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

Reference: HOHP/PF/14/0134

Re: Flat 1/1, 29 Marlborough Avenue, Glasgow, G11 O 7BP (the Property)

The Parties:

Ms Alexander McAulay, Flat 1/1, 29 Marlborough Avenue, Glasgow,G11 O 7BP (the homeowner).

Your Place Property Management Ltd, Granite House, 177 Trongate, Glasgow G1 5HF ("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 Tom Keenan (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

Determines that, in relation to the Homeowner's Application, the factor has not complied with the Code of Conduct for property factors.

Background

1. The factor's date of registration as a property factor is 22nd November 2012.

2. By application dated 2nd September 2014 the homeowner applied to the Homeowner Housing Panel ("the Panel") for a determination that the property factor had failed to comply with the Code of Conduct for Property Factors. The specific matters complained about in relation to breach of the Code of Conduct for Property Factors were breach of Sections relating to Communications and Consultation and Carrying out Repairs and Maintenance. The issue surrounds the factor's failure to take steps to include the Property in a common or group heating system.

3. After the application had been lodged the parties attempted to resolve matters without success and the matter was referred to a Homeowner Housing Panel Committee (the Committee) on 7th January 2015.

4. Following service of the Notice of Referral, the homeowner made written representations on 26th January 2015 and the property factor made written representations on 27th January 2015

5. The Committee issued a Notice of Direction to the parties seeking the homeowner to produce a copy of the Title relating to the Property. This was complied with.

6. The Parties made further representations- the homeowner on 10th February 2015 and the property factor on 18th February 2015.

7. Parties agreed that the matter could be determined by written representations rather than an oral hearing.

Hearing

8. A hearing took place in respect of the application on 4th March 2015.

Findings in Fact

9. The Committee finds the following facts to be established:-

9.1 The applicant (homeowner) is the heritable proprietor of the property known as Flat 1/1 29 Marlborough Avenue, Glasgow, G11 7BP. The property

is registered in the Land Register of Scotland under Title Number GLA90861. The applicant has owned the property since October 2008.

9.2 The property is described in the Land Certificate as being a first floor flat in a tenement of nine flats.

9.3 The proprietor of the property has a right in common to the common parts of the tenement more particularly described in a Deed of Declaration of Conditions recorded on 15th January 1992.

9.4 A group heating system is installed in the tenement which serves all flats in the building with the exception of the Property. The Property has never been connected to the system.

9.5 The property factor is part of Glasgow Housing Association which owns four of the nine flats in the tenement.

9.6 In 2011 the homeowner asked the property factor for a quotation to have the Property included in the group heating system. The property factor took two years to advise that it was not prepared to advance this. Prior to advising the homeowner of this in December 2013 the homeowner had been given a quotation and an indication that the Property would be included in the group heating system but this was forthcoming only after considerable delay.

9.7 The property factor accepted that it had fallen short of its standards in connection with communicating with the homeowner and upheld the homeowner's complaint on this matter but did not accept that it had been in breach of the Code of Conduct for Property Factors. The property factors had offered the homeowner the sum of £100 in compensation and then £500. The homeowner rejected both offers.

9.8 The property factor was not obliged to take steps to have the Property included in the group heating system.

9.9 The group heating system is not a common part in relation to the Property.

Evidence

10.1 There was no dispute between the parties with regard to ownership of the property, the ownership of the other flats in the tenement and the fact that there is a group heating system serving all the flats in the tenement with the exception of the Property.

10.2 Both parties agreed that the property had never benefited from the group heating system. The homeowner said that he had only discovered this after he had bought the property.

10.3 The property factor accepted that it had not communicated well with the property owner and from the correspondence it was clear that the homeowner had waited some time for a substantive response to his initial request, had eventually been given a price for the Property to be included in the group heating system and then been told that Glasgow Housing Association was not prepared to do the work necessary to the system. It was also clear from the correspondence that the homeowner had to make persistent effort in chasing the property factor for progress on his request. The Committee noted that the homeowner had used the complaints procedure of the property factor and the Committee had sight of a letter from Glasgow Housing Association in connection with Stage 2 of the complaints process which is purported to be written on 21st February 2013 but which, clearly from its content and from the context of other information provided to the Committee must have been written on 21st February 2014. That letter set out the reasons why Glasgow Housing Association was not prepared to include the Property in the group heating system. That is more than two years after the homeowner had sought to have it included. The letter also upheld the homeowner's complaint in relation to the property factor's failure in communicating with the property factor. The property factor offered a payment to the homeowner of compensation of £100 and this was subsequently increased to £500. Both offers were refused.

10.4 No technical evidence was produced with regard to whether or not the Property could or could not be easily connected to the group heating system. The property factor's position was that it was a business decision of Glasgow Housing Association not to add any properties to existing group heating systems. It explained that such systems had been existing in properties which had been transferred to the Association under stock transfers. They said that the decision had been taken because of the high cost involved in addition to any sum paid by any property owner, the amount of staff time and the disruption to other homeowners/tenants. The property factor said that there were no flow and tail pipes in the Property.

10.5 The homeowner's position was that the property factor had an obligation to have the Property included in the group heating system and pointed out that, although he doesn't enjoy the benefits of the group heating system, he has suffered because a water tank in connection with the system is situated above the property and that there has been water ingress to his property when it failed.

Discussion

The members of the Committee considered the evidence. It considered that the matters before it could helpfully be divided into two: the possible breaches of Section 2 of the Code and the possible breaches of Section 6 of the Code.

Section 2: Communication and Consultation

The Committee had no difficulty in finding that section 2.1 of the Code had been breached. The homeowner had made a reasonable request and had been given information which was inaccurate. The Committee considered that section 2.5 of the Code had been breached. To take two years for the homeowner to be eventually told that it was not possible to connect to the group heating system was unreasonable and did not meet the standard in the Code of dealing with enquiries "....as quickly and as fully as possible." The Committee did consider the property factor's position as set out in its representations of 27th January 2015 that, although it accepted that there had been communication failures, it was not in breach of the Code because it had taken steps to remedy "earlier communication issues." The Committee was not persuaded by this argument and considered that there were clear breaches of Sections 2.1 and 2.5.

Section 6: Carrying out Repairs and Maintenance.

The Committee considered first whether or not the property factor was obliged to have the Property included in the group heating system. It considered it significant that it had never been part of the scheme. The Committee considered the terms of the Land Certificate which stated inter alia that common parts were included in the title of each individual flat and then defined common parts of the tenement as "the whole parts of the tenement which are used by or serve more than one of the said dwellinghouses excepting parts which are specifically conveyed...." It then details specific parts such as solum and foundations, common halls and landings etc. It does not refer to the group heating system. On one view therefore the group heating system is a common part owned by all the proprietors of the tenement. The Committee was not persuaded that this was the correct approach. A simple example shows the flaw in such an argument. Had the homeowner not sought to join the group heating system and there had been a catastrophic failure in the system requiring boiler replacement it is extremely unlikely that the homeowner would have considered it reasonable that he be asked to contribute to the repair. The Property had never been served by the group heating system and the Committee considered that in so far as it relates to the Property the group heating system is not a common part.

The Committee considered further the terms of Deed of Conditions. There are provisions for proprietors to call meetings to determine what common repairs

are to be done. There are nine flats and the owner of four of the flats (a minority of proprietors) has indicated that it would not entertain the addition of the Property to the group heating system. The Committee considered it a possibility that a meeting of proprietors could decide that such works be carried out but the Committee did not consider that such a decision would be competent and that the property factor was therefore not under any obligation to facilitate such a meeting of proprietors. It was considered that such a decision would be incompetent because the group heating was not a common part in relation to the Property and the Deed of Conditions provides a framework for maintenance, repairs and renewal to be carried out and not for completely new works to be initiated- in this case the addition of the Property to the group heating system and installation of appropriate pipework etc. in the Property to facilitate this .

The Committee did not find that Sections 6.1 and 6.3 of the Code had been breached.

The Committee considered whether or not it was appropriate to make a property factor enforcement order in respect of the breach of Section 2 of the Code. In determining this the Committee had regard to the whole circumstances and the fact that it had taken two years for the homeowner to be told that it was not possible to have the Property included in the group heating scheme. The Committee considered it an aggravating factor that the homeowner had previously been told that the property could be included and also the number of times that the homeowner had to chase the property factor for progress. During this period the homeowner could take no steps to install an alternative heating system. Having considered all the particular facts and circumstances of the case the Committee considered it appropriate to propose that a property factor enforcement order be made to the effect that the property factor pays the homeowner the sum of £600 to compensate him for the inconvenience caused. The Committee proposes to make a property factor enforcement order (PFEO) as detailed in the accompanying Section 19(2)(a) notice:

That the property factor makes a payment to the homeowner of £600 in respect of compensation and in recognition of the inconvenience experienced by the homeowner.

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.

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"...(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...."

Chairman of Committee. Date 11th March 2015

Martin J. McAllister