change of policy sufficient to comply with Section 5 (Insurance) of the Code at paragraph at 5.2?

6. Mr Chaplin acknowledged that although the homeowner had received the factor's documentation, being the newsletter and a standard letter with extract of the policy cover, copies of which form productions m) and n) lodged on behalf of the factor, he had not read these, Mr Chaplin's position being that a material change to the building policy should not have been notified by these media.

7. Mr Chaplin stated that there had been a telephone conversation between him and Mr Bell of the factor on 10 June 2014 and put forward his position that he relied directly on Mr Bell's statement to him both in that telephone conversation and in the email from Mr. Bell of the same day (production a) and o)) that the insurance cover for the properties included loss of rent.

Evidence on behalf of the factor.

8. Mrs. Rita Glendenning gave evidence on behalf of the factor and advised the Committee that as insurance manager for the factor and in response to customer feedback, she had arranged a change to both the factor's block buildings insurance provider and extent of cover. Mrs. Glendenning advised that Committee that previously landlords' loss of rent had been included in the cover as standard but that the new policy provided this cover as optional at an additional cost. Mrs. Glendenning advised the Committee that the factors had intimated these changes to all property owners by way of the Journal, a newsletter which accompanied the factor's account and a standard letter with extract of the policy cover, all referred to paragraph 8 above and being the productions lodged on behalf of the factor. Mrs. Glendenning referred the Committee to various paragraphs in all of these productions which stated that landlords' loss of rent cover was optional at an additional charge. Mrs. Glendenning also advised the Committee that shortly before the incident at the properties which resulted in the homeowner's claims on the policy, she had spoken with Mr. Chaplin by phone. Mrs. Glendenning was aware that the homeowner's co-owners in the blocks at 9 and 11 Baliol Street were considering terminating their relationship with the factor and Mrs. Glendenning recalled discussing with Mr. Chaplin the benefit to him as a landlord letting to students in remaining with the factor and their block policy. Mrs. Glendenning recalled having mentioned to Mr. Chaplin the optional loss of rent cover. Mrs. Glendenning gave evidence in a straightforward, professional and open manner and gave the Committee no reason to doubt the veracity of her account.

9. Mr. Bell gave evidence on behalf of the factor and advised the Committee that as property manager for factor he had dealt with the incident at 9 and 11 Baliol Street which resulted in the occupants having to vacate. Mr. Bell confirmed that he had dealt with Mr. Chaplin for very many years and was aware that the homeowner was a professional landlord. Mr. Bell

confirmed the content of his telephone conversation with Mr. Chaplin on 10 June 2104 following the incident and that he had sent an email on the same day stating that "You can claim loss of rent as discussed but not for loss of rent and accommodation costs." Mr Bell stated that his intention was to provide information to Mr Chaplin that he could claim either one or other of loss of rent or accommodation costs and not both loss of rent and accommodation costs and that he had not intended his email to be taken by Mr Chaplin as advice specific to the homeowner. Mr. Bell advised the Committee that he had not checked the detail of the extent of the homeowner's policy cover. Mr. Bell gave evidence in a straightforward, professional and open manner and gave the Committee no reason to doubt the veracity of his account. However, the Committee were of the view that Mr. Bell's comments and email could have been interpreted by Mr. Chaplin as advice specific to the homeowner's policy cover.

Factual findings of the Committee.

10. The Committee found that:-

- i) The properties were on or around June 2014 managed by the factor who had arranged block buildings insurance cover which did not include landlords' loss of rent cover as standard;
- ii) The block buildings insurance cover arranged previously by the factor did include landlords' loss of rent cover as standard;
- iii) The homeowner did not purchase the optional landlords' loss of rent cover;
- iv) The factor notified the change of block buildings insurance cover to all property owners by the same method, namely the issue by post of a Journal, a newsletter which accompanied the factor's account and a standard letter with extract of the policy cover;
- v) The homeowner received the various items mentioned in iv) above but did not read them;
- vi) An incident occurred at 9 and 11 Baliol Street which resulted in the occupants having to vacate and the homeowner making an unsuccessful claim on the block buildings insurance for loss of rent;
- vii) Mr. Chaplin of the homeowner and Mr. Bell of the factor had a telephone conversation on 10 June 2104 following the incident and

viii) on the same day Mr. Bell sent an email to Mr. Chaplin stating that "You can claim loss of rent as discussed but not for loss of rent and accommodation costs " which Mr Chaplin took as advice specific to the homeowner's policy cover.

Decision of the Committee

11. The matter between the parties and the matter for the Committee's determination therefore is (i) has the factor failed to comply with Section 2 (Communication and Consultation) of the Code at paragraph 2.1 by providing misleading or false information in an email sent by one of their employees and (ii) has the factor failed to comply with Section 5 (Insurance) at 5.2 by failing to provide clear information in respect of the buildings insurance policy?

12. Section 2 (Communication and Consultation) of the Code at paragraph 2.1 states:-

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

With regard to the first question, the Committee determined that Mr Bell's email of 10 June 2014 stating "You can claim loss of rent as discussed but not for loss of rent and accommodation costs" was inaccurate as the extent of the homeowner's policy cover did not allow a claim for loss of rent. The Committee were of the view, however, that there was no intention to mislead or to give false information. The Committee were of the view that the homeowner had been provided with sufficient information regarding the change of policy and so the homeowner ought to have known that Mr. Bell's statement was not correct and ought not to have relied solely on it. The Committee were of the view that a prudent and professional landlord faced with a potentially large financial burden should have made its own enquiries with the insurers as to the extent of cover before making a commercial decision. In the circumstances, the Committee decided that there was no breach of the Code.

13. Section 5 (Insurance) of the Code at paragraph at 5.2 states:-

"You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this."

With regard to the second question, the Committee determined that the information sent by the factors to the homeowner in respect of the change of policy was sufficient to comply with paragraph 5.2 of the Code. The reason for this determination is that the change in policy cover was clearly stated throughout the various pieces of information sent to the homeowner by the factor. Had Mr. Chaplin of the homeowner, or indeed another director or employee of the homeowner, chosen to read this, and Mr. Chaplin admits that he did not do so, the homeowner would have been aware of the change. The Committee believed Mrs Glendenning's evidence that she had highlighted the landlord option to the Mr Chaplin. It may be that Mr Chaplin did not fully appreciate the effect of the changes. However, the changes were clearly marked in the information sent out by the factors. The Committee are of the view that as a professional person and a professional landlord, Mr. Chaplin of the homeowner must bear responsibility for looking after the homeowner's affairs and that it was not for the factors to enquire if the homeowner had fully comprehended the effect of the change.

14. The decision is unanimous

Appeals

15. The parties' attention is drawn to the terms of Section 22 of the 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 date on which the decision appealed against is made..."

Karen Moore

Chairperson

14 November 2015.