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

Hohp ref: HOHP/PF/14/0121

Re: Properties at 50, 52 and 54 Leven Road, Royale Court, Hamilton ML3 7WS (Collectively "the Properties")

The Parties:-
Mr. Colin Park, 2 Denbeath Court, Ferniegair, Hamilton ML3 7TR ("the Applicant")

Hacking and Paterson Management Services, 1 Newton Terrace, Charing Cross, Glasgow G3 7PL("The Respondent")

Decision by a Committee of the Homeowner Housing Panel In an Application under Section 17 of the Property Factors (Scotland) Act 2011

Committee Members:
Patricia Anne Pryce (Chairperson); Elizabeth Dickson (Housing Member).

DECISION

The committee unanimously determined that the Respondent has failed to comply with their Section 14 duty, in terms of the 2011 Act, to comply with the Code of Practice by:-

1. Repeatedly providing the applicant with erroneous information when corresponding with the applicant and therefore providing information which was misleading or false (a breach of Section 2.1 of the Code).
2. Failing to have a clear written complaints resolution procedure which sets out a series of steps with reasonable timescales (a breach of Section 7.1 of the Code).

By the time this matter came before the committee for a hearing, the Respondent was no longer the factor of the properties, having had their contract terminated by the owners of the properties at Royale Court, Hamilton with effect from 28th February 2014. In all the circumstances of the case, the committee did not find it necessary to make a Property Factor Enforcement Order.

We make the following findings in fact:

The Applicant is the owner of three first floor flats known as 50, 52 and 54 Leven Road, Royale Court, Hamilton which are situated in a block of flats consisting of nine flats in total.

The Respondent was, until 28th February 2014, the factor of the common parts of the block of flats within the property at Royale Court, Hamilton.

The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a property factor (1st November 2012).

Following on from the Applicant's application to the HOHP, which comprised of documents received in the period 14th August 2014 until 2nd October 2014, the Vice President referred the application to committee on 8th October 2014.

Hearing

A hearing took place at the offices of the HOHP on 10th December 2014.

The Applicant attended on his own and gave evidence directly.

The Respondent was represented by Mr. David Doran who is a Director employed by the Respondent. Mr. Doran gave evidence directly.

There was an observer present at the hearing.

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the Homeowner Housing Panel (Applications and Decisions)(Scotland) Regulations 2012 as "the 2012 Regulations".

The Committee had available to it and gave consideration to: the Application Form dated 14th August 2014 together with all of the enclosures contained therein; letter by the Applicant to the HOHP dated 25th September 2014 enclosing letter by the Respondent to the Applicant dated 1st September 2014; letter by the Applicant to the HOHP dated 1st October 2014 enclosing email from the Applicant to the Respondent dated 30th September 2014; Minute of Decision by Vice President made under Section 18(1) of the Property Factors (Scotland) Act 2011; letter by the Respondent to the HOHP dated 30th October 2014 containing written representations in answer to the Application and various enclosures consisting of invoices submitted by the Respondent to the Applicant; letter by the Applicant to the HOHP dated 22nd August 2014 containing copy letters and notification by the Applicant to the Respondent in terms of Section 17(1) of the 2011 Act.

Preliminary Issues

The hearing commenced and a number of preliminary issues were raised as follows:-

1. **Did the hearing relate to all three properties owned by the Applicant at Royale Court?**

This was a preliminary matter raised by the committee for clarification purposes. In his application form, the Applicant had included all three properties at 50, 52 and 54 Leven Road, Royale Court which he owns. The Applicant confirmed that the hearing was in respect of all three properties.

2. **The Applicant did not receive a copy of the Respondent's written representations dated 30th October 2014 until the day before the hearing.**

The Applicant confirmed that the Respondent's written representations had not been included in the bundle of papers which had been sent to him by the HOHP. The committee asked the Applicant if he would require an adjournment of the hearing to fully consider the written response of the Respondent and to prepare further but the Applicant confirmed that this would not be necessary and that he was ready to proceed with the hearing.

3. **Was the Applicant's Application to the HOHP deficient as narrated within Points 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 of the Respondent's written representations to the HOHP dated 30th October 2014?**

The committee advised the Respondent that the Vice President had signed a Minute under Section 18(1) of the 2011 Act to the effect that the Vice President was of the opinion that there was no reasonable prospect of the dispute being resolved between the parties and therefore referred the matter to be heard before a committee. The Respondent helpfully accepted that he was no longer insisting on Points 1.1, 1.2 and 1.3 of his submission.

At this point of the hearing, the Respondent confirmed that he wished to insist on the preliminary issues contained within Points 1.4, 1.5 and 1.6 of the Respondent's written representations to be considered by the committee. Furthermore, the Respondent advised that he wished to raise some further preliminary points which were not contained within his written submission and which were being raised for the first time in this matter. These further preliminary matters were as follows:-

1. As the Respondent's contract with the Applicant had been terminated effective from 28th February 2014 and the Applicant's notification of his application to the Respondent did not take place until 22nd August 2014, the Respondent's submission was that the Applicant's application was incompetent.

2. The Respondent submitted that, as the Applicant had confirmed that his application referred to all three of his properties at Royale Court, this effectively rendered the Application incompetent as there should be three separate applications for each of the Applicant's properties.

3. The Respondent submitted that, while the Respondent acted as factor for the Applicant, he could confirm that the Applicant remained the owner of the properties in question. However, the Respondent advised that as he had not acted as factor for the properties since February this year, he simply did not know if the Applicant remained as the owner of these properties and the owner had not provided any proof of his continuing ownership to the Respondent or committee.

4. The Respondent submitted that as the Applicant was relying on breaches of Sections 2.1, 7.1 and 7.2 of the Code, given that the Respondent's designation as factor had terminated on 28th February 2014, the Respondent was no longer obligated to comply with the Code in respect of his dealings with the Applicant.

The committee heard the parties in respect of the above preliminary points and adjourned to consider the balance of the points raised by the Respondent within his written submission together with the further four issues he had raised at the hearing.

Decision on Outstanding Preliminary Issues

The committee reconvened and advised the parties of its decision in relation to the outstanding preliminary issues which had been raised. In relation to Points 1.4, 1.5 and 1.6 of the Respondent's written submission, these in effect related to whether or not the Applicant had failed to properly notify the Respondent in terms of Section 17 of the 2011 Act and, if so, that the present application must therefore be incompetent. The decision of the committee was that the Application by the Applicant did not simply consist of the Application form signed and dated by the Applicant on 14th August 2014. In terms of the Minute under Section 18 of the 2011 Act signed by the Vice President, the Vice President was clear that the Application comprised documents received in the period 14th August 2014 to 2nd October 2014. The Applicant had provided confirmation to the HOHP that he had carried out notification in terms of Section 17 of the 2011 Act on 22nd August 2014, thus comprising part of the Application. Given this, the committee decided that the Application was competent and that the Applicant had complied with the requirements of Section 17 of the 2011 Act.

The committee then delivered its decision in relation to the preliminary issues which the Respondent had raised for the first time at the hearing, without prior notification of any kind to the committee or to the Applicant. The committee noted its dissatisfaction with preliminary points being raised by the Respondent at such a late stage in proceedings. The committee determined that there had been ample opportunity for the Respondent to provide notification in advance of the hearing to both the committee and the Applicant of these preliminary issues. In light of the foregoing, the committee decided that it was not in the interests of justice to allow these preliminary points to be considered at the hearing and, therefore, the committee was not prepared to consider these further preliminary points.

However, the committee advised the parties that had it decided to fully consider the new preliminary points which had been raised by the Respondent at the hearing, the committee would have been of the view that: **firstly**, the timing of the termination of

the factor's appointment was irrelevant as the behaviour complained about which was at the root of the present application emanated from actions which took place prior to the termination of the appointment; **secondly,** the committee would have viewed the issue of the three properties within the one application as being irrelevant and without effect on the competency of the application. The Application came from the same owner of three properties which were all located within the same floor of the same building with the same factor; **thirdly,** if the Respondent had genuinely believed that ownership of the properties was an issue, this should have and could have been raised well in advance of the hearing. For the avoidance of doubt, the Applicant confirmed to the committee and to the Respondent that he remained the owner of all three properties. In any event, the committee, if required to consider this point fully, would have taken the view that the Respondent agreed that the Applicant was the owner of the properties when the behaviour complained about took place, that is, before the termination of the appointment of the factor; **fourthly,** it would have been the view of the committee that those acts complained about which constituted the alleged breaches of Sections 2.1, 7.1 and 7.2 of the Code had their root in conduct which had taken place while the Respondent's appointment as factor was extant.

The committee then continued with the hearing to deal with the substantive parts of the Application.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 2.1, 3.3, 7.1 and 7.2 and to a breach of the property factor's duties (as defined by Section 17 subsection 5 of the 2011 Act).

The Code

The elements of the Code relied upon in the application provide:-

"2.1 You must not provide information which is misleading or false.

3.3 You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.

7.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

7.2 When your in-house complaints procedure has been exhausted without

resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the homeowner housing panel."

The Factual Complaints

There are a variety of these and they will be addressed in order of the alleged breaches of the Code.

1. *Breach of Section 2.1*

The Applicant in his evidence went through in great detail all of the documentation which he had included within his application form to the HOHP. He advised that on Friday 21st February 2014 he had received an invoice from the Respondent which covered charges by the Respondent in respect of the management of the properties at Royale Court for the period from 29th November 2013 until 28th February 2014, inclusive. The Applicant had helpfully prepared as part of his application an inventory of productions and the production numbers the committee refers to are those allocated by the Applicant. This invoice is referred to as production number 8. The Applicant advised that on 28th May 2014 he received a further invoice from the Respondent which is referred to as production number 9. The Applicant confirmed that it appeared from these two invoices that he had been charged six times for garden/ground maintenance rather than the three times which would be expected for that period. The Respondent could offer no explanation for this other than the charge may simply have been omitted from the earlier invoice. He, however, could not confirm what had happened in this instance. The Applicant confirmed that the second invoice was received without any kind of covering letter which may have offered an explanation as to why this invoice was now being received. The Applicant confirmed that he had owned the three flats since 2009 immediately after they were built and that the Respondent had been the factor from the beginning until the owners of the properties at Royale Court had voted to terminate their appointment effective as of 28th February this year. The Applicant confirmed that the garden/ground maintenance charges had always been billed in equal monthly instalments as demonstrated by the invoices provided to the committee by both the Applicant and the Respondent.

The Applicant's issue in relation to these final two invoices was simple: there was always a monthly amount to be paid in respect of the garden/ground maintenance cost which was always the same, namely, £331.21, but in the second invoice there was an amount of £281.21 with both charges appearing against the same date namely 28th February 2014 which did not appear to make any sense to the Applicant. A chain of correspondence then took place between the Applicant and the Respondent commencing with the Applicant writing by email to the Respondent on 27 May 2014 requesting clarification of these charges. The Respondent replied by email of same date advising that the Cleansweep charge related to an invoice from the contractor which had been received too late to include in the invoice received on 21st February. The Applicant then wrote back by email requesting confirmation of

the dates when the contractor visited the properties for the purposes of garden/ground maintenance. By email of 29th May, the Respondent confirmed that the last visit by the contractor had taken place on 10th January. The Applicant further queried whether this final visit had included stairwell cleaning. After sending a further reminder, the Respondent wrote by email confirming that the final visit for cleaning was 27th February. The Applicant then wrote by email dated 9th June requesting clarification once again as it would appear on the face of the invoices that there were two ground maintenance charges for the month of February 2014. The Respondent replied by email dated 10th June 2014 which the Applicant referred to in his evidence as production number 7i. This email did not address the queries raised by the Applicant in his email of 9th June. By email of 10th June (production number 7j), the Applicant requested clarity once again from the Respondent. The Respondent failed to reply to this email and the Applicant sent a reminder to the Respondent by email dated 17th June 2014, production number 7k. The Respondent provided the Applicant with a substantive response by way of a letter dated 19th June 2014 (production number 7m) which stated additional dates for the last visits by the contractors in respect of ground maintenance, namely, 15th February and 13th March, both 2014.

The Applicant in evidence stated that the Respondent was now claiming two further visit dates. The Applicant advised that the date in March could not have been possible as the contract had finished along with the termination of the appointment of the factor, namely, on 28th February 2014. He advised that the 15th February 2014 was also not possible as a date for a visit as it was a Saturday and the work was only ever carried out on a week day. The Applicant advised that he felt that the Respondent was still not answering his queries and still providing the wrong information. At this point, the Applicant referred the committee to production number 7n which was the Applicant's email to the Respondent advising that the dates could not be correct and that his initial queries remained outstanding. The Applicant also requested that his complaint be forwarded to a Director in terms of the Respondent's complaints procedure.

The Applicant referred the committee to production number 7p which was a letter by the Respondent to the Applicant dated 1st July 2014 advising that the dates previously provided were wrong and enclosed an email from the contractor for clarification in relation to both the charges and the visit dates. The Applicant pointed out that this latest correspondence provided a different and third date for the last visit of the contractors, namely, 11th February 2014. This raised a further issue for the Applicant as, up until this point, he advised that he had been unaware that there was such a huge difference in charges between the summer and winter months of the ground maintenance contract. He was aware that the amount of work and visits varied greatly between the summer and winter months, however, he felt that he should not have been left to work this out himself and that the factor should have been more open about this. The Applicant advised that had he known how large the charges were for the summer months, he would have queried these charges from 2009 onwards. The Applicant advised that the monthly winter charge was £60 whereas the monthly summer charge was £638.48 which he felt was extortionate. The Applicant accepted, however, that he was aware of the annual cost of the contract.

The Applicant then referred the committee to production number 7R which was an email by the Respondent to the Applicant dated 15th July 2014 wherein the Respondent advises that the Respondent has answered all of the Applicant's queries.

The Applicant concluded his evidence by stating that he was of the opinion that the Respondent had breached Section 2.1 of the Code as the Respondent had provided the Applicant with the wrong information on several occasions by way of the wrong dates for visits of the contractor. The information was misleading or false and the Applicant advised that he did not receive clarification around the two different charges throughout the lengthy exchange of correspondence.

Mr. Doran for the Respondent then addressed the issues raised by the Applicant. Mr. Doran referred to the Respondent's letter to the Applicant of 1st September 2014 which the Applicant produced to the HOHP and wherein the Respondent offered an apology for the lack of response to the Applicant's queries regarding the invoices. This letter also contained an apology for the wrong dates which were intimated to the Applicant regarding the contractor's visits. The letter seeks to address all of the breaches which the Applicant has alleged in his present Application. It also contained a cheque in the sum of £100 as gesture of goodwill but also in full and final settlement of the Applicant's complaint.

Mr. Doran was very open in his evidence advising that he was of the view that up until the Applicant had received the Respondent's letter of 1st July 2014, the information which had been provided to the Applicant was poor and the handling of the information by the Respondent was poor. He felt that the letter of 1st September offered a resolution to the Applicant's complaint.

Mr. Doran accepted that the information provided to the Applicant was inaccurate or wrong and he apologised for this several times throughout the hearing. He advised that the Respondent had not done this deliberately.

However, Mr. Doran advised that the process had been in place in respect of ground maintenance and the invoice charging since 2009 and nothing had changed. He advised that all of the owners of Royale Court properties were aware that there were far fewer visits throughout the winter months than the summer months therefore it should have been obvious to them all that the summer charges would be far higher.

The Applicant was adamant that the owners had not been provided with the correct price of the contract for ground maintenance. His view was that the huge difference in seasonal charges should have been made clear to the owners by the Respondent.

As a result of all of the evidence led before the committee, in particular, that the Respondent continued to provide the Applicant with wrong information through a course of correspondence when it should have been obvious to the Respondent that the information being provided was wrong, the committee finds that the Respondent did breach Section 2.1 of the Code in that the Respondent provided information which was misleading or false.

2. *Breach of Section 3.3*

The Applicant's evidence in relation to this alleged breach of the Code essentially was that the Respondent had failed to provide clear details of the charges for ground maintenance as the invoices which the Respondent issued quarterly did not reveal the vast difference between the summer and winter charges.

The applicant accepted that he was aware that there were more visits and work carried out during the summer months.

Mr. Doran stated in evidence that if the Respondent had received a reasonable request from the Applicant, the Respondent would have been content to provide any further information to the Applicant. He also submitted that the invoices issued quarterly by the Respondent to the Applicant showed a detailed breakdown of charges together with a description of the activities concerned. Mr. Doran confirmed that is was usual practice for such charges with seasonal variations to be spread equally throughout the year.

The committee is of the view that the invoices produced by the Respondent contained a financial breakdown of the charges concerned together with a description of the works. At no stage from 2009 onwards did the Applicant query the charges or the cost of the contract for ground maintenance. The Applicant himself produced to the HOHP a letter from the Respondent to the Applicant dated 21 May 2009 wherein the frequency of visits by the contractor in respect of the ground maintenance contract was clearly stated.

Given the foregoing, the committee is of the view that there has been no breach of Section 3.3 of the Code.

However, the committee would comment that, in future, it might be prudent for the factor to make clear in correspondence with owners the large differentiation between the charges for the summer months and the winter months in order to avoid future misunderstandings.

3. *Breach of Section 7.1*

In terms of this alleged breach, the Applicant advised the committee that, as detailed within his Application, he had requested that his complaint be dealt with by a Director. The Applicant produced a copy of the Respondent's complaints procedure as part of his Application. Mr. Doran confirmed to the committee that this was an accurate copy of the Respondent's procedure.

Mr. Doran also confirmed in evidence that the only timescale contained with the Respondent's complaints procedure is the 21 day period within which a Director will provide a final written response to any complaint. The procedure does not contain any other timescales.

The Applicant advised that the Respondent did not take his complaint seriously and to the level of Director until after he had applied to the HOHP. Mr. Doran disagreed with this.

However, the committee is of the opinion that the complaints handling procedure of the Respondent does not contain a series of steps nor reasonable timescales. In fact, the procedure only contains one time limit and that is for the final stage of the complaint to be dealt with by a Director. To that end, the committee is of the opinion that the Respondent's complaints handling procedure is wholly inadequate. It is therefore the decision of the committee that the Respondent has breached Section 7.1 of the Code.

4. *Breach of Section 7.2*

The Applicant advised that the only reason that the complaint procedure of the Respondent was not exhausted prior to his Application to the HOHP was because the Respondent refused to refer his complaint to a Director.

Mr. Doran referred to Point 6.3 of the Respondent's written submission wherein he advised that the Applicant had yet to exhaust the Respondent's complaints handling procedure and no final letter had been issued by the Respondent.

While the committee has every sympathy for the Applicant's view in relation to this part of his Application, given that the Respondent's complaints handling procedure is so vague and lacking entirely in clear steps and stated timescales, it is impossible to say whether or not their complaints handling procedure had been exhausted. Given this, it is the reluctant decision of the committee that there has been no breach of Section 7.2 of the Code.

However, the committee is of the opinion that the complaints handling procedure of the Respondent is wholly inadequate. In the committee's view, it is a damning indictment of the complaints handling procedure that a committee cannot actually state whether or not the procedure has been exhausted as its terms are wholly inadequate. The committee would strongly recommend that the Respondent reviews this procedure as a matter of urgency.

5. *Failure to carry out the property factor's duties*

The Applicant stated in evidence that the Respondent had failed in its duties as it had failed to disclose the price of the contract for ground maintenance. The Applicant referred to his earlier evidence about the large differing rates between the summer and winter months and the lack of clarity provided by the Respondent.
The Applicant advised that the Respondent had failed to provide a copy of the contract with the ground maintenance contractor. However, the Applicant accepted that he had never requested a copy of this document prior to this HOHP Application.

Mr. Doran reiterated that the Applicant had never asked for a copy of this contract and that the method of charging for it had remained consistent from 2009 until the termination of the contract on 28th February 2014.

The decision of the committee is that there has been no breach of the property factor's duties. The Applicant never requested a copy of the contract before his present application. The Applicant's argument was that he required to work out the

seasonal charges himself, however, in the opinion of the committee, this did not amount to a breach of these duties.

The committee is of the view, however, that the Respondent could avoid future conflict with owners by being proactively clear about the differences in seasonal charges.

Observations

The committee opines that it is extremely unfortunate that matters in the present case ever came before committee. If correspondence from the Applicant had been dealt with appropriately and the queries answered by the Respondent, this would never have come before a committee. In essence, the Applicant's queries were not appropriately dealt with by the Respondent until the Respondent's letter to the Applicant dated 1st September 2014. It was clear to the committee that clarity was only provided to the Applicant after Mr. Doran became involved and corresponded with the Applicant. The committee would respectfully suggest that this case highlights a training issue for those within the organisation of the Respondent in terms of learning how to deal with correspondence appropriately and with clarity.

Reasons for Decisions

Section 19(1)(b) affords the committee discretion as to whether or not to make a Property Factor Enforcement Order. The committee concluded that there would be no purpose, justification or necessity to do so in this particular case. The Applicant made it clear to the committee that he did not wish to receive money from the Respondent. The Respondent no longer factors the properties which are the subject of this Application. Furthermore, the Respondent has already apologised to the Applicant both in writing and several times throughout the hearing. The committee records that the Respondent did breach the code in relation to its complaints procedure (Sections 2.1 and 7.1 of the Code).

Appeals

In terms of Section 22 of the 2011 Act, any appeal is on a point of law only and requires to be made by Summary Application to the Sheriff. Any appeal must be made within 21 days beginning with the day on which the decision appealed against is made.

Signed.....

Date 22 December 2014.....

Patricia Anne Pryce

Chairperson