



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

In Application

by

Aylmer Millen, 30/5 Eyre Crescent, Edinburgh EH3 5EU (“the Applicant”)

Property Factor: Grant & Wilson Property Management Ltd, 5 Coalhill, The Shore, Edinburgh EH6 6RH (“the Respondent”)

hohp Ref: HOHP/PF/13/0240

Re: Property at 30/5 Eyre Crescent, Edinburgh EH3 5EU (“the Property”)

Committee Members:

John McHugh (Chairman); Sara Hesp (Surveyor Member); and Colin Campbell (Housing Member).

This document should be read in conjunction with the Committee’s Decision of 26 May 2014.

DECISION

We are of the view that we should make a property factor enforcement order in the terms originally proposed by us.

Our decision is unanimous.

REASONS FOR DECISION

In our decision we indicated that we proposed to make a property factor enforcement order (“PFEO”).

We indicated that prior to making a property factor enforcement order, we would provide the parties with a period of fourteen days within which to make representations under section 19(2)(b) of the Act.

Our decision was intimated to the parties on 27 May 2014.

We have had regard to an email by the Applicant dated 6 June 2014. Parts of that email address the content of the Decision as opposed to the PFEO and, accordingly, may not be considered at this stage of the proceedings. We have given consideration to the part which relates to the content of the proposed PFEO. No representations have been received from the Respondent on the content of the PFEO although we have given consideration to a letter received from it dated 9 June 2014 which invited us to delay the issue of the PFEO on the basis that an appeal of our Decision was in contemplation. The deadline for appeal has passed without the fact of any appeal having been intimated to the office of the HOHP. Accordingly, we consider it inappropriate to delay the issue of the PFEO.

As regards the Applicant's suggestion that the Decision should have retrospective effect we are of the view that, as the Applicant himself volunteered at the hearing, any attempt to unravel past practices of cost sharing in the Development would be fraught with such difficulty as to be impractical. We do not consider it necessary to make any alteration to the PFEO to deal with the Respondent's failures in respect of its responses to the homeowner's complaints.

We consider that, having decided that there has been a failure to carry out the property factor's duties and the section 14 duty, we are obliged by section 19(3) of the Act to make a property factor enforcement order.

Nothing in the Applicant's email of 6 June 2014 has persuaded us that the proposed property factor enforcement order ought to be amended.

Property Factor Enforcement Order

We hereby make the following Property Factor Enforcement Order ("PFEO"):

Within 28 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 Apply the terms of the Deed of Conditions to its management of the Development and in particular in relation to the apportionment of common charges as required by Clause TENTH of the Deed of Conditions;
- 2 Make a payment to the Applicant of £150 in recognition of the stress and inconvenience caused to him as a result of the Respondent's failings;
- 3 Send by post to the proprietors of each and every flat in the Development and to the Medical Practice a copy of the Committee's Decision and this PFEO.

- 4 Provide evidence of compliance with paragraph 3 above by sending to the office of the Homeowner Housing Panel Certificates of Posting issued by Royal Mail.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

APPEALS

The parties' attention is drawn to the terms of section 22 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...”

Signed

Date 20 June 2014

JOHN M MCHUGH

Chairperson