



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

Reference: HOHP/PF/14/0011

Re:20 Scotcraigs Apartments, Boat Road, Newport on Tay, Fife,DD6 8EU

The Parties:

**Miss Janet Bowden, 20 Scotsraig Apartments, Boat Road, Newport on
Tay DD6 8EU ("the homeowner")**

**Sheltered Housing Management Ltd, South Hawkhilllock, Ardallie,
Aberdeenshire, AB42 OTS ("the property factor")**

**Decision by a Committee of the Homeowner Housing Panel in respect of
an application under section 17 of the Property Factors (Scotland) Act
2011(the Act).**

Committee Members

Martin McAllister (Chairperson) and Mary Lyden (Housing Member).

Decision of the Committee

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the factor has

Complied with the Code of Conduct for property factors, as required by

Section 14 of the 2011 Act and complied with the Property Factor's duties

Determined that the property factor be given the opportunity to make further representations to the Committee in respect of matters relevant to the Application and contained in the letter of the homeowner dated 4th November 2014. The Committee further determined that, should the property factor wish to make such representations, they be made within fourteen days of the date of service of this Decision and that it would reconvene at a future date to consider the Application and arrive at a final Determination.

Background

1. By an undated application received by the Homeowner Housing Panel on 28th January 2014 the homeowner applied to the Homeowner Housing Panel ("the Panel") for a determination that the factor had failed to comply with the Code of Conduct for Property Factors and had failed in its Property Factor's duties. The specific matter complained about in relation to breach of the Code of Conduct for Property Factors was an alleged breach of and 6.4 (failure of having in place a programme of works for periodic property inspections/ planned programme of cyclical maintenance). The alleged failure to carry out Property Factor's duties was surrounding the property factor's failure to complete the decoration of a corridor.
2. By Notice of Referral dated 22nd September 2014 the President of the Panel intimated that she had decided to refer the application to a Homeowner Housing Committee ("the Committee").
3. Following service of the Notice of Referral, the Homeowner indicated that she was content that the matter be dealt with by written representations alone. This was the procedure adopted by the Committee and a Hearing was subsequently fixed for 19th November 2014. The homeowner sent copies of correspondence relating to the subject matter of the Application as well as other matters.
4. On 15th October 2014 the property factor's solicitors sent a letter with detailed representations dealing with the subject matter of the application and other matters.
5. On 4th and 5th November 2014 the homeowner sent letters to the Private Rented Housing Panel. The letter of 5th November dealt with a matter not relevant to the subject matter of the Application and stated "This is purely for information and I do not wish it to be a part of my original complaint." The letter of 4th November covered a number of

issues and contained three paragraphs dealing with the subject matter of the Application. Copies of both letters were sent to the property factor.

6. On 12th November solicitors acting for the property factor emailed the Homeowner Housing Panel and stated that they had received the copy letters of 4th and 5th November outwith the time limit for making representations and they sought a further fourteen days to make representations.

Hearing

7. A hearing took place in respect of the application on 19^h November 2014 at Europa Building, 450 Argyle Street, Glasgow.

Preliminary Issues

8. The Committee indicated that it considered that there were two preliminary issues that required to be addressed.
9. The first is what the Application is about. The Application alleges breach of the Code of Conduct for Property Factors in respect of Section 6 (4) which states "If the core service agreed with homeowners includes periodic property inspections and /or a planned programme of cyclical maintenance, then you must prepare a programme of works." The Application also relates to an allegation that the property factor has failed to carry out the property factor's duties and then details what the homeowner considers the failure to be. This relates to alleged failure to complete the decoration of a common corridor. The Committee, in considering the Application, formed the view that the matter it required to determine in due course was whether or not the property factor had failed in its obligations under the Code of Conduct for Property Factors in relation to maintenance obligations in relation to the common corridor and whether or not the property factor had failed in its duties in relation to the common corridor.
10. The second preliminary matter was whether or not the property factor be given the opportunity to make further representations on matters raised by the homeowner in her letters of 4th and 5th November 2014. The Committee had little difficulty in determining that the letter of 5th November would not form part of its deliberations. It contained nothing relevant to the Application and furthermore the homeowner had stated that she did not want it to form part of her original complaint. The letter of 4th November did partly relate to the subject matter of the Application and accordingly the Committee determined that the property factor be

given the opportunity to make representations within fourteen days of service of the Decision. The Committee considered that the property factor should direct its representations to three paragraphs in the second page of the letter those paragraphs starting with the words " I was interested..." and concluding with the words "same as everyone else..."

Reasons

10. Fairness to both parties means that the property factor is entitled to be given the opportunity to make representations.

Appeals

The parties' attention is drawn to the terms of section 21 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...."

Martin McAllister

Chairman of Committee.

Date *24 November 2014*