



**DETERMINATION BY HOMEOWNER HOUSING COMMITTEE
STATEMENT OF DECISION OF THE HOMEOWNER HOUSING
COMMITTEE**

UNDER

**THE HOMEOWNER HOUSING PANEL (APPLICATIONS AND DECISIONS)
(SCOTLAND) REGULATIONS 2012 (the "Regulations")**

hohp Ref: HOHP/PF/13/0251

Re Flat 8/5, The Maltings, Falkirk FK1 5BX (the Dwelling-house")

The Parties:-

Mrs Patricia McLaren, Seafield, Falkirk FK1 3AH (the "**Homeowner**")

Property 2, 2a Northkirklands, Eaglesham Road, Glasgow G76 0NT (the "**Factor**")

Decision to Serve a Notice of Failure to Comply with the Property Factor Enforcement Order on the Scottish Ministers by a Committee of the Homeowner Housing Panel under Section 23 of the Property Factors (Scotland) Act 2011 (the "**Act**")

Committee Members

Jamie Millar (Chairman), Douglas McIntyre (Surveyor) and Colin Campbell (Housing Member) (the "**Committee**").

Statement of Facts and Reasons for Decision

1. On 9 January 2014 the Committee issued a Property Factor Enforcement Order dated 7 January 2014.
2. The Property Factor Enforcement Order required the Factor as follows:-

"Within six weeks from the date of issue of the Property Factor Enforcement Order the Factor must:-
 - (a) Provide the Homeowner with up to date and correct information, including the claims history required, to enable the Homeowner to obtain, for her own purposes, a quotation for the insurance of the Development;
 - (b) Provide the Homeowner with detailed financial breakdowns of the Scottish Canal's charge and the insurance charge on each invoice issued by the Factor to the Homeowner since 7 December 2012;

- (c) Provide the Homeowner with clear information showing the basis upon which her share of the insurance premium is calculated, the sum insured, the premium paid, any excess which apply, the name of the insurance company providing insurance cover and the terms of the policy;
 - (d) Provide the Homeowner with copies all electricity bills for the Development for which the Homeowner is or was partially responsible in the period from 7 December 2012 to the date of this Property Factor Enforcement Order and either request the supplier to read the meters for the communal electricity supply to the Development or provide meter readings to the supplier so that accurate bills for the communal electricity supply to the Development can be issued and apportioned.
 - (e) Provide to the Homeowner in writing details of any commission, administration fee, rebate or other payment or benefit received by the Factor from the company providing insurance cover;
 - (f) Notify the Homeowner of the frequency with which property revaluations would be undertaken for the purposes of buildings insurance;
 - (g) Pay to the Homeowner the sum of £50 to reflect the inconvenience which she has suffered as a result of the failures of the Factor to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.”
3. The communication of the Property Factor Enforcement Order was sent by recorded delivery post to the Factor on 9 January 2014 and by e mail on 9 January 2014.
 4. On enquiry, the Clerk to the Committee found that the days of appeal had expired and that the Factor had not appealed against the Property Factor Enforcement Order by lodging a summary application at Glasgow Sheriff Court.
 5. The Clerk to the Committee sent letters by recorded delivery post to both the Homeowner and the Factor on 21 February 2014 inviting each of them to comment by 7 March 2014 whether they agreed or disagreed that the Factor had complied in whole or in part with the Property Factor Enforcement Order.
 6. No response was received from either the Homeowner or the Factor to the Clerk’s letters of 21 February 2014.
 7. At the request of the Committee the Clerk sent a further letter by recorded delivery post to the Factor on 12 March 2014 inviting the Factor to comment by 5 pm on 19 March 2014 whether the Factor agreed or disagreed that the Factor had complied in whole or in part with the Property Factor Enforcement Order and intimating that a failure to respond may result in the Committee deciding that the Factor had failed to comply with the Property Factor Enforcement Order and referring the case to the Scottish Ministers.

8. A scanned copy of the letter of 12 March 2014 to the Factor was also sent to the Factor by e mail
9. Neither of the recorded delivery letters to the Factor have been returned by the Royal Mail to HOHP as undelivered.
10. The Clerk to the Committee has ascertained that the recorded delivery letter sent to the Factor on 12 March 2014 was received and signed for.
11. No evidence that the Factor has complied with the Property Factor Enforcement Order has been received from either the Factor or the Homeowner.
12. In the absence of evidence of compliance the Committee decides in terms of S. 23(1) that the Factor has failed to comply with the Property Factor Enforcement Order made by the Committee on 7 January 2014 and served on the Factor on 9 January 2014. The decision of the Committee is unanimous.
13. In terms of S. 23(2) of the Act, the Committee is obliged to serve notice of that failure on the Scottish Ministers. The Committee gives notice of the failure by the Factor to comply with the Property Factor Enforcement Order made by the Committee on 7 January 2014 and served on the Factor on 9 January 2014 and resolves to serve that notice on the Scottish Ministers forthwith.

Right of Appeal

14. The parties' attention is drawn to the terms of Section 22 of the Act regarding their right to appeal and the time limit for doing so. Section 22 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"

Jamie Millar

Chairman

28/03/2014

Date