

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)
under section 48 of the Housing (Scotland) Act 2014 (“2014 Act”)**

Chamber ref: FTS/HPC/LA/22/1698

Re: 6/9 Taylor Gardens, Edinburgh, EH6 6TG
 (“Property”)

Parties:

**Dr Matthew Spike and Mrs Ozge Spike, 6/9 Taylor Gardens, Edinburgh, EH6 6TG
 (“Applicants”)**

**Factotum (Scotland) Limited trading as Factotum, 63 Dublin Street, Edinburgh,
EH3 6NS
 (“Respondent”)**

Tribunal Members:

**Pamela Woodman (Legal Member and Chair) and Frances Wood (Ordinary
Member)**

Present:

The hearing in relation to case reference FTS/HPC/LA/22/1698 took place at 10am on Tuesday 31 January 2023 by telephone conference call (“**the Hearing**”). Neither of the Applicants nor the Respondent were present at the Hearing, nor were they represented. The clerk to the Tribunal was Cecilia Lee. Alan Strain was present as an observer.

Background

1. The Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“**the Tribunal**”) under section 48 of The Housing (Scotland) Act 2014 (“**2014 Act**”) and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 95 (*Application to enforce letting agent code of practice*) of the HPC Rules.
2. A case management discussion (“**CMD**”) in relation to this case had been held on Friday 14 October 2022, at which both Dr Matthew Spike (one of the Applicants) and Mr Christopher Boisseau (representing the Respondent) were present.

3. At the CMD, both parties were informed that further information was required in order to consider the application and so it was explained to the parties the submissions and information which they would be required to provide. These requirements were set out in a notice of direction dated 14 October 2022, which was in the following terms:

“The Tribunal, on its own initiative and for the purpose of making inquiries, gives the following Direction to the parties as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended):

1. *By 9am on Monday 7 November 2022, the Respondent is required to submit to the Tribunal (with a copy sent to the Applicants) copies of the following:*
 - a. *its terms of business (or other written procedures) entered into with the landlord(s) of the Property - for the avoidance of any doubt, the Respondent may redact any financially sensitive information, such as any amount payable to the Respondent as a fee, retainer and/or commission; and*
 - b. *its complaints procedure for landlords and tenants.*
2. *By 9am on Monday 21 November 2022, the Applicants are required to submit to the Tribunal (with a copy sent to the Respondent) the following:*
 - a. *a high-level timeline setting out key dates relevant to the alleged failures of the Respondent to comply with the Letting Agent Code of Practice (“Code”), for example, the date on which an alleged want of repair was notified to the Respondent, the date of any response from the Respondent, the date on which repair carried out, etc;*
 - b. *a statement setting out its written submissions respectively in respect of each paragraph of the Code with which the Applicants allege that the Respondent has failed to comply, including (i) the nature of the alleged failure to comply with that particular paragraph, (ii) in what way the Respondent has allegedly failed to comply (for example what the Applicants say the Respondent did or did not do), and (iii) by reference to the relevant page numbers within the evidence bundle referred to below, the evidence which (the Applicants say) supports the Applicants’ position;*
 - c. *a paginated evidence bundle of all documentation, including any relevant e-mails, on which the Applicants will seek to rely - for the avoidance of any doubt, it is anticipated that this bundle will include, but not be limited to, the e-mail of 9 May 2022 and the “previous” and “chain” of correspondence referred to in the “Supplementary material for Form J” document, which accompanied the application; and*
 - d. *a list of the witnesses (if any), whom the Applicants wish to have give oral evidence at the hearing – for the avoidance of any doubt, it is for the Applicants to ensure that such witnesses (if any) consent to being a witness and that they attend.*

3. *On or before the date falling 14 days prior to the date of the hearing in this case with reference FTS/HPC/LA/22/1698, the Respondent is required to submit to the Tribunal (with a copy sent to the Applicants) the following:*
 - a. *a statement setting out its written submissions in response to the written submissions and evidence bundle provided by the Applicants (respectively in respect of each paragraph of the Code with which the Applicants allege that the Respondent has failed to comply) including, by reference to the relevant page numbers within the Applicants' evidence bundle or the Respondent's evidence bundle referred to below, the evidence which (the Respondent says) supports the Respondent's position;*
 - b. *a paginated evidence bundle of all documentation, including any relevant e-mails, on which the Respondent will seek to rely; and*
 - c. *a list of the witnesses (if any), whom the Respondent wishes to have give oral evidence at the hearing – for the avoidance of any doubt, it is for the Respondent to ensure that such witnesses (if any) consent to being a witness and that they attend.*

In each case, the submissions and other paperwork should relate and be relevant to the issue to be resolved at the hearing in this particular case (FTS/HPC/LA/22/1698). By "paginated", it is meant that each page has been given a page number in sequential order, which may be added in handwriting and need not be added through the use of technology. For the avoidance of any doubt, any submissions provided by a party prior to the date of the case management discussion on 14 October 2022 on which that party wishes to rely should be included within the paginated evidence bundle.

Reason for Direction

To obtain further information and documentation in order to provide evidence to support and/or to clarify details in the application paperwork and to assist the Tribunal in the determination of the case."

4. The Respondent complied with direction 1 on 18 October 2022 and provided copies of (i) the terms of business between the Respondent and the landlord and (ii) the Respondent's complaints policy.
5. The Applicants had contacted the Tribunal administration team on 9 November 2022 (stating that they had missed the deadline for complying with direction 2) but the deadline for complying with direction 2 had not yet passed and so the Tribunal administration team confirmed this and queried if the Applicants were seeking an extension to the deadline for compliance which was 21 November 2022.
6. The Applicants did not respond to this query and no further communication was received by the Tribunal administration team from either the Applicants or the Respondent.

Proceedings

7. The Applicants and the Respondent did not attend and were not represented at the Hearing. None of them had they engaged in any way with the Tribunal administration team for over two months and none of them had informed the Tribunal administration team that they would not be attending the Hearing.
8. The Tribunal Members were satisfied that the Applicants and the Respondent had been notified by the Tribunal administration team by e-mail on 28 October 2022 of the date, time and dial-in details for the Hearing.
9. Accordingly, the Tribunal Members proceeded with the Hearing on the material before them.

Reasons for decision

10. The Applicants had failed to comply with direction 2.
11. The Respondent had not complied with direction 3, albeit that direction 3 anticipated the Respondent setting out its response to the submissions and evidence which should have been provided by the Applicants in terms of direction 2.
12. The Applicants had failed to provide sufficient information or any evidence to support their application and so had failed to prove, on the balance of probabilities, that the Respondent had failed to comply with the Letting Agent Code of Practice.

Decision

13. The Tribunal Members refused the application made under case reference FTS/HPC/LA/22/1698 to enforce the Letting Agent Code of Practice against the Respondent.

Right of Appeal

In terms of Section 46 of the Tribunals (Scotland) Act 2014, a party 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.

Chair Pamela Woodman

Date 31 January 2023