



Decision of the Homeowner Housing Committee issued under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP PF/14/019

The Property: Flat 2/2, 665 Cumbernauld Road, Alexandra View, Glasgow G33 2EA

The Parties: –

**MISS DEBORAH SCOTT, residing at the Property (“the Homeowner”)
and**

Be-Factored Ltd (formerly Property2 Ltd), 2a North Kirklands, Eaglesharn Road, Glasgow G76 0NT (“the Factors”)

Committee Members:

David Preston (Chairman); and Susan Napier (Surveyor Member).

Decision:

The Committee found that the Factors had failed: to comply with the Code of Conduct for Property Factors; and to carry out the property factor’s duties.

Background:

1. By application dated 1 December 2014 the Homeowner applied to the Homeowner Housing Panel (“the Panel”) to determine whether the Factors had

failed to comply with the Code of Conduct and had failed to carry out the Property Factors' duties imposed by the Act.

2. The Homeowner complained that the Factors had breached the Code of Conduct in respect of Sections: 2.1; 2.2; 2.5; 3.3; 3.4; 6.9; and 7.2.
3. In addition she complained that the Factors had failed to carry out their duties in that:
 - a. They had failed to take adequate action over a period of 3½ years in regard to the Homeowner's concerns about charges for the excessively high common electricity supply for the block of which the Property formed part, resulting in the Homeowner and others in her block being invoiced for the wrong address. She complained that the Factors took 3½ years to get confirmation that something was not right and that the meter numbers and supply addresses for the development were mixed up.
 - b. They had failed to listen to the concerns of the Homeowner and take such adequate action as she expected of a 'property manager', despite having confirmation from an electrical contractor (MRH Electrical) that the meters were not faulty but that the meter numbers and supply addresses at the Alexandra View development had been mixed up. After the correct information had been given to Scottish Power the Homeowner had waited until March 2015 for the Factor to refund the amount due to her. Further, when she raised concerns about the calculation of the refund due, she had not been given an adequate explanation.
 - c. They had failed to meet the expected level of customer service to the Homeowner in accordance with the terms of their brochure. She got no consistency with responses to her queries and ongoing disputes. She had to explain the same issues over and over again to various members of the Factors' team.
4. By Minute dated 20 March 2015 the President of the Panel intimated her decision to refer the application to the Committee.

Hearing:

5. A hearing took place at the offices of the Homeowner Housing Panel, Europa Building, 450 Argyle Street, Glasgow on 28 May 2015.
6. Present at the hearing were: the Homeowner, who represented herself but was accompanied by her partner, Mr Kenneth Johnston and her father Mr Donald Scott who provided support to the Homeowner; Ms Lisa Pieper and Ms Ashleigh Ogilvie were present to represent the Factors.
7. The Homeowner's application had been accompanied by copy correspondence and paperwork. Further copy correspondence and documents following submission of the application had been provided to the Committee.
8. In response to the application the Factors had submitted a copy of a letter dated 2 April 2015 addressed to the Homeowner together with: copy statements; copy invoices from Simply Gardening; copy correspondence with the Homeowner and with others in the block; and copy newsletters dated December 2013 and March, June and December 2014.
9. In addition to the written evidence submitted by the parties, representations were made by them at the hearing.
10. The Homeowner confirmed the information as contained in the documents namely that the dispute had been ongoing since September 2010 when she had moved into the Property and the Factors had taken over responsibility for management of the Property from Ribbon Homes, the developers.
11. The Homeowner identified the key issues as:
 - a. Scottish Power:
 - i. The length of time it had taken the Factors to accept the reasons for the excessive electricity charges and in them resolving the problem.
 - ii. The fact that since the problems had been identified it took the Factors until the March account to refund the overpayment.

- iii. The fact that she had been told that the calculation of the refund due to her would be a complicated exercise and yet when she received the refund it was a straight division of 1/8 of the refund due to her block.
- iv. That her block had received a total refund of £1385.99, whereas the underpayment by the other block amounted to £2714.62.
- v. Despite requests she had not been provided with an explanation of the division of the refund or for the difference in the payments.
- vi. She had asked to see the documentation from Scottish Power with regard to the refund but this had not been provided.

b. Landscaping:

- i. The Homeowner said that she had questioned several of the charges for the landscaping which had been carried out by Simply Gardening. She explained that the Residents Association had instructed the Factors that they did not wish visits from the contractors over the winter months and that they should attend on 13 visits during the summer months.
- ii. The Homeowner referred to the copy invoices from Simply Gardening which showed charges for visits during winter months which she said had not taken place and which, in any event were unauthorised in view of the Owners' instructions.

c. Continuing mix-ups between blocks:

- i. The Homeowner referred to the correspondence regarding a charge which had been imposed in respect of a visit by a locksmith which had been wrongly charged to her block and to the length of time before the Factors had rectified this error. The invoice had been dated 8 March 2013 but the refund had not been made until June 2014.
- ii. The Homeowner further complained that a charge had been wrongly applied to the owners in her block for a visit from MRH Electrical which had in fact been to the other block. Since February

2014 she had repeatedly requested a copy of the invoice but as at the date of the hearing this had not been received.

12. In summary the Homeowner explained that she was concerned about the whole aspect of the customer service being provided by the Factors. She explained that she had been put to considerable inconvenience and had suffered significant stress through the constant correspondence which she found it necessary to have with the Factors. She explained that she did not have Internet access in her home and therefore she required to visit the library to write the emails and correspondence and thereby maintain a paper trail. She had given up speaking to the Factors in view of the difficulties she had and in view of her need to keep an adequate paper trail. She explained that she had been prescribed beta-blockers by her doctor as a result of the significant stress which had been caused to her. Mr Johnson and Mr Scott both confirmed the stress which the Homeowner had suffered since moving into the Property as a result of these issues.

13. In response, the Factors advised:

a. Scottish Power:

i. Ms Ogilvie had begun working for the Factors in December 2013 by which time an investigation into the problems with the accounts had begun. She had ascertained that MRH Electrical and Scottish Power had investigated the position. She had followed the situation up with Scottish Power who maintained that the meters were not faulty, but eventually conceded that whilst there was no problem with the meters, the information with which they had been provided by Ribbon Homes had been incorrect which resulted in the accounts being billed to the wrong blocks. She confirmed the information in the documents lodged that the block at 665 Cumbernauld Road in which the Property was situated had no lift whereas the block at 661 Cumbernauld Road did have a lift. Both Ms Ogilvie and Ms Pieper confirmed that they had recognised that there was a problem with these accounts and indeed Ms Pieper

was of the view that even the electric consumption in respect of the block at 661 (with the lift) appeared to be excessive.

- ii. The Factors explained that they had chased Scottish Power between December 2010 and June 2013 before Scottish Power conceded that the invoices had been mixed up. Ms Pieper further explained that the block at 665 comprised 8 flats and the block at 661 comprised 10 flats. She explained that in view of the different dates of entry and the number of proprietors who had owned some of the flats, the calculation of the division of the refund in respect of 665 and the underpayment in respect of 661 was particularly complicated. It had been further complicated by a number of the accounts issued by Scottish Power having been inaccurate.
- iii. The Factors had engaged MRH Electrics in December 2013 to visit block 665 to ascertain whether the wiring into the common meter was correct. She explained that she had experience of occasions when a developer had wired the show-house into the common supply and then failed to separate the wiring when the development was sold.
- iv. Ms Pieper explained further that Scottish Power had refused to simply swap over the meters and accounts to the correct blocks without further information which had been difficult to obtain.
- v. The Factors confirmed that they had continued to pay Scottish Power on the receipt of the bills notwithstanding that they were obviously wrong and explained that they were concerned that Scottish Power might disconnect the supply.

b. Landscaping:

- i. The Factors advised that the contract with Simply Gardening had been in place when they had taken over the management of the development. Simply Gardening had been instructed to visit the Property fortnightly during the summer months and been told that the residents did not wish visits to take place over the winter. As far as the Factors were concerned winter visits did not take place.

- ii. Ms Pieper referred to the Simply Gardening invoice dated 1 May 2014 which included an extra charge of £30 due to the length of the grass which had resulted from there having been no winter visit.
 - iii. Ms Pieper explained that the contractor issued invoices monthly for the contract price, notwithstanding that they only visited during the summer. Ms Ogilvie explained that the January invoice which referred to the contractor's inability to make the visit due to snow and ice was a standard invoice which they had issued for all their contracts notwithstanding that a visit in January was not scheduled for the Property.
 - iv. Ms Ogilvie advised that she had asked the contractor to provide her with tracking information and evidence regarding their visits to the Property and that this was still awaited.
- c. Continuing mix-ups between blocks:
- i. The Factors pointed out that the mix-up with the locksmith account had been resolved.
 - ii. The Factors agreed that the request for a copy of the MRH Electricals account in respect of their earlier visit to the development had not been dealt with and undertook to recover a copy of the relevant invoice from the archives and to supply same to the Homeowner.

14. In Summary, the Factors accepted that the situation with Scottish Power had taken a long time to resolve but that this had been discussed at the meeting of the Residents Association and it had been followed through and a refund obtained. The Factors had offered to credit the owners with one quarter's management fee but this had been refused by the residents. Ms Ogilvie explained that she continued to pay attention to the Alexandra View properties on the various points which had been raised at that meeting.

Findings in Fact:

15. The Homeowner had been the proprietor of the Property at flat 2/2, 665 Cumbernauld Road Alexandra View since 3 September 2010 as evidenced by the Land Certificate lodged by the Homeowner. The Factors had been appointed by the developers to manage the Property. The date of registration of the Factors was 7 December 2012.
16. The Committee noted that some of the issues raised by the Homeowner related to matters which predated the coming into effect of the Act and which occurred prior to the Factors' registration. However the Committee was satisfied that in terms of the transitional provisions in Regulation 28 of the Homeowners Housing Panel (Applications and Decisions) (Scotland) Regulations 2012, the Committee was entitled to take into account any circumstances occurring before 1 October 2012 in determining whether there had been a continuing failure to act after that date.
17. The Property forms a flat in the block of eight flats at 665 Cumbernauld Road, Alexandra View (hereinafter referred to as "Block 665") developed by Ribbon Homes Ltd. The development of which the block at 665 Cumbernauld Road forms part includes another block of ten flats at 661 Cumbernauld Road, Alexandra View (hereinafter referred to as "Block 661"). Block 661 contains a lift and Block 665 has no lift.
18. The development was completed in or about 2010 and the Factors had been appointed by the developers and remained in that capacity as at the date of the hearing.
19. After moving into the Property and receiving quarterly statements from the Factors in relation to the common expenses, the Homeowner raised concerns with the Factors in relation to, amongst other things, the Scottish Power accounts for the common electricity. In particular the Homeowner complained that the Scottish Power accounts for Block 665 were significantly higher than those for Block 661, despite the fact that Block 661 had a lift when Block 665 did not.

20. The Factors had instigated an investigation into the discrepancy between the accounts and had engaged MRH Electricals to investigate the possibility that one of the flats had been connected into the common supply. By December 2013 the Factors had established that no such connection had been made. The Factors had made efforts to persuade Scottish Power that the supplies had somehow been mixed up but Scottish Power continued to maintain that the meters were in order.
21. In or about June 2013, the Factors appear to have convinced Scottish Power of the error and accounts received thereafter had been correctly allocated.
22. Between June 2013 and March 2015 the Factors had attempted to calculate the differences in the accounts which had been wrongly allocated to the respective blocks.
23. In March 2015 the Factors completed their calculations and made a refund to the owners of the flats in Block 665 in the sum of £1385.99 and calculated that the underpayment by Block 661 amounted to £2714.62. The Factors were unable to explain to the Committee's satisfaction why the underpayment by Block 661 differed by approximately £1400 from the overpayment by Block 665.
24. The Factors continued to make payment to Scottish Power on receipt of invoices despite the dispute and requests by the Homeowner to withhold payment until the dispute had been resolved.
25. The Factors failed to provide the Homeowner with adequate explanation of their actions in relation to the dispute with Scottish Power or of their calculations of the different accounts resulting in the refund and the underpayment.
26. The Factors paid Simply Gardening on receipt of monthly invoices for the annual charges. However they failed to explain adequately to the Homeowner the basis of the invoices received. The Factors had questioned some of the invoices but had failed to explain any discrepancies in the terms of the invoices to the Homeowner despite requests to do so.

27. In 2013 the Factors wrongly allocated an Argyle Locksmiths invoice to Block 665 instead of Block 661 and took a number of months to rectify the error, having been requested to do so by the Homeowner.
28. The Factors had failed to supply a copy invoice from MRH Electricals in respect of their visit to the development which had been contested by the Homeowner as having been charge to Block 665 when it had been in respect of Block 661.
29. The service provided by the Factors to the Homeowner fell significantly short of the standard which the Homeowner could reasonably have expected
30. The Homeowner had suffered significant stress as a result of the on-going difficulties she had faced in her dealings with the Factors. She had spent considerable time in dealing with the issues raised by her and in having to repeat her requests without proper acknowledgement or adequate explanation of the on-going situation. The stress suffered had an adverse effect on the health of the Homeowner.
31. The Factors had not failed to comply with Sections 2.1, 2.2, 3.3, 3.4 or 7.2 of the Code of Conduct but had failed to comply with Sections 2.5, and 6.9. in addition the Factors had failed to fulfil the property factor's duties in terms of the Act.

Reasons:

32. In coming to its decision the Committee carefully considered all of the written, documentary and oral evidence presented to it.
33. The Committee was satisfied that the correspondence between the parties demonstrated that the Homeowner had repeatedly raised significant concerns about the issues referred to, but no adequate responses or explanations had been provided by the Factors.
34. In evidence, both Ms Ogilvie and Ms Pieper stated that they had not been with the Factors at the relevant time and were accordingly unable to provide certain

information sought. The Committee was not satisfied with such a response. The responsibilities to comply with the terms of the Act were those of the Factors and not the individuals.

35. The Committee was satisfied that the Factors had taken steps to address the issues with Scottish Power and recognised the difficulties faced when dealing with matters of this nature. However the Committee found that the Factors could have taken matters further with Scottish Power, particularly when requested to do so by the Homeowner and others, or at least provided an explanation of their reasons for not doing so.
36. In evidence at the hearing, the Factors were unable to explain the apparent discrepancies between the underpayment by Block 661 and the overpayment by Block 665.
37. No evidence was produced to the Committee as to the actions taken by the Factors between the end of 2010 and December 2013 when the report from MRH Electricals was obtained.
38. The Committee accepted the evidence of the Homeowner that she was unaware of the circumstances surrounding the detail shown on the Simply Gardening invoices. The Committee found that this was as a result of the Factors' failure to explain properly to the Homeowner and others about the basis of the invoices.
39. The Committee was satisfied that the Factors had paid invoices from Simply Gardening and Scottish Power without adequately raising questions until raised by the Homeowner. Thereafter the Factors failed adequately to keep the Homeowner advised as to the steps being taken and calculations made.
40. The email from the Homeowner dated 4 May 2014 stated that the issue relating to the Argyle locksmiths account had been drawn to the Factors' attention in September and October 2013. However despite the matter having been raised again in a number of emails during early 2014 a refund was not made until June 2014.

41. The Factors acknowledged that they had failed to provide the copy invoice from MRH Electricals in respect of the earlier visit which had repeatedly been requested by the Homeowner since February 2014 and they undertook to recover same from archive and to do so.
42. The Committee was not satisfied that the correspondence had been abusive, intimidating or threatening. It was satisfied that any inaccurate or incorrect information had not been intentionally provided by the Factors, which the Committee considered was a necessary test. Whilst the technical provision of a detailed financial breakdown had been complied with, the information provided had been inadequate to address properly and satisfactorily the reasonable concerns and questions of the Homeowner.
43. The Committee accepted the evidence of the Homeowner and the information in the documents that the situation had adversely affected her health. The Committee was advised that the Homeowner had persisted with her efforts when the other owners in the development had given up their efforts. The Committee was satisfied that the Homeowner had been required to engage in extensive correspondence due to a lack of adequate responses or explanations from the Factors.

Property Factor Enforcement Order:

44. The Committee proposes to make a Property Factor Enforcement Order (PFEO) as detailed in the accompanying Section 19(2)(a) notice.
45. The Committee considered that the efforts of the Homeowner to keep pressure on the Factors which eventually resulted in a resolution of the Scottish Power went far beyond anything that she should have been expected to do. As she pointed out in her correspondence she should have been able to rely on the accuracy of the quarterly accounts issued by the Factors and of the various accounts. As a result of her lack of confidence in the Factors she has had to check carefully all the entries. Further, on the occasions when her queries were justified, as in the case of the Simply Gardening account which referred to snow

and ice preventing visits which were not required, she was not provided with an explanation until she had raised it. Taking an overview of the circumstances in this case, the Committee was of the view that the standard of service provided by the Factors fell so far short of what could be expected that the Factors should refund to the Homeowner a sum representing 25% of the management fees charged by them since they took over responsibility for the management of the development until the date when the refund of the electricity overcharge was made (March 2015).

46. In addition to that sum, the Committee considered that the sum of £200 should be paid by the factors to the Homeowner to reflect the inconvenience, stress and anxiety which had clearly been suffered by the Homeowner throughout the period as well as the additional stress and anxiety occasioned by the need for her to apply to HOHP.

Right of Appeal:

47. The parties' attention is drawn to the terms of Section 22 of the Act regarding the 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 the decision of the President of the Homeowner Housing Panel or 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 ..."

More information regarding appeals can be found in the information guide produced by the Homeowner Housing Panel. This can be found on the Panel's website at:

<http://hohp.scotland.gov.uk/prhp/2649.325.346.html>

..Chairman

7-6-15
.....Date