

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) by a Legal Member with delegated powers from the Chamber President

Case reference FTS/HPC/LM/24/3567

Parties

**Cheryl Gallagher (Homeowner)
Ross & Liddell (Property Factor)**

Eaglesham Drive (Communal Garden/Play Area), Ayr (Land)

1. By application dated 1 July 2024 the Homeowner sought a property factor enforcement order against the Property Factor for their alleged failure to carry out their duties under Rule 43 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017.
2. Following review of the application by a Legal Member of the Tribunal with delegated powers of the Chamber President the Tribunal wrote to the Homeowner on 23 July 2024 in the following terms:-

“Your application has been reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President.

You also indicate that you are proceeding on what you believe to be a breaches of the “property factors duties” as set out in section 17(5) of the Property Factors (Scotland) Act 2011. The duties in that section are specifically stated to be duties in relation to “the management of the common parts of land owned by a homeowner”. You do not claim that there has been any breach of the Codes of Conduct for Property Factors, either the original code which applied before 16 August 2021 or the revised code which has applied since then. Please confirm that to be the case

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. 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. Please

explain why you believe your emails are sufficient notice relating to the alleged breaches. Alternatively, 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. 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.

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.

Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination.

Please respond to this letter within the next two weeks. If you fail to respond to this letter then the tribunal may reject your application.

You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017."

3. On 20 August 2024 the Homeowner responded to the Tribunal by email advising that she wished to clarify whether the Property Factor could send fee invoices without accompanying receipts before she provided the requested information, stating that the Property Factor had told her this was acceptable. The Tribunal responded to the Homeowner by email on 21st August 2024 stating that it could not provide her with legal advice or guidance, and referring her to links to advice agencies on the Tribunal's website.
4. The Tribunal wrote again to the Homeowner on 12 September 2024 noting that she had not provided the information requested. The Homeowner was asked to provide a response by 19 September 2024, failing which the Chamber President may reject the application.
5. No further response was received from the Homeowner.
6. Rule 8(1)(c) of the Rules allows an application to be rejected by the Chamber President if "they have good reason to believe that it would not be appropriate to accept the application". The Homeowner has failed to provide the information requested by the Tribunal and has failed to satisfy the requirements for an application under Rule 43. She has been asked for the information on two

occasions. She has been warned that in the absence of this information her application may be rejected. Accordingly I have concluded that it would not be appropriate to accept the application at this time and the application must be rejected.

NOTE: What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: A party aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Ruth O'Hare, Legal Member
27 October 2024