

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Certificate of Compliance:

Property Factors (Scotland) Act 2011 Section 23

Case Reference Number: HOHP/PF/16/0010

Re : Property at Flat 10, 25 Simpson Loan, Edinburgh EH3 9GE (“the Property”)

The Parties:-

Mr Jason Watson, Flat 18, 15 Simpson Loan, Edinburgh EH3 9GB (“the Applicant”)

Quatermile Estates Limited, Estate Office, 9 Simpson Loan, Edinburgh EH3 9GQ (“the Respondents”)

The Tribunal comprised:-

Mr David Bartos	- Legal member and Chairperson
Ms Carolyn Hirst	- Ordinary member

Decision

The Tribunal certifies that the Property Factor Enforcement Order in respect of the Property dated 1 September 2016 as varied by its decisions dated 30 January 2017 and 6 October 2017 has been complied with.

The decision of the Tribunal is unanimous

Reasons

1. By its decision dated 30 January 2017 the Tribunal decided that the Respondents had failed to comply with the Property Factor Enforcement Order ("PFEO") dated 1 September 2016 and also varied part (3) of the PFEO. By its decision dated 6 October 2017 and issued to the parties on or about 23 October 2017 the Tribunal further varied the PFEO by omitting parts (3) and (4) thereof. There has been no appeal against the PFEO or the decision of 30 January 2017 or the decision of 23 October 2017.
2. By letter to the Tribunal dated 31 October 2017 the Respondents applied for a certificate of compliance. The letter was received accompanied by a budget for the building (Q11) of which the Property forms part. The budget was for the year 2017 which the letter stated had been issued to all homeowners in the building on 31 March 2017. The budget included in schedule 2 a section dealing with a budgeted insurance charge. An explanatory note stated that it was "subject to change". It did not state what the change might be and why. It made no reference to change upon a quotation being obtained.
3. By letter dated 13 December 2017 from the Tribunal the Applicant was referred to the Respondents' application and invited to comment on whether he agreed or disagreed that the outstanding part of the PFEO had been satisfactorily completed or whether a variation or revocation of the PFEO was appropriate. By written response dated 14 December 2017 the Applicant stated that he did not agree that there had been satisfactory completion and did not wish the Tribunal to consider a variation or revocation of the PFEO. He referred to an e-mail to the Tribunal dated 24 July 2017 which he had submitted in connection with the Respondent's previous application to vary the PFEO to nil, which it had granted in part in its decision of 6 October 2017. He did not address the budget which the Respondents had attached to their most recent application. He did not suggest that it had not been issued to him. Nor did his e-mail of 24 July 2017 suggest this. Despite it being offered he did not seek a hearing on the 31 October application.

4. In these circumstances the Tribunal accepted the Respondents' statement in their application that a budget in the terms lodged with the Tribunal on or about 31 October 2017 had been sent to the Applicant and other homeowners in the building on 31 March 2017.
5. With regard to part (1) of the PFEO, the Tribunal found that the explanatory note in the budget for the insurance was inadequate. It did not indicate to the Homeowner whether a quotation for the insurance had or had not been obtained and therefore whether the figure quoted was realistic. With regard to part (2) of the PFEO, neither the Respondents' letter of 31 October 2017 nor their letter to the Tribunal of 5 January 2018 enclosed any supporting quotation and indeed made no reference to quotations at all.
6. In the light of this the Tribunal issued a direction dated 12 January 2018. In it the Tribunal directed the Respondents to provide to both the Applicant and the Tribunal a copy of any or all quotations for insurance for the building (Q11) for 2017 and to provide the Applicant and the Tribunal by no later than 28 February 2018 a copy of the Service Charge Certificate for the calendar year 2017 showing the amount charged for the insurance as that set out in the budget for 2017 or as quoted in the quotations.
7. By letter e-mailed to the Tribunal on 18 January 2018 the Respondents provided copies of a two-page quotation (pages numbered 8 and 18) for the buildings insurance provided by their brokers JLT Speciality Ltd together with This indicated an actual premium of £ 13,419.24 including tax for block Q11, in contrast to the £ 14,547.97 budgeted for 2017. That premium covered various other insurances other than pure buildings insurance all of which was broken down in the quotation, headed 'Premium Summary'. However the Respondents indicated that they would not be in a position to provide a Service Charge Certificate until the end of March 2018 although they could produce a reconciled but unaudited serviced charge certificate. By letter to the Tribunal dated 13 February 2018 the Respondents provided an extended trial balance unsupported by any invoices. In these circumstances the Tribunal issued a further direction dated 19 February

2018 extending the time limit in the direction for the Certificate to 3 April 2018.

8. By letter dated 23 March 2018 the Respondents lodged with the Tribunal a copy of the audited service charge certificate for block Q11 for 2017 together with the quotation for £ 13,419.24 duly receipted. However for reasons not explained the figure for insurance in the service charge certificate was £ 13,869.24 rather than the £ 13,419.24. Accordingly the Tribunal was obliged to issue a further direction dated 3 April 2018 which required the Respondents to provide a full explanation of the difference. By letter dated 4 April 2018 the Respondents explained that the £ 450 difference was due to the additional expenditure of a fire reinstatement cost valuation being £ 375 plus VAT and enclosed the invoice for this expenditure. They also enclosed an independent accountant's report for the calendar year 2017 confirming that there was nothing to suggest that the service charge accounts were not inaccurate. In both letters of 23 March 2018 and 4 April 2018 the Respondents reiterated their request for a certificate of compliance. Both letters and their enclosures were copied to the Applicant. No comment has been received by the Tribunal from the Applicant.
9. Both Tribunal and Applicant have now been supplied with both the budget for 2017 with an explanatory note that the insurance figure budgeted is subject to change together with quotations duly received as paid which are less than the budgeted figure. The actual amount paid for insurance for block Q11 (25 and 26 Simpson Loan) is also supported by an audited service charge certificate for 2017. For these reasons the Tribunal was satisfied that the PFEO (as varied) had been complied with. Accordingly it made the decision stated above.
10. The Tribunal must however record its disappointment that it has taken so long for the Respondents to achieve compliance since the notification of the budget in March 2017. In particular the earlier application for a certificate of compliance in April and June 2017 was made without any attempt to lodge the budget sought in the PFEO. In October 2017 the application was made

without any attempt to lodge quotations sought in the PFEO or to explain their absence. In February 2017 the Respondents sought to lodge an extended trial balance when was directed was a service charge certificate. In March 2017 having advised insurance expenditure to be at one figure, they lodged a service charge certificate for another figure but with no explanation for the difference. All of this delay was entirely unnecessary and has required the Tribunal to incur unnecessary expense. There is also the possibility of a party being found liable for expenses of the other party caused through unreasonable behaviour, although the Applicant has not sought any award in this case.

Appeals

- 11. A homeowner or property factor aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

David Bartos

_____ Legal Member and Chairperson

__26 April 2018_____ Date