



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Case reference FTS/HPC/PF/24/1272

Parties

Mr Jonathan Weir (Applicant)

James Gibb Residential Factors (Respondent)

3 Windsor Gardens, Gleneagles, Auchterarder, PH3 1QE (Property)

Tribunal Member: Jacqui Taylor (Legal Member)

The Tribunal rejects the application by the applicant sent to the Tribunal by email dated 18th March 2024, being an application under section 17(1) of the Property Factors (Scotland) Act 2011.

The Tribunal sent the applicant an email dated 2nd April 2024 which requested further information to enable the application to be processed and asked that the requested information be provided by 30th April 2024. The email was in the following terms:

'A legal member of the Tribunal with delegated powers of the Chamber President has considered the application submitted by you and has determined that more information is needed before the matter can progress:

1. The form you have submitted is incomplete. You have failed to complete section 7 B. The application form is returned for amendment.

2. Section 17 (3) of the Property Factors (Scotland) Act 2011 states that no application can be made to the Tribunal unless the homeowner has notified the property factor in writing as to why it is considered that the property factor has failed to carry out the

property factor's duties or comply with the Code and the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern. Although you have provided copies of various items of correspondence, it is not considered that this constitutes notification in terms of the Act. You will require to give notification to the property factor which states the particular paragraph(s) of the Code you think has/have not been complied with and why you consider there to be such non-compliance. A template letter is attached which you might find helpful. If you are sending a letter of notification, the Tribunal requires to have a copy and evidence that the property factor has received it such as an acknowledgement, copy of sent email or proof that the letter has been delivered such as by recorded delivery. An application requires to mirror the letter of notification.

3. You have indicated that you want to include a failure to comply with the property factor's duties. 'Property factor's duties' are generally taken to apply to any duties other than those under the code of conduct. The source of a property factor's duties could be, for example, the factor's written statement of services, the title deeds for the property, any other relevant contract, or the general law of agency. It may be that, on reflection, you consider that an application in respect of alleged failure to comply with the Code is sufficient. If you do want this to be part of your application, you must also notify the property factor about this/these complaint(s) before we can take the application forward. You will need to write to the property factor stating clearly why you believe it has failed to comply with its duties, which duties you believe have been breached, and the source of these duties. A template notification letter in relation to property factor's duties is attached and you may find it useful. This is the letter which states 'I am writing to inform you that I believe that you have failed to carry out your property factor duties as set out in section 17 (5) of the Property Factors (Scotland) Act 2011'. If you are sending a letter of notification, the Tribunal requires to have a copy and evidence that the property factor has received it such as an acknowledgement, copy of sent email or proof that the letter has been delivered such as by recorded delivery.

4. Please note that a property factor requires to be given an opportunity to respond to any Section 17 notification sent by a homeowner. Please provide copies of any responses received.

5. In terms of Rule 43 (2) (d) of the Tribunal Rules, any application submitted to the Tribunal must be accompanied by a copy of the written statement of services provided to homeowners. If you do not have this, you should obtain a copy.

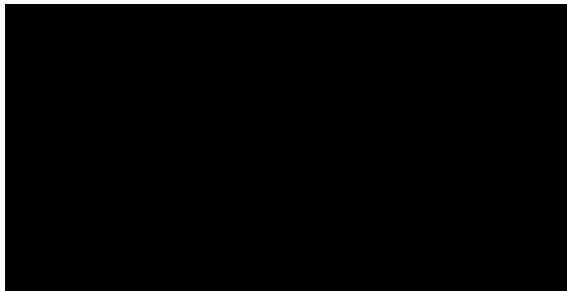
Please reply to this office with the necessary information by 30 April 2024, when your application will be further considered by the Chamber President. If we do not hear from you within this time, the Chamber President may assume that the dispute has been

resolved and consequently may reject the application in terms of Section 18(2) of the Act. It is, therefore, important that you respond within the timescale given.'

As no response had been received the Tribunal sent the applicant further emails dated 30th May 2024 and 25th June 2024 requesting the applicant to provide the required information by specified dates. The emails dated 30th May 2024 and 25th June 2024 explained that if the information was not provided the President may decide to reject the application.

The applicant has not provided the Tribunal with the information requested. Accordingly the Tribunal have good reason to believe that it would not be appropriate to accept the application and reject the application in terms of rule 8 (1)(c) of the Tribunal Rules.

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



.....Legal Member Date: 22nd July 2024