



Property Factor Enforcement Order

of

the Homeowner Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 19 (3) of the Property Factors (Scotland) Act 2011

Case Reference Number: HOHP/PF/13/0075

Re : Property at 39 Meadowside Road, Cupar, Fife KY15 5DD ("the Property")

The Parties:-

Philip Defew, Cairnlea, Foodie End, Foodie Ash, Cupar, Fife KY15 4PP ("the Applicant")

Kingdom Housing Association Limited, Saltire Centre, Pentland Court, Glenrothes, Fife KY6 2DA ("the Respondent")

NOTICE TO THE PARTIES

Whereas in terms of their decision dated 13 May 2014, the Homeowner Housing Committee decided that the Respondent has failed to comply with the Property Factor Code of Conduct all as stated in said decision; the Committee makes a property factor enforcement order in the following terms:

The Respondent shall, within 2 weeks of the notification of this Order :

- (1) notify the Applicant in writing of the withdrawal of the Written Statement of Services covering "Meadowside Place/Oakvale, Cupar" with retrospective effect from 10 September 2012, such notification to be made forthwith;

- (2) withdraw and cancel the invoice issued to the Applicant dated 1 April 2014;
- (3) in respect of the invoice issued to the Applicant dated 19 February 2013 issue a credit note to the Applicant and Mrs Lesley Defew to the value of £ 49.38 and credit the Applicant's account No. 388 with that sum; and shall credit that account with any interest that may have accrued on the sum of £ 69.38;
- (4) pay to the Applicant's wife Mrs Lesley Defew the sum of one hundred and fifty pounds sterling (£ 150.00) together with interest thereon at the rate of three per cent per year from 17th May 2013 until payment.

Further Reasons

These reasons are further to those in the decision of 13 May 2014. The Committee has taken account of the letters from the Respondent's solicitors dated 29 May and 25 June 2014, letter from the Applicant dated 8 June 2014 and e-mails from him dated 2 July 2014. In relation to the letter of 29 May from the Respondent's solicitors the Committee make the following observations (using the paragraph sub-headings in the letter) :

Page 3 – section (i) The Committee has noted evidence from Mrs Paterson on which to base its findings in fact. It is now too late to bring in fresh evidence. All evidence should have been presented at the hearing.

Page 4 – section (p) The Applicant's evidence of a threat was accepted. There was no evidence before us to the contrary.

Page 4 – section 4 The Committee found that there was no authority to charge the Respondent at all. The observations are irrelevant.

Page 5 – section 6 The Committee refers to paragraph 26 of its decision of 13 May. The written statement did not set out the processes for reviewing and increasing or decreasing the management fee. To say that there is an annual review says nothing about how and increase or decrease is to be worked out.

Page 9 – section 23 There was no appointment of the Respondent so this is not material to the Committee's decision. However supply of electricity to street lighting was not identified as a core service identified in the

written statement nor was it covered by clause (tenth) of the deed of conditions which covered only "maintenance, repair and if required renewal" of parking areas, boundary walls and street lighting.

Page 12 – The Committee's decision is reflected in this Order which represents the majority view

Page 33 – the observations under Page 9/section 23 apply here also.

None of the representations in the other correspondence mentioned was material, given that representations are not an opportunity to present fresh evidence. The Committee observes that the question of the appointment of the Respondent having been raised in its direction of 3 February 2014, there was ample opportunity for the Respondent's representatives to have been fully prepared to deal with the issue at the hearing. In all the circumstances the Committee remains satisfied that the Respondent has failed to comply with its duty under section 14 of the Act and adheres to the terms of its decision of 13 May 2014.

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

Signed ... 7 July 2014

David Bartos, Chairperson