



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

HOHP Ref: HOHP/PF/14/01

Property at: 1/1 38 Netherplace Road

The Parties

Andrew Crombie, residing at 1/1 38 Netherplace Road, Glasgow ("the applicant")

and

Glasgow Housing Association Ltd, an Association registered under the Industrial and Provident Societies Act 1965, having a place of business at 37 Brockburn Road, Glasgow, G53 5BG ("the respondent")

Decision of the Committee

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the respondent has complied with the property factor's duties created by Section 17 of the Property Factors (Scotland) Act 2011.

Committee Members

Paul Doyle	(Chairperson)
Tom Keenan	(Housing Member)

Background

- 1 By application dated 29 October 2014, the applicant applied to the Home Owner Housing Panel for a determination as to whether the respondent has failed to comply with the property factor's duties.
- 2 The applicant considered that the respondent failed to comply with the property factor's duties by failing to obtain the most competitive price for

works carried out on the larger building of which the applicant's property forms part.

- 3 By interlocutor dated 25 November 2014, the president of the Home Owner Housing Panel intimated a decision to refer the application to a Home Owner Housing Committee. The Home Owner Housing Panel service notice of referral on the parties, directing the parties to make any further written representations.
- 4 The applicant provided further written representations dated 12 December 2014 & 16 January 2015. The respondent submitted further written representations dated 15 December 2014.
- 5 Neither party has requested an oral hearing. The Committee were satisfied that this case could be justly determined on the available documentary evidence.

Findings in Fact

- 6 (a) The applicant purchased the property at 1/1 38 Netherplace Road, Glasgow on 11 April 2008. Title to the property was taken in the joint names of the applicant and his spouse. The property is a flatted dwellinghouse forming part of a larger tenement block containing six flatted properties entering from a common passage and stair. Three of the flats (including the applicant's property) are in private ownership. Three of the flats on the same stair are owned by the respondent and are rented out to tenants.

(b) On 29 September 2011, a meeting was held at Pollok Tenant's Choice Ltd, to which all of the proprietors of the common passage and stair at 38 Netherplace Road, Glasgow were invited. The proprietors of flats 1/2 and 2/1 38 Netherplace Road, who own those properties, chose not to attend the meeting. The meeting was attended by three representatives of the respondent, together with the applicant. The purpose of the meeting was to discuss a proposal to carry out common repairs of the larger building of which the property forms part.

(c) At that meeting, the applicant was told that the total proposed costs of the common repair works to the larger building of which the applicant's property forms part was £193,889.62. That figure was to be divided into six equal shares (one for each of the flatted dwelling-houses entered by the common passage and stair at 38 Netherplace Road, aforesaid). The applicant was advised that a 50% grant was available to assist each proprietor with the cost of the works. The applicant complained that he believed the cost of the works to be too high and asked whether or not competitive quotes had been invited.

(d) The respondent's representative explained to the meeting that they felt obliged to carry out the works because the respondent is a registered social landlord who is required by the Scottish Ministers to bring properties up to a certain standard. It was the respondent's position that the works were necessary to meet that standard. The proposed works were put to a vote. Although the applicant voted against the works, the majority of proprietors attending the meeting voted in favour of the works.

(e) The common repairs were carried out. The total final cost was £178,799.06. That cost was split equally between the six proprietors of the flats entering from the common passage and stair of 38 Netherplace Road, Glasgow. Each proprietor was liable for a one-sixth share, which was £29,799.84. Because grants were awarded, each proprietor was required to pay £15,029.92 towards the final costs of the common repairs.

(f) The applicant raised his concerns as a complaint with the respondent. The applicant was offered the opportunity to resolve the difference between the parties at arbitration but chose not to pursue arbitration.

(g) Before instructing the work, the respondents invited tenders for the works which were to be carried out as part of the common repairs scheme. They received 41 initial responses. After considering those responses, they invited 23 contractors to submit tenders. 11 tenders were received. After considering the tenders, the respondent appointed the contractors who ultimately carried out the work.

Reasons for Decision

7 (a) The applicant does not complain that the respondent failed to comply with the code of conduct. The duty to comply with the code of conduct is set out in Section 14 of the 2011 Act. In terms of Section 17(3) of the 2011 Act, no application can be made unless the home owner has notified the property factor, in writing, of his contention that there has been a failure to comply with the code of conduct. In this case it has never been part of the applicant's case that the respondent failed to comply with the code of conduct. Even if the applicant were to raise such a complaint at this stage, the committee could not competently consider it because the respondent has not been given any notice of such a complaint.

(b) The applicant keeps his complaint in very clear focus. He summarises it in one sentence in the application by stating "*The property factor has failed to obtain the most competitive price for the works carried out.*" The applicant argues that if there has been a failure to obtain the most competitive price for the common repairs scheme, then there is a breach of the property factor's duties.

(c) The property factor's duties are defined in Section 17(5) of the Act as follows:

"17(5) In this Act, "property factor's duties" means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner."

(d) It is common ground that the respondent is authorised to act in terms of the titles to the larger property at 38 Netherplace Road, Glasgow. It is also not disputed that a meeting was held to discuss the (then) proposed common repairs scheme on 29 September 2011, and that the appellant attended that meeting and, whilst the applicant opposed proceeding with the common repairs scheme, he was outvoted. The majority at that meeting voted in favour of the common repairs scheme. It is therefore common ground that the respondents had a mandate to carry out the works required by the common repairs scheme. The focus in this case is on whether or not the respondents instructed the works at excessive cost.

(e) The applicant states that the respondent has not obtained *"...the most competitive price..."* but he offers no reliable evidence of the standard price at which such a scheme of works would be carried out by a reliable tradesman in the ordinary course of business.

(f) On the other hand, in written submissions, the respondent provides detail of the tender process that was used and the manner in which they whittled down 41 potential contractors to the contractor who was finally instructed.

(g) Neither the applicant nor the respondent provides a comparison of the costs, nor detail of the quality or the quantity of work that could have been carried out for the costs. The weight of reliable evidence placed before the committee indicates that the respondent followed a well-established tendering process before instructing the works.

(h) There is no reliable evidence before the committee of a comparison of the costs of work from various contractors. The committee therefore cannot make a finding in fact that the works that were instructed were charged at an excessive rate. Throughout his application, the applicant refers to being *"...grossly*

overcharged...” and to “...*exorbitant prices...*” but without a comparison, it is impossible to say that the works were charged at an excessive rate.

(i) The weight of evidence indicates that a competitive tendering process was followed and that the contractors were instructed as a result of that competitive tendering process. On the balance of probabilities, the Committee finds that one of the determinative factors in appointing the contractors was competitive pricing.

(j) What the committee can see is that the actual cost of the works was £15,090.56 less than the total proposed costs discussed at the meeting on 29 September 2011. The committee can also see that that overall saving resulting in a saving of £2,515.10 (ignoring grant aid) for each of the proprietors (including the applicant).

(k) When the committee takes a holistic view of each strand of evidence, the committee comes to the conclusion that the respondents have not failed in their duty to meet the property factor’s duties as defined in Section 17(5) of the 2011 Act.

Decision

8 The committee therefore finds that the respondent has complied with the property factors duties. The committee refuses the application. No property factor enforcement order will be made in response to this application.

Appeals

9 The parties’ attention is drawn to the terms of section 22 of the Property Factors (Scotland) 2011 Act regarding their right to appeal and the time limit 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...”

Paul Doyle

Signed
Chairperson

Date

11/02/2015