

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision by the Convener
Re: Application to First-tier Tribunal made under Section 17(1) of the Property Factors (Scotland) Act 2011

NOTICE OF REJECTION TO: Mr Brian Johnston

Chamber Reference Number: FTS/HPC/PF/17/0311

Address: 71 Nicolson Street, Greenock PA15 1TL

Dear Mr Johnston

Thank you for your application to the First-tier Tribunal for Scotland (Housing and Property Chamber). All the information you provided has been carefully considered. I have now made a decision in exercise of my delegated powers under section 96 of the Housing (Scotland) Act 2014 and Section 16 (8) of the Property Factors (Scotland) Act 2011 ('the Act'), regarding your application in terms of section 17(1) of the Act.

Decision

I have considered your application in terms of Section 18 of the Act. After consideration of your application, **I have decided that your application should be rejected.**

Reasons for the decision and grounds for rejection

I have considered your application in terms of Section 18 of the Act. That Section provides as follows:

Section 18(1) - The Chamber President must decide whether to-

- (a) refer an application under section 17 (1) to the First-tier Tribunal, or
- (b) reject the application

Section 18 (2) - The Chamber President may reject an application only if the Chamber President considers-

(a) that it is vexatious or frivolous,

(b) that the homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute,

(c) where the homeowner has previously made an identical or substantially similar application in relation to the same property, that a reasonable period of time has not elapsed between the applications, or

(d) that the dispute to which the application relates has been resolved.

The reasons for the decision and grounds for rejection are as follows:

I have concluded that your application is vexatious or frivolous, and I have therefore decided to reject your application under Section 18 (2) (a) of the Act.

The complaint which you have made in your application is that your property factor, Oak Tree Housing Association, has failed to carry out its property factor's duties to ensure that the common stair within your tenement is cleaned. It is clear from your application paperwork that your complaint relates to the alleged failure of one of Oak Tree Housing Association's tenants who lives within your tenement, to 'take her turn' to clean the stairs.

You state that Oak Tree Housing Association has a statutory obligation under rule 1.5 of the Tenement Management Scheme set out in Schedule 1 of the Tenements (Scotland) Act 2004 to maintain the common areas of the tenement, and that stair cleaning is considered to be maintenance. Your complaint is that Oak Tree Housing Association has a duty to ensure that the common stair is cleaned, and that it has failed to do so.

As previously advised in the tribunal's correspondence with you, the Tenement Management Scheme in Schedule 1 of the Tenements (Scotland) Act 2004 sets out procedures which flat owners need to follow when making 'scheme decisions' about maintaining and repairing common parts. It therefore applies to *owners* of flats within a tenement. Were the Tenement Management Scheme to apply to your tenement, therefore, it would apply to Oak Tree Housing Association in its capacity as an owner and landlord of other flats within your tenement, rather than as a property factor.

Your property factoring arrangement with Oak Tree Housing Association is governed by 1) their written statement of services and 2) your title deed. There is no reference

to stair cleaning (either in respect of providing a cleaning service or ensuring that the common stair is cleaned) in the property factor's written statement of services.

We have therefore requested a copy of your title deed from you on several occasions in order to consider whether this sets out any further factor's duties which might include stair cleaning. Having received a copy of your land certificate (title deed) from you on 4 December, it appears that there is no reference to a property factor, or a property factor's duties, within your title deed. There is only a reference (at entry no. 3 on page D4) to each owner being bound to pay a one-eighth share of the expenses of repairs, maintenance etc, and to a majority of owners having power to order mutual repairs to be done.

I have therefore concluded that your complaint relates to Oak Tree Housing Association's responsibilities in its role as a landlord, rather than as your property factor. The tribunal can only consider complaints which relate to alleged failures by a property factor. I would therefore suggest that you may wish to pursue your complaint through other channels which are relevant to Oak Tree Housing Association's responsibilities as a Registered Social Landlord.

'Frivolous' in the context of legal proceedings was defined by Lord Bingham (as Lord Chief Justice) in R V North West Suffolk (Mildenhall) Magistrates Court [1998] Env LR 9 at Page 16 as an application which is 'futile, misconceived, hopeless or academic'. I have concluded that your application falls within this definition, as it is not a valid application under section 17 of the Property Factors (Scotland) Act 2011. This is because it does not relate to a complaint about a property factor, but rather concerns a complaint about a Registered Social Landlord.

For the reasons stated above, your application is rejected.

What you should do now

If you accept the Convener's decision, there is no need to reply.

If you disagree with this decision –

A Tenant aggrieved by the decision of the Chamber President or the Convener 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. Information about the appeal procedure can be forwarded to you on request.

Yours sincerely

S O'Neill

Sarah O'Neill

Convener

Legal member of the First-tier Tribunal for Scotland (Housing and Property Chamber)