



Variation of Property Factor Enforcement Order of the Homeowner Housing Committee (“the committee”) under section 19(3) of the Property Factors (Scotland) Act 2011 (“the Act”)

HOHP Reference: HOHP/PF/13/0321

Re: Property at Flat 11 Block 8, Tait Wynd, Edinburgh EH15 2RJ

The Parties:-

The homeowner – Victoria Allan (“the applicant”)

The property factor – Charles White Ltd (“the respondents”)

Background

On 24 March 2014 Notice was given in terms of Section 19 of the 2011 Act, of the terms of a proposed Property Factor Enforcement Order and allowed parties an opportunity to make any written submissions in relation to the proposed Order. No representations have been received.

On 10 April 2014, a Property Factor Enforcement Order was subsequently issued to parties.

On 10 April 2014, the respondents lodged an Appeal by way of Summary Application to the Sheriff which sought to set aside the original Decision of the committee dated 13 March 2014.

On 22 July 2014, the respondents’ appeal was dismissed.

On 3 September 2014, having resumed consideration of the Reference following the above sundry procedure, the committee, of new, made a fresh Property Factor Enforcement Order in the following terms:-

Upon receipt of the Order the respondent must:-

- 1. Immediately implement the survey report and recommendations of Site Sealants Ltd by forthwith instructing said company to carry out the work identified within their (undated) report and to ensure that said work is completed within 28 days. The costs of such to be paid for by the respondents, in the first instance, and thereafter the said costs to be*

recovered from all relevant proprietors in such shares as they are obliged to pay common repairs.

2. *Survey, instruct and repair, at their sole cost, any internal redecoration works (including electrical supply services) required to the applicant's property as a result of water ingress, said work to be instructed as soon as reasonably practicable, and if the work cannot be completed within 28 days, then to produce the detailed proposals for such rectification works.*
3. *Issue a written apology to the applicant for:*
 - i. *failing to respond timeously to communications.*
 - ii. *providing false and misleading information.*
 - iii. *for failing to have surveyed the common parts causing water ingress to the applicant's property and their failure to organise necessary repair work.*
4. *Make a payment to the applicant of £500 in recognition of the anxiety, stress and inconvenience caused to her as a result of their failings.*
5. *Refund the management charges paid to them by the applicant from July 2012 to date.*
6. *Prepare a schedule of proposed staff training to ensure that all staff are fully aware of the respondents' obligations in terms of both the Code of Practice and their duties arising from the Deed of Conditions, including details of the provider of the training and timescales for the provision of training.*

Evidence of the respondents' compliance requires to be lodged with the committee within 6 weeks. The 6 week time period for the Respondent's compliance in respect of the foregoing Order expired on 15 October 2014.

Decision

Following enquiries made with both parties, the committee identified that the foregoing Property Factor Enforcement Order had not been complied with timeously by the respondents. Little information was produced from the respondents other than an indication that the contractors to be instructed to carry out the works, namely Site Sealants Ltd had been emailed on two occasions (6 October and 9 October, both 2014). The committee finds that the respondents' efforts to comply with the foregoing Order, based upon the evidence produced, is wholly insufficient. In addition to the respondents' failure to expedite and complete the necessary works to be completed in accordance with items 1 and 2 of the foregoing Order, there is no evidence that they have complied with items 3, 4, 5 and 6 which are all within their own control. The committee are disappointed with the apparent efforts undertaken by the respondents to date to comply with said Order. They do not appear to

have taken their responsibilities seriously. In the circumstances, the committee concluded that it would be open to them to find that the respondents had failed to comply with the Property Factor Enforcement Order and proceed to serve Notice of their said failure on the Scottish Ministers.

Property Factor Enforcement Order (As Varied)

The committee however, in terms of their overriding objectives and with a view to ensuring that the homeowners' needs and interests are met, Varies the previously issued Property Factory Enforcement Order in terms of Section 21 of the Property Factors (Scotland) Act 2011, in the following ways:-

1. *The respondents should, if necessary, in order to avoid further delay and to comply with the time limit specified herein, instruct an alternate reputable company to carry out the works specified within the Survey Report and Recommendations of Site Sealants Ltd in the event that they themselves are unable to carry out and complete the work within the time limit specified herein, and ensure that the said work is completed within 28 days of today's date.*
2. *Otherwise the requirements and obligations imposed upon the respondents in terms of items 1, 2, 3, 4, 5 and 6 should be implemented. In the case of items 3, 4, 5 and 6 such conditions should be fulfilled by the respondents within 7 days of today's date.*
3. *Evidence of the respondents' compliance in respect of all six components of the Order (as varied) requires to be lodged with the committee within 6 weeks of today's date.*

The property factor should note that failure without reasonable excuse to comply with the (Varied) Property Factor Enforcement Order is a criminal offence in terms of Section 24 of the 2011 Act. Additionally Scottish Ministers can take any failure into account in respect of the future registration of the respondent on the register of property factors.

Right of Appeal

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.

Richard Mill

Chairperson

20 October 2014