



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/PF/24/2977

Parties

**Wai Kent Ho (Homeowner)
Ross & Liddell (Property Factor)**

1/2, 331 Wellshot Road, Glasgow, G32 7QW (Property)

1. By application dated 1 July 2024 the Homeowner sought a property factor enforcement order against the Property Factor for alleged breaches of the Property Factors Code of Conduct 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:-

“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 application form refers to one alleged breach of the Code: Section 6.9 which refers to failure to provide tendering or selection information in connection with contractors. Is this what you intended?

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. 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. The Tribunal requires to have copies of the letter of notification 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 not indicated whether you consider that the property factor has failed to comply with the Property Factor's Duties. Please confirm if you consider there to have been failure. 'Property factor's duties' is 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'. The Tribunal would require a copy of the letter of notification together with evidence of delivery (as stated in paragraph 2).

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 respond by 20 August 2024, failing which the President may consider rejection of the application."

- 3. On 25 July 2024 the Homeowner responded to the Tribunal by email with a copy of two letters to the Property Factor notifying them of the alleged breaches of the Code.*
- 4. On 27 August 2024 the Tribunal emailed the Homeowner again in the undernoted 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. You have provided a copy of two template letters dated 25 July 2024, one in respect of alleged breach of the Code and the other in respect of an alleged failure to comply with the property factor's duties . Please provide evidence that the property factor has received them such as an acknowledgement , copy of

sent email or proof that the letters have been delivered such as by recorded delivery.

2. You have provided a copy of a template letter in respect of property factor's duties and it is therefore assumed that you want this aspect to be considered as part of your application but the application form does not reflect that. The form is returned so that you can tick or shade the appropriate box at section 7.

3. 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 to your letters of notification.

4. 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 respond by 10 September 2024, failing which the President may decide to reject the application."

5. The Tribunal received no response. On 11 September 2024 the Tribunal emailed the Homeowner again noting that he had failed to respond to the request for information dated 27 August 2024. The Homeowner was asked to respond no later than 18 September 2024, failing which his application may be rejected.
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. He has been asked for the information on at least two occasions. He has been warned that in the absence of this information his 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