

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
(“the Tribunal”)

Application for Review: Statement of Decision:

Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Procedure Rules”);
Property Factors (Scotland) Act 2011 (“the 2011 Act”)
Tribunals (Scotland) Act 2014, section 43 (“the 2014 Act”)

Chamber Ref: FTS/HPC/PF/19/4014

Property at 15 Rosebank Tower, Cambuslang, South Lanarkshire, G72 7HE
(“The Property”)

The Parties:-

Mr Gerald Boyd, 19 Tanzieknowe Road, Cambuslang, Lanarkshire, G72 8RD
(“the Homeowner”)

and

South Lanarkshire Council, Property Services, Pollock Avenue, Hamilton, Lanarkshire, ML3 9SZ (“the Factor”)

The Tribunal comprised:-

Maurice O’Carroll - Legal Member and in-house Convenor
Elizabeth Dickson – Ordinary Member

Decision

The Tribunal rejects the application for review in terms of rule 39(3).

Background

1. By decision dated 5 April 2020, the First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) found that the Factor had breached its duties as a factor in terms of section 17(5) of the 2011 Act. It held that the Factor ought to have provided quarterly statements to the Homeowner which divided the property management fee element of common charges by seventy-two as required by the Title deeds to the Property.

2. By email dated 28 April 2020, the Factor submitted an application requesting a review of the Tribunal decision.
3. The original Tribunal which made the decision under review comprised Mr David Bartos, Advocate, Legal Member, and Mrs Elizabeth Dickson, Ordinary Member. Since the Tribunal decision, Mr Bartos has resigned from the Tribunal in order to become a full-time member of the Scottish Law Commission. Maurice O'Carroll, Advocate and in-house Convenor has therefore considered the application for a review of the Tribunal decision in the place of Mr Bartos.

Ground for review

4. The Factor submitted with its application for review a detailed legal submission comprising 12 pages of text with extensive reference to authorities. Only the briefest of summaries of those submissions is possible, which summary is not intended to be comprehensive.
5. In essence, it is submitted by the Factor that the Tribunal's interpretation of the relevant clauses within the Deed of Conditions relative to the Property leads to an outcome which is not fair or reasonable. It is also submitted that it is unlawful for the Factor as local authority to recoup expenditure in the manner decided upon by the Tribunal due to its obligations in terms of the Housing (Scotland) Act 1987.

The Tribunal decision on the application for review

6. Rule 36 of the Procedure rules allows for correction of clerical mistakes or accidental slips or omissions. At the other end of the spectrum is the possibility of appeal to the Upper Tribunal in terms of rule 37. Between these two possibilities is a review of a decision, as sought, in terms of rule 39. The Tribunal is not being asked to correct mere clerical mistakes, nor is it competent to consider an appeal against its own decision. Therefore, a review in terms of rule 39 falls somewhere between the two and is appropriate where an obvious error as to fact or law has been made which may be corrected without recourse to the more cumbersome appeal procedure.
7. At paragraph 23 of its decision, the Tribunal correctly made reference to the question which it required to answer, namely whether the Factor was in breach of its duties as property factor in terms of the 2011 Act. In doing so, it interpreted the terms of clause 1(6)(c) of the Deed of Conditions, again, as it was required to do. At paragraph 29 of its decision, the Tribunal considered that it was clear from the terms of the relevant title condition that all of the dwelling houses required to bear the "common charges." It is explained in paragraph 26 of the decision by specific reference to the wording of the relevant title condition that common charges include "remuneration of the factor and any reimbursement to him of any expenses incurred by him in performing his duties in relation to the Property."

8. Having considered the submissions made in the application for review, the present Tribunal cannot see any obvious error in the original Tribunal's determination that may be corrected upon review in light of the findings made by the Tribunal and its reasoning following those findings.
9. In relation to the Factor's obligations in terms of the Housing (Scotland) Act 1987, the Tribunal noted, at paragraph 15, the submission made by the Factor that the Respondent is not entitled to use income from tenants to assist in the provision of factoring services to private homeowners. At paragraph 20 of the decision, the submission made by Mrs Paton to the effect that the Respondents could not be entitled to remuneration for their factoring services as this was prohibited by local authority law was noted. The Tribunal noted that no statutory provision was cited in support of that proposition. It would appear that the present application for review renews those arguments and attempts to provide the specific authority that was not advanced at the time of the original hearing by reference to the 1987 Act.
10. The decision of 5 April 2020 considered whether the Factor had complied with its property factor duties by reference to the obligations contained within the Deed of Conditions affecting the Property. The obligations incumbent on the Respondent as local authority may be viewed as a separate suite of obligations arising and running alongside its obligations as Factor to the Property. The present Tribunal does not accept that those obligations have an effect on the fundamental question which the Tribunal required to answer in terms of the 2011 Act. In any event, the Tribunal considered the arguments made before it in relation to those points and rejected them.
11. Accordingly, while wishing to acknowledge the detailed and well-reasoned submissions made in support of the application for review, the present Tribunal does not consider that the application has any merit.
12. The Tribunal therefore refuses the application to review the decision of 5 April 2020 in terms of rule 39(3) of the Procedure rules.
13. In terms of section 55(2) of the Tribunals (Scotland) Act 2014, this decision may not be itself be subject to review or an application for leave to appeal.

Signed

Date: 6 May 2020

Maurice O'Carroll
Legal Member and in-house Convenor for the Tribunal