



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

hohp Ref: HOHP/PF/13/0243

Re: Property at 52 St. Vincent Street, Flat E/8, Glasgow

The Parties:-

Mrs. Danielle Bakayoko ('the homeowner')

Glasgow West Housing Association Ltd ('the property factor')

Committee members:

Karen Moore (Chairperson)

Carolyn Hirst (Housing member)

Colin Campbell (Housing member)

This document should be read in conjunction with the Committee's Decision dated 13 June 2014 under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act") and the Property Factor Enforcement Order issued by the Committee under Section 19 (3) of the Act on 5 September 2014

Background

1. The Committee's decision dated 13 June 2014 indicated that the Committee proposed to make a Property Factor Enforcement Order ("PFEO"). In that decision, the Committee indicated that prior to making a PFEO, the Committee would provide the Parties with a period of fourteen days within which to make representations under Section 19(2)(b) of the Act. The Parties both made representations to the Committee. The Committee took account of the representations. Thereafter, on 5 September 2014, the Committee issued the following PFEO :-

"Within 42 calendar days of the date of this Property Factor Enforcement Order, the property factor must:

1. *Confirm in writing to the Committee that the revised invoice layout as submitted to the Committee by the property factor on 3 July 2014 has been implemented;*

2. Confirm in writing to the Committee that the cleaning programme for the common areas of the Development as submitted to the Committee by the property factor on 3 July 2014 has been implemented;

3. Confirm in writing to the Committee that staff training on complaints handling programme as submitted to the Committee by the property factor on 3 July 2014 has been implemented and

4. Provide the Committee with written evidence that the property factor has :-

4.1. Taken legal advice on the interpretation and application of the terms of the title deeds of the Property and any relevant legislation in respect of the homeowner's ownership of the various elements of common property;

4.2. Further to 4.1, ascertained the homeowner's specific liability for the costs attributable to each element of the common property in which the homeowner has an interest and

4.3. Reviewed their invoicing arrangements to ensure that the correct calculation and apportionment of common charges attributable to the homeowner in terms of the title deeds is applied."

The Committee cautioned the property factor that failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

The PFEO was intimated to the Parties on 8 September 2014.

2. On 23 October 2014, a letter was issued to the Parties requesting confirmation that the PFEO had been complied with. The Parties both made representations to the Committee in response.
3. The homeowner advised the Committee that the PFEO had not been complied with. The homeowner's response was copied to the property factor.
4. The property factor advised the Committee that the PFEO had been complied with and submitted a representation by email in support of this contention. The email comprised an attachment headed "Evidence of Compliance with Property Factor Enforcement Order". The property factor's representation was copied to the homeowner.
5. The Committee noted that the attachment referred to in paragraph 4 above largely replicated the response which the property factor submitted to the Committee on 3 July 2014 in reply to that part of the Committee's decision of 13 June 2014 which invited representations under Section 19(1)(a) of the Act in respect of the proposed PFEO. In fact, the sub-headings in the attachment refer to the each element of the Committee's PFEO as proposed on 17 June 2014 and not the PFEO as issued on 5 September 2014.
6. The Committee considered both the homeowner's and the property factor's representations.

7. In respect of the property factor's representation, the Committee are concerned that the property factor has failed to distinguish between the PFEO as proposed and the PFEO as issued, has attempted to comply with the PFEO as proposed and has not addressed the PFEO as issued. Taking into account the property factor's conduct at the Hearing on 15 April 2014 and subsequent representations, the Committee are not of the view that the property factor's failure to address the PFEO as issued is malicious or deliberate. The Committee are of the view that the property factor acted in error in this respect.
8. The Committee took into account the homeowner's representations which state that the PFEO has not been complied with. As the homeowner's assertion is at odds with the property factor's, the Committee considered holding a Hearing to determine compliance with the PFEO. In considering this, the Committee had regard to the fact that it appears to the Committee that the property factor has failed to address the PFEO as issued. The Committee formed the view that a Hearing on this basis would not serve a useful purpose. The Committee also considered the effect of this view on the homeowner and if there would be any prejudice to the homeowner in not proceeding to a Hearing. From the proceedings to date, the Committee are satisfied that, whilst there are failings on the part of the property factor, the property factor is acting in good faith towards the homeowner and the homeowner is not under threat of any litigation by the property factor in respect of non-payment of common charges, nor does it appear that interest is accruing on any amounts outstanding. The Committee are mindful that the aim of the homeowner's application to the Homeowner Housing Panel and the resultant PFEO was to have the property factor carry out the property factor duties and to comply with the Property Factor Code, all in terms of the Act. Therefore, the Committee are of the view that a Hearing to determine compliance at this stage would not achieve that aim and the lack of a Hearing would not prejudice the homeowner's position.
9. The Committee are mindful that their decision of 5 September 2014 warned the property factor of the consequences of failure to comply with a PFEO. These consequences are that, in terms of Section 23 of the Act, the Committee must intimate failure to comply to the Scottish Ministers and, in terms of Section 24 of the Act, failure to comply with a PFEO without reasonable excuse is a criminal offence. The Committee are also mindful that the property factor is a Registered Social Landlord and that failure to comply with the PFEO could be a matter of interest to the Scottish Housing Regulator. Given that the consequences of failure to comply with a PFEO are extremely serious and given that the Committee do not consider the property factor to have had wilful disregard of the PFEO as issued, the Committee are of the view that the property factor should be given a further opportunity to comply with the PFEO.
10. Accordingly, taking into account the full matters as narrated above, the Committee decide, in terms of Section 21(1)(a) of the Act to vary the PFEO of 5 September 2014 to the effect that the timescale for compliance is extended. Whilst, the Committee consider that, as the original PFEO was issued on 5 September 2014, it is reasonable for the property factor to achieve compliance within 21 calendar days of

the date of this decision, as the Christmas and New Year public holidays fall within that time period, the Committee will allow 35 calendar days for compliance.

Property Factor Enforcement Order

The Committee hereby vary the Property Factor Enforcement Order of 5 September 2014 as follows :-

Within 35 calendar days of the date of this Property Factor Enforcement Order, the property factor must:

1. Confirm in writing to the Committee that the revised invoice layout as submitted to the Committee by the property factor on 3 July 2014 has been implemented;
2. Confirm in writing to the Committee that the cleaning programme for the common areas of the Development as submitted to the Committee by the property factor on 3 July 2014 has been implemented;
3. Confirm in writing to the Committee that staff training on complaints handling programme as submitted to the Committee by the property factor on 3 July 2014 has been implemented and
4. Provide the Committee with written evidence that the property factor has :-
 - 4.1. Taken legal advice on the interpretation and application of the terms of the title deeds of the Property and any relevant legislation in respect of the homeowner's ownership of the various elements of common property;
 - 4.2. Further to 4.1, ascertained the homeowner's specific liability for the costs attributable to each element of the common property in which the homeowner has an interest and
 - 4.3. Reviewed their invoicing arrangements to ensure that the correct calculation and apportionment of common charges attributable to the homeowner in terms of the title deeds is applied.

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

Appeals

11. 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 Signature Date... *22 Dec 2014*