



Notice of Failure

Decision of the Homeowner Housing Committee issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011 and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP PF/14/0148

The Property: 34 Bell Street, Wishaw ML2 7NU

The Parties: –

Miss Claire McKenna, residing at 9 Burnpark Avenue, Uddingston, G71 7RY (“the homeowner”)

and

Miller Property Management Ltd, registered under the Companies Acts and having its Registered office at 29 Brandon Street, Hamilton, South Lanarkshire, ML3 6DA (“the factors”)

Committee Members:

David Preston (Chairman); and Andrew Taylor (Surveyor Member).

Decision:

The Committee hereby determines that the Property Factor Enforcement Order has not been complied with.

Background

1. The Committee issued a Property Factor Enforcement Order (“PFEO”) on 10 November 2015, which was varied by Notice of Variation dated 10 January 2016.
2. In terms of section 23(1) of the 2011 Act, the Committee is required to determine whether the Factor has complied with the PFEO.
3. The Committee considered the extent to which the PFEO had been complied.

4. The Notice of Variation required the factors within a period of one month from the date of its issue, to provide to the homeowner at their own expense and not at the expense of the homeowner: full details of the basis on which they appointed or re-appointed all contractors employed by them to carry out any work or to provide cleaning, maintenance or insurance services at the property, including, if applicable paper or electronic copies of documentation relating to any tendering processes (excluding any commercially sensitive information).
5. By email dated 8 February 2016, the factors' representative submitted a copy letter dated 8 February 2016 from the factors to the homeowner together with a copy letter dated 14 June 2011 addressed to the Residents at MacLay Court. On 20 February 2016 the homeowner responded to the Compliance Check issued by HOHP.

Reasons

6. Within the letter of 8 February 2016, the factors state that the reason for re-appointing the contractors for landscaping and cleaning is based upon the continuing reliable services provided by them and the competitive rates offered by each contractor. The factors said that the contractors monthly charges/rates have remained the same over the last three years.
7. In her response of 20 February 2016 and at the hearing, the homeowner stated that the charges imposed over the years for landscaping and cleaning had varied considerably. The purpose of the PFEO and the Notice of Variation was to provide her with a full explanation as to why there should have been such a variation in the charges imposed in the accounts if the contractors' charges had remained the same over the years.
8. Further, the Committee considers that the letter to the homeowner in response to the Notice of Variation does not explain or show the basis upon which the factors have tested that the rates of these contractors are competitive, particularly in view of the fact that they had been appointed by the developers prior to the factors taking on responsibility for the development. The homeowner had requested this information after the Act had come into force and it has not been provided, notwithstanding the terms of the PFEO.
9. In relation to the information required to be provided by the factors regarding the provision of insurance services, the factors' letter of 8 February 2016 states that Mackay Corporate Insurance Brokers are responsible for the undertaking of the tendering of the Buildings Insurance Policy and that Liverpool Victoria were appointed on the basis that the rates were 5% lower than the existing market and the excess amount offered would be reduced from £500 to £250 for all claims and that the brokers felt it would be in the best interests of the cool proprietors and owners that the Block Policy be moved to Liverpool Victoria.
10. The Committee considers that this falls short of the factors providing full details on the basis on which the insurance services were changed as required by the PFEO and the Notice of Variation. The factors should have been able to provide details of the number

and names of alternative quotations and the comparative rationale for appointment of the insurer.

APPEALS:

The parties' attention is drawn to the terms of Section 22 of the Act regarding the 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 the decision of the President of the Homeowner Housing Panel or 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..."

26-Mar-16

X

CHAIRMAN

Signed by: DAVID MICHAEL PRESTON