



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”)

Chamber ref: FTS/HPC/PF/23/1669

Re: 538 Dumbarton Road, Partick, Glasgow G11 6SW (“the Property”)

The Parties:

Mr. Mohammad Ibrahim, 146 Glasgow Road, Glasgow G69 6EU (“the Applicant”)

and

Partick Works Limited, 10 Mansfield Street, Glasgow G11 5QP (“the Respondent”)

Tribunal Members

Nicola Irvine (Chairperson) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application was not competent and therefore dismissed the application.

Background

1. The Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Respondent had failed to comply with the 2021 Code of Conduct for Property Factors (“the “2021 Code”).
2. On 1 August 2023, a Legal Member of the Tribunal with delegated powers of the President referred the application to a case management discussion (“CMD”). The parties were notified that a CMD would take place on 24 October 2023 at 10am by telephone conference call.
3. On 13 September 2023 and 16 October 2023, the Tribunal received written representations from the Respondent.

Case Management Discussion

4. The CMD took place on 24 October 2023 at 10.00 by telephone conference call. The Applicant did not take part in the discussion but was represented by Mr Hany Aborida. The Respondent was represented by Mr. Bobby Murray.
5. The Tribunal explained the purpose of the CMD to the parties. The Tribunal referred to the preliminary issue raised by the Respondent in the written submissions lodged on 13 September 2023 and gave the Applicant's representative an opportunity to respond. The Applicant's representative explained that he was unaware that the Act does not apply to non-residential properties. He went on to explain that the tenement is a mix of residential and non-residential property.
6. The Tribunal adjourned the CMD briefly to enable the members to discuss matters in light of the submissions made. When the CMD was reconvened, the parties were advised that the Tribunal decided to dismiss the application. The Tribunal explained that section 17 of the Act provides that a homeowner may apply to the Tribunal for a determination as to whether a property factor has failed to carry out duties and comply with the code of conduct. The Tribunal referred to the definition of homeowner and explained that the application must fail because the property is not residential property.

Reasons for decision

7. The Applicant owns shop premises and the Respondent is the appointed property factor. The Tribunal considered the terms of section 17 of the Act which provides:-

1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the "section 14 duty").

The Tribunal also had regard to the meaning of "homeowner" as defined by section 10(5) of the Act which provides:-

In this Act, "homeowner" means—

(a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or

(b)an owner of residential property adjoining or neighbouring land which is—

(i)managed or maintained by a property factor, and

(ii)available for use by the owner.

8. Although there are issues that the Applicant wishes to have determined in relation to the work carried out by the Respondent, this Tribunal is not the appropriate forum. The legislation makes clear who can make an application and the Applicant cannot be considered to be a homeowner as defined by the Act. For this reason, the Tribunal dismissed the application as incompetent.

Appeals

9. **A homeowner or property factor 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.**

Signed

Nicola Irvine

24 October 2023