



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

Property Factor Enforcement Order

HOHP reference: HOHP/PF/13/0063

Re: Property at Flat 3, 23 Hyndland Road, Glasgow G12 9UZ

The Parties:

Mr Euan MacLeod, Flat 3, 23 Hyndland Road, Glasgow G12 9UZ ('the applicant')

Hacking and Paterson Management Services, 1 Newton Terrace, Glasgow G3 7PL ('the respondent')

Background

1. In its decision dated 27 August 2013 ("the decision"), the homeowner housing committee ("the committee") determined that the respondent had failed to comply with its duties under section 14 of the Property Factors (Scotland) Act 2011 ("the Act") in respect of sections 2.1 and 7.2 of the code of conduct for property factors. The reasons for the committee's determination are set out in full in the decision.
2. In terms of section 19 (2) of the Act, the committee gave notice of its proposed property factor enforcement order as part of the decision, and allowed the parties 14 days to make representations to the committee. No representations were made by the applicant. In a letter dated 30 August 2013, the respondent made a number of detailed representations in relation to the decision of the committee, as well as the proposed property enforcement order.
3. The committee has carefully considered the respondent's representations, and by this decision issues a property factor enforcement order with the following points of clarification in response to those representations.
4. The respondent is not 'the property factor responsible for the management of the flats within the property at 23/25 Hyndland Road, Glasgow', as stated in the decision. The respondent is the property factor for the property at Flat 3, 23 Hyndland Road, Glasgow.

5. In the decision, the committee set out the following proposed Property Factor Enforcement Order:

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

- 1) Refund to the homeowner the quarterly management fee paid to the respondent for each of the three quarters from September 2012 – May 2013, together with an explanation of how this figure was calculated **or** if this sum has already been repaid to the applicant, provide evidence of this having been done.
 - 2) Make payment to the applicant of £100 in recognition of the stress and inconvenience caused to him by the respondent's failure to comply with its duties under sections 2.1 and 7.2 of the code.
 - 3) Issue a formal written apology to the applicant in respect of the respondent's failure to comply with its duties under sections 2.1 and 7.2 of the code.
6. The respondent disagreed with all three paragraphs of the proposed property factor enforcement order, and asked the committee to reconsider each of these and accept that the apology previously tendered to the applicant was sufficient. The respondent's representations and the committee's response to these are set out below in relation to each of the three paragraphs of the proposed property enforcement order.
 7. Firstly, the respondent argued that the proposed requirement that it should refund three quarters' management fees, or provide evidence of this having been done, was not competent, as the failures found by the committee occurred over two quarters only. However, as the committee noted at paragraph 55 of the decision, the respondent stated in its letter to the panel of 29 July that it had already refunded to the applicant the equivalent of 9 months' management fees, totalling £122.40. This was disputed by the applicant, who said that he was only aware of the sum of £43.20 having been refunded on 30/1/13. This was the only sum repaid which had been evidenced by the respondent to the committee. There was also some confusion over the sums involved, as the figures did not obviously tally (£43.20 multiplied by 3 does not equal £122.40).
 8. As the respondent was not present at the hearing to clarify matters, the committee therefore framed the terms of the order in such a way as to give

the respondent the opportunity to evidence the payment it said had already been made, and to explain how this figure was calculated. Given that the respondent stated that it had already repaid this sum, it is not clear to the committee why the respondent is now disputing this. The committee has the power under section 20 (1) (b) of the Act to require the property factor to make such payment as it considers reasonable. The committee considers that this payment is reasonable in the circumstances.

9. Secondly, the respondent stated that it could not understand why the committee had decided that the applicant should receive £100 compensation in recognition of the stress and inconvenience caused to him, in the absence of any medical evidence. Under section 20(1) (b) of the Act, the committee has power to require the factor to make such payment to the homeowner as the committee considers reasonable. The committee was satisfied on the basis of the applicant's oral and written evidence that he had suffered stress and inconvenience as a result of the factor's failure to comply with the appropriate sections of the code of conduct. The committee is satisfied that a payment of £100 is reasonable, and does not propose to amend the proposed property factor enforcement order in this respect.
10. Thirdly, regarding the proposed requirement that the respondent should issue a written apology to the applicant, the respondent stated that it had apologised to the homeowner on several occasions, that it had advised the committee of this, and that the applicant had rejected these apologies. As the committee noted at paragraph 55 of the decision, the respondent had acknowledged in its correspondence with the applicant and with the homeowner housing panel that it had provided incorrect information to the applicant. It had issued apologies for this, although it had denied any failure in its duties under the code. It was clear from the correspondence before the committee that the respondent had apologised to the applicant several times for 'the certain aspects of our service which could have been handled better'.
11. The respondent had not, however, in the committee's view, issued an adequate apology for having provided false and misleading information to the applicant on two occasions, or for having failed to provide details of how he might apply to the homeowner housing panel in its final complaints letter. It is in respect of these failures to comply with its duties under sections 2.1 and 7.2 of the code that the committee proposes to require the respondent to issue an apology to the applicant.
12. As the committee is satisfied that the property factor has failed to comply with its section 14 duty, the committee must make a property factor enforcement order, as required by section 19 (3) of the Act. The committee proposes to

issue the property factor enforcement order in the terms proposed in its original decision, for the reasons set out in this decision.

Property Factor Enforcement Order

The committee therefore makes the following property factor enforcement order:

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

1. Refund to the homeowner the quarterly management fee paid to the respondent for each of the three quarters from September 2012 – May 2013, together with an explanation of how this figure was calculated or if this sum has already been repaid to the applicant, provide evidence of this having been done.
2. Make payment to the applicant of £100 in recognition of the stress and inconvenience caused to him by the respondent's failure to comply with its duties under sections 2.1 and 7.2 of the code.
3. Issue a formal written apology to the applicant in respect of the respondent's failure to comply with its duties under sections 2.1 and 7.2 of the code.

Failure to comply with a property factor enforcement order without reasonable excuse is an offence under section 24 of the Act.

Right of appeal

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 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.

More information regarding appeals can be found in the information guide produced by the homeowner housing panel. This can be found on the panel's website at:

<http://hohp.scotland.gov.uk/prhp/2649.325.346.html>

Sarah O'Neill
Signed

Date 18/11/13

Chairperson