



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

hohp Ref: HOHP/PF/15/0037/38/49/59/70/86 & 91

Re: Property known as Royal Apartments, Union Street, Dundee DD1 (collectively "the Property")

The Parties:-

- 1. Roger Marchant, 8 Fairmount Drive, Sauchie, Clackmannanshire FK10 3HN**
- 2. Russell Bowen, 27 Clepington Road, Dundee DD4 7EL**
- 3. Murray Philips, 51/11 Rattray Drive, Edinburgh EH10 5TH**
- 4. Lorraine Findlater, 29 Rosehill Road, Montrose, Angus DD10 8ST**
- 5. Deirdre Langton, The Cottage, Mannings Opening, Strand Street, Sherries, County Dublin, Republic of Ireland.**
- 6. Jill Sim, Flat 17, Royal Apartments, 15 Union Street, Dundee DD1 4BN**
- 7. Fiona Taylor, 24 Flass Road, Wormit, Newport-on-Tay, Fife DD6 8NL ("the Applicants")**

Property Factor: Be-Factored Ltd, 2a North Kirklands, Eaglesham Road, Glasgow G76 0NT ("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:

John McHugh (Chairman); David Hughes Hallett (Housing Member).

Decision

The Committee hereby determines that the Property Factor Enforcement Order has not been complied with.

The decision is unanimous.

Reasons for Decision

The Committee issued a Property Factor Enforcement Order (“PFEO”) on 11 February 2016.

In terms of section 23(1) of the 2011 Act, the Committee is to determine whether the Respondent has complied with the PFEO.

The Committee gave consideration to the extent to which the PFEO had been complied with.

The Committee gave consideration to the Respondent’s completed response form of 23 February 2016 and to the many responses received from the various Applicants.

Paragraph 1 of the PFEO required the Respondent to make a payment of £50 to each of the Applicants and this appears to have been complied with.

The remainder of the PFEO is concerned with the provision of information. It is evident that the documentation supplied by the Respondent falls well short of what is required by the PFEO. The Applicants have highlighted many shortcomings in their correspondence.

The Committee does not propose to highlight here every shortcoming identified by the various Applicants. The most obvious omission is the certificate which was required to be obtained from an independent Chartered Accountant. That requirement was a key part of the PFEO and was included in order to provide confidence to the Committee (and to the Applicants) that the information provided in compliance with the PFEO was accurate.

It is impossible to have confidence that what has been provided is a full accounting reconciliation of all relevant financial intrusions as required by the PFEO and the Committee does not find what has been produced by the Respondent to be clear in its terms or to meet the terms of the PFEO.

Certainly the Respondent has failed to produce all invoices and receipts as required (none have been produced).

The Respondent’s submission is that its files have been sent to storage along with invoices and it has instead sought to rely upon lists of contractors and amounts paid to them. The Respondent refers the Applicants to their earlier quarterly statements. There is no explanation as to why documents in storage have not been recalled and the exercise required by the PFEO completed by the Respondent.

The Committee accordingly hereby finds that the PFEO has not been complied with.

Effect of Decision

Notice of the failure to comply will be sent to the Scottish Ministers in accordance with section 23(2) of the 2011 Act.

Appeals

The parties' attention is drawn to the terms of section 22 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.

(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..."

Signed

Date 8 April 2016

JOHN M MCHUGH

Chairperson