



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

**Property Factor Enforcement Order**

**Hohp ref: HOHP/PF/14/0144**

**Re: 100 Hawk Brae, Livingston EH54 6GF (the property)**

**The Parties:**

**Miss Patricia Quin, 100 Hawk Brae, Livingston EH54 6GF ('the homeowner')**

**Be Factored Ltd (formerly Property 2 Ltd), 2a North Kirklands, Eaglesham Road, Glasgow G76 0NT ('the factor')**

**Committee members:** Sarah O'Neill (Chairperson), Elizabeth Dickson (Housing member)

**Background**

1. In its decision dated 30 March 2015 and issued on 7 April 2015 ("the decision"), the homeowner housing committee ("the committee") determined that the respondent had failed to comply with its duties as a property factor under section 14 of the Property Factors (Scotland) Act 2011 ("the Act"). 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 issued a Notice of Proposal to make a Property Factor Enforcement Order (PFEO) on 7 April 2015, and allowed the parties 14 days to make representations to the committee.
3. A letter dated 10 April was received from Ashleigh Ogilvie, Property Manager with the factor on 13 April 2015. The letter stated that the homeowner had been issued with a cheque for £100 and a letter of apology. A copy of that letter, which apologised for the factor's failure to comply with sections 2.1, 4.6 and 5.2 of the code of conduct for property factors, and stated that a payment of £100 was enclosed, was included with the letter from the factor. Also enclosed with the letter was a copy of the factor's amended written statement of services, which Ms Ogilvie advised had been submitted to all owners within the development. All of these matters were included in part 1 of the Notice of Proposal to make a Property Factor Enforcement Order.

4. No written representations were received from the homeowner.
5. The committee has carefully considered the written representations received from the factor. The committee notes that the factor appears to have misinterpreted the Notice of Proposal to make a Property Factor Enforcement Order as being the PFEO itself, when in fact the purpose behind the Notice was to seek representations from the parties on the terms of the proposed PFEO, before deciding whether to issue such a PFEO and/or its terms.
6. The committee notes that the factor has carried out all of the actions set out in part 1 of the said Notice. It has issued a written apology to the homeowner for its failure to comply with certain sections of the code, and has issued a cheque for £100 to the homeowner, which the homeowner confirmed to the Panel's offices by email on 5 May. The committee notes that the factor has also made the required amendments to Part C (paragraph headed 'Float Payments') of its written statement of services. The committee does not therefore include these matters in this PFEO. The factor has not yet, however, completed the actions set out in part 2 of the Notice, which the committee had proposed should be carried out within a timescale of 3 months.
7. The committee therefore issues the following Property Factor Enforcement Order ("PFEO"):

Within 3 months of the communication to the factor of this Property Factor Enforcement Order, the factor must:

1. Provide written statements to all homeowners within the development, setting out the balance due to them or owed by them in respect of the communal electricity which owners within the homeowner's stair paid between 2006 and the date when the meter within that stair was registered.
2. Provide documentary evidence to the committee of its compliance with the above by sending such evidence to the office of the Homeowner Housing Panel by recorded delivery post.

Section 19 of the 2011 Act provides as follows:

*"... (2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so...*

*(a) give notice of the proposal to the property factor, and*

*(b) allow the parties an opportunity to make representations to them.*

*(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order..."*

**Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence.**

### **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>

Chairperson Signature .

Date.....9/5/15.....