

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 17(1) of the Property Factors
(Scotland) Act 2011**

Chamber Ref: FTS/HPC/PF/22/2724

Re: Property at 466 Duke Street, Dennistoun, Glasgow G31 1QN (“the Property”)

Parties:

Mrs Helen Fitzsimmons, 466 Duke Street, Dennistoun, Glasgow G31 1 QN (“the Applicant”)

Cumming Turner and Watt, 40 Carlton Place, Glasgow G5 9TS (“the Respondent”)

Tribunal Member:

**Graham Harding (Legal Member)
Elixabeth Dickson (Ordinary Member)**

Decision (in absence of both parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed for want of insistence.

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as “the Code”; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as “the Rules”.

Background

1. By application dated 31 July 2022 the Applicant's representative Alan Scott, complained to the Tribunal that the Respondent was in breach of Sections OSP 3 and 11, 2.7 and 7.1 of the Code and had also failed to carry out its property factor's duties. Mr Scott complained that the Applicant had been charged for home insurance that had already been paid and that charges imposed by the Respondent had been miscalculated. He also alleged that the insurance premium was excessive compared to market rates.
2. Following correspondence between the Applicant's representative and the Tribunal administration an amended application was submitted by the Applicant's representative by email on 17 October 2022 in similar terms.
3. By Notice of Acceptance dated 7 November 2023² a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.
4. By email dated 21 December 2022 the Respondent submitted written representations to the Tribunal.
5. By email dated 16 January the Applicant's representative submitted further correspondence to the Tribunal.
6. By email dated 3 February 2023 the Respondent submitted a copy of correspondence that had been sent to the Applicant.
7. A CMD was held by teleconference on 7 February 2023 and was attended by the Applicant's representative and by Mr Robert Watt. The parties were in agreement that they wished to negotiate a settlement and that a continuation would be appropriate. The Tribunal indicated that it would be prepared to allow a continuation for the parties to reach an agreement and to sort out the issues over the insurance but that if agreement could not be reached then it would determine the matter at a hearing in about three months' time.
8. By email dated 19 May 2023 the Applicant's representative advised the Tribunal that the factor had issued a revised invoice incorporating the corrections to their errors in calculations he had identified plus the removal of their service charge and that the invoice had been paid. Therefore in that regard the Respondent had complied with the agreement reached during the CMD. The Applicant's representative went on to say that his formal complaint was about a lack of communication from them in response to issues raised however we had not had another occasion to test this since the meeting date.
9. By email dated 23 May 2023 the Respondent's representative Mr Robert Watt advised that as far as he was aware there was no update.

The Hearing

10. A hearing was held at Glasgow Tribunals centre on 30 May 2023. Neither party attended or was represented. No explanation for non-attendance was offered by either party.

Reasons for Decision

11. As the application had been continued to allow the parties to negotiate an agreement and as it appeared from the Applicant's representative's email of 19 May 2023 that at least the financial issues had been resolved it appeared to the Tribunal that given the non-appearance by either party at the hearing it would not be an appropriate use of public funds to continue the application and accordingly dismissed it for want of insistence.

Decision

12. There being no appearance by either party, the Tribunal dismissed the application.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

**Graham Harding
Legal Member/Chair**

**12 June 2023
Date**