



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

HoHP ref: HOHP/PF/16/0044

Re: Property 41 Dorchester Court, 1 Dorchester Place, Glasgow, G12 0BS (“the property”)

The Parties:-

Mrs Linda Kirk-Wilson, 41 Dorchester Court, 1 Dorchester Place, Glasgow, G12 0BS (“the Homeowner”)

James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX (“the Factor”)

Decision by a Committee of the Homeowner Housing Panel In an Application under Section 17 of the Property Factors (Scotland) Act 2011

Committee Members:

Patricia Anne Pryce (Chairperson); Jean Thomson (Housing Member)

Decision

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 and complied with the Property

Factor's duties, determines unanimously that, in relation to the Homeowner's Application, the factor has not complied with the property factor's duties and has not complied with the Code of Conduct for property factors.

We make the following findings in fact:

The Applicant is the owner of 41 Dorchester Court, 1 Dorchester Place, Glasgow.

The Respondent is the factor of the common parts of the block of flats wherein the property is situated and has been since 2 March 2015.

The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2012 from the date of its registration as a property factor (23 November 2012).

Following on from the Applicant's application to the HOHP, which comprised of documents received in the period from 15 April to 21 June, both 2016, the Convener with delegated powers under Section 96 of the Housing (Scotland) Act 2014 referred the application to committee on 19 May 2016.

Hearing

A hearing took place in Wellington House, 134/136 Wellington Street, Glasgow, G2 2XL on 6 September 2016.

The Applicant attended on her own behalf.

The Respondent was represented by Mrs. Deborah Rummens, Operations Director of the Respondent.

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the Homeowner Housing Panel (Applications and Decisions)(Scotland) Regulations 2012 as "the 2012 Regulations".

The Committee had available to it and gave consideration to: the Application by the Applicant which comprised of all paperwork submitted by the Applicant in the period of 15 April to 21 June 2016, letter dated 1 August 2016 and received by the HOHP on 4 August 2016 by the Respondent together with enclosures contained therein, letter by the Respondent dated 29 August 2016 and received by the HOHP on 30 August 2016 and letter dated 1 September 2016 by the Applicant to the HOHP received by the HOHP on 2 September 2016 together with enclosures contained therein.

Preliminary Issues

1. The Committee had issued a Preliminary Direction under the Homeowner Housing Panel (Applications and Directions)(Scotland) Regulations 2012 dated 17 August 2016 which required the Respondent to attend or be represented at the hearing on 6 September 2016 and to confirm the legal status of the document entitled "Development Schedule" relative to the property. The Respondent replied to the Direction by letter dated 29 August 2016 which contained an explanation of the status of the said document together with confirming the Respondent's attendance at the hearing. The Committee considered that the Respondent complied with the said Direction.
2. The Applicant sought to respond to the Respondent's letter of 29 August 2016 by letter dated 1 September 2016 together with enclosure therein. The Committee advised the Applicant that this document and response had been received late in terms of Regulation 12 of the 2012 Regulations which states that "... a party must send to the panel no later than 7 days prior to any hearing.....(a) a list of any documents and copies of the documents that the party wishes to rely upon:....". The Respondent advised that she had no objection to the lodging of the letter of 1 September 2016 by the Applicant. The Committee decided that it would hear evidence in respect of the letter and enclosure under reservation and make its decision after conclusion of the hearing. Having heard parties throughout the hearing, the Committee decided that to allow the said letter and enclosure to be admitted into evidence as there was no prejudice to the Respondent.

The Legal Basis of the Complaints

The Applicant complains under reference to Section 1 Ab and Section 1Fp of the Code and to a failure to carry out the property factor's duties (as defined by Section 17 subsection 5 of the 2011 Act).

The Code

The elements of the Code relied upon in the application are as follows:-

SECTION 1: WRITTEN STATEMENT OF SERVICES

You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. If a homeowner applies to the homeowner housing panel for a determination in terms of section 17 of the Act, the Panel will expect you to be able to show how your actions compare with the written statement as part of your compliance with the requirements of this Code.

You must provide the written statement:

- to any new homeowners within four weeks of agreeing to provide services to them;
- to any new homeowner within four weeks of you being made aware of a change of ownership of a property which you already manage;
- to existing homeowners within one year of initial registration as a property factor. However, you must supply the full written statement before that time if you are requested to do so by a homeowner (within four weeks of the request) or by the homeowner housing panel (within the timescale the homeowner housing panel specifies);
- to any homeowner at the earliest opportunity (not exceeding one year) if there are any substantial changes to the terms of the written statement.

1.1a For situations where the land is owned by the group of homeowners

The written statement should set out:

A. Authority to Act

- a statement of the basis of any authority you have to act on behalf of all the homeowners in the group;
- where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing works, and situations in which you may act without further consultation;

B. Services Provided

- the core services that you will provide. This will include the target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the core service);
- the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a "menu" of services) and how these fees and charges are calculated and notified;

C. Financial and Charging Arrangements

- the management fee charged, including any fee structure and also processes for reviewing and increasing or decreasing this fee;
- what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services each owner within the group is responsible for. If management fees are charged at a flat rate rather than a proportion, this should be stated;
- confirmation that you have a debt recovery procedure which is available on request, and may also be available online (see [Section 4](#): Debt recovery);
- any arrangements relating to payment towards a floating fund, confirming the amount, payment and repayment (at change of ownership or termination of service);
- any arrangements for collecting payment from homeowners for specific projects or cyclical maintenance, confirming amounts, payment and repayment (at change of ownership or termination of service);

- j. how often you will bill homeowners and by what method they will receive their bills;
- k. how you will collect payments, including timescales and methods (stating any choices available). Any charges relating to late payment, stating the period of time after which these would be applicable (see [Section 4](#): Debt recovery);

D. Communication Arrangements

- l. your in-house complaints handling procedure (which may also be available online) and how homeowners may make an application to the homeowner housing panel if they remain dissatisfied following completion of your in-house complaints handling procedure (see [Section 7](#): Complaints resolution);
- m. the timescales within which you will respond to enquiries and complaints received by letter or e-mail;
- n. your procedures and timescales for response when dealing with telephone enquiries;

E. Declaration of Interest

- o. a declaration of any financial or other interests (for example, as a homeowner or lettings agent) in the land to be managed or maintained;

F. How to End the Arrangement

- p. clear information on how to change or terminate the service arrangement including signposting to the applicable legislation. This information should state clearly any "cooling off" period, period of notice or penalty charges for early termination.

The Factual Complaints

The same facts establish the alleged breaches of the Code upon which the Applicant sought to rely and therefore the breaches will be dealt with together.

Breach of Section 1 Ab and Fp

The Applicant referred to the application and to the supporting documentation contained therein to demonstrate that the Respondent had failed to provide the Applicant with the Respondent's written statement of services (hereinafter "WSS").

The Committee noted that the Applicant had produced a copy of the Respondent's WSS within her present application and sought clarification from the Applicant as to how she had obtained the copy. The Applicant confirmed that she had downloaded a copy of the WSS from the Respondent's website.

The Applicant had also produced a copy of the Respondent's quarterly newsletter dated Autumn 2015 wherein the Respondent advised that the new revised WSS was now available on the Respondent's website. The newsletter also advises that if an owner does not have access to the website, a hard copy of the WSS will be made available to any owner who requests this. The Applicant confirmed that she did not request a hard copy of the WSS. The Applicant complained that there were elderly

residents in her development who did not have internet access and would not be able to access the on line WSS but she accepted that the newsletter, which was sent by hard copy to all owners, did provide information to owners as to how to obtain a hard copy of the WSS.

The Committee advised the Applicant that Section of the Code requires a property factor to “provide each homeowner with a written statement of service...”. The Committee further pointed out to the Applicant that the Code did not specifically require a property factor to produce a hard copy of the WSS to every owner. The Applicant accepted this and, to that extent, accepted that the Respondent had provided to the Applicant access to the WSS on line in August 2015.

The Respondent advised that the Respondent had purchased the business of the previous factor of the Applicant’s property, Messrs Grant and Wilson, on 2 March 2015. The Respondent explained that the Respondent had purchased the business of Grant and Wilson who had been based in Glasgow along with the business of Bruce and Partners who had been based in Aberdeen. This meant that the Respondent had three different WSS to work with. As a result, the Respondent revised all three WSS and produced the singular revised version on or about August 2015 which was what was made available to the Applicant and all of the other owners on the Respondent’s website. The Respondent advised that the Respondent would happily provide a hard copy of the WSS if this was requested by a homeowner and that within the 4-week timescale as dictated by the Code.

The Applicant advised that she had complained that the WSS as provided by the Respondent on the website could not be read on its own in order to fully regulate matters as between the Respondent and the homeowners. She advised that in order to get the detail, for example the financial authority limits of the Respondent and how to terminate the Respondent’s appointment, she had to look at a document entitled the “Development Schedule”. However, she confirmed that she requested this document in 2015, although she could not remember the exact date.

Helpfully, the Respondent accepted that the Applicant had requested a copy of the Development Schedule in 2015 but this was not made available to the Applicant until Mrs Rummens herself sent it to the Applicant under cover of her letter to the Applicant of 29 March 2015, in other words, this document was not provided to the Applicant until more than a year after the Respondent took over factoring of the Applicant’s property. The Respondent accepted this and could not provide any explanation for the delay in providing the document to the Applicant. The Respondent advised that the delay had been down to the previous property manager employed by the Respondent who had simply not sent the document to the Applicant in satisfaction of her request. The Respondent advised that this property manager was no longer employed by the Respondent.

The Applicant advised that she did not and could not accept the Development Schedule as being part of her terms and conditions with the Respondent as Mrs Rummens had sent it to her referring to it as the “Draft Development Schedule”. In other words, the Applicant did not know if this was the final document upon which she could rely in terms of regulating her relationship with her factor.

Mrs Rummens helpfully explained that this document was the final document and she had used the word "draft" in her correspondence simply because the document was due to be uploaded to the new client portal on the Respondent's website. She confirmed that it was simply her ill-advised use of the word "draft" which had led to the present misunderstanding and she apologised to the Applicant for this misunderstanding along with the inordinate delay in sending a copy of this document to her. She also confirmed that, to date, the Development Schedule had not been uploaded to the client portal on the website as the Respondent had encountered IT issues which are presently being addressed.

When questioned by the Committee, Mrs Rummens confirmed that the Development Schedule did form part of the Respondent's WSS and should be read and treated as such. She explained that the WSS dealt with all of the general services that the Respondent provided to its clients. However, each development managed by the Respondent had its own specific financial limits and other conditions often contained in a specific deed of conditions. She advised that the Respondent went through each development managed by it and prepared a specific Development Schedule which had to be read along with the main WSS which would be the full WSS for that specific development.

The Applicant indicated that she was relieved and happy with this explanation. She had simply wanted to know what the terms and conditions were regulating her relationship with the Respondent and that she was content to now rely on the Development Schedule as forming part of the WSS.

The Committee pointed out to the Respondent that the Development Schedule which forms part of the WSS was not sent out to the Applicant until 29 March 2016, more than a year after the Respondent took over factoring the development in which the Applicant resides. In other words, the Applicant did not know the financial authority limits for works which could be carried out by the Respondent without specific authority from the homeowners nor did the homeowners know how to bring the Respondent's appointment to an end. The Respondent helpfully accepted this.

In light of the foregoing, the Committee finds that the Respondent breached Section 1 Ab and Fp of the Code.

Failure to carry out the property factor's duties

The Applicant advised that her complaint in relation to this was based on the same set of facts as she had relied upon to establish the breach of the Code. She specifically advised that on the front page of the Respondent's WSS the Respondent stated that "It is the duty of the registered Factors to provide each homeowner in managed developments with a written statement of services....". Her submission was simple: the Respondent had failed to do this as it had not provided her with the Development Schedule for over a year after it commenced managing her property and that this document formed part of the WSS.

The Respondent helpfully conceded that this was the case.

The Committee noted this and advised parties that it accepted that there was a failure to carry out these duties but that the Committee also noted that this failure was established by the same specific set of circumstances.

Property Factor Enforcement Order

We propose to make the following property factor enforcement order:

Within 28 days of the date of communication to the Respondent of the property factor enforcement order, the Respondent must:

1. Send a letter to all of the owners in the development in which the property is situated enclosing a copy of the Development Schedule specific to the development at 1 Dorchester Place, Glasgow.
2. Provide documentary evidence to the Committee of the Respondent's compliance with the above Property Enforcement Factor Order 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."

The intimation of this decision to the parties should be taken as notice for the purposes of section 19(2) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the Homeowner Housing Panel's office by no later than 14 days after the date that this decision is intimated to them,. If no representations are received within that timescale, then the Committee is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

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:

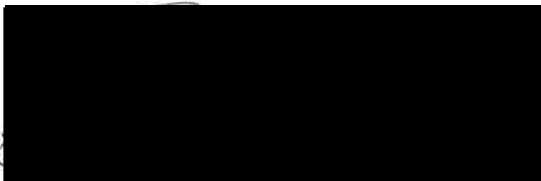
"...(1) An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or a homeowner housing committee.

(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.

Patricia Anne Pryce

Chairperson



Date.....

7/2 September 2016