

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules) in relation to an application for extension of time limit to determine application for registration as a letting agent under Rule 93 of the Procedure Rules.

Chamber Ref: FTS/HPC/XA/19/3031

Parties:

The Scottish Government ("the Applicant")

Tayside Property Management ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member)

Background

1. The Applicant submitted an Application to the Tribunal under Tribunal Rule 93 for an extension of time to determine the Respondent's application for registration as a letting agent in terms of section 33(3) of the Housing (Scotland) Act 2014. The Application was dated 27th September 2019.

The Application stated:

'The application was made under section 32 of the Housing (Scotland) Act 2014 and was received by the Scottish Ministers on 29 September 2018. The registration team began processing the application on 30 April 2019.

The Respondent has encountered difficulties in obtaining a client account and in obtaining a client money protection insurance policy which has led to a delay in assessing the application fully.

In late August 2019 the Respondent advised that they would no longer be conducting letting agency work and another company (which is a registered letting agent) would be managing the properties. The Respondent has transferred the management of these properties to the other agent but a number of tenants continue to deposit rent payments into the respondent's bank account. The handling of this money would likely constitute conducting letting agency work. As it is a criminal offence to conduct letting agency work without being a registered agent, or having submitted an application before 1 October 2018 that has yet to

be determined, the Respondent is unable to withdraw their application before the deadline the Scottish Ministers have to determine the application without committing a criminal offence.

The applicant therefore seeks an extension to the time limit to determine the respondent's application to join the Scottish Letting Agent Register. This extension is to enable the Respondent to do the following:

- 1) To ensure that all rent payments are being paid into the account of the letting agency now managing the properties
- 2) To confirm that they are no longer conducting letting agency work and to request their application to join the Scottish Letting Agent Register be withdrawn and
- 3) To enable the Applicant to fully assess the information provided by the Respondent in relation to the reasons above and to withdraw the application by the Respondent to join the Scottish Letting Agent Register.

The Applicant seeks an extension to the time limit to determine the application for registration as a letting agent to the 30 March 2020.'

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicant were:

2.1 A copy of an email from the Respondent dated 26th September 2019 confirming that they had no objection to the Application being made to the Tribunal.

3. Decision

3.1. Requirements of Section 93 of the Procedure Rules.

In connection with the requirements of section 93 the Application correctly detailed the requirements of section (i),(ii), (iii) (iv) and (v) of section 93 the Procedure Rules namely:-

- (i) The address of the Scottish Ministers.
- (ii) The name and address and profession of the representative of the Scottish Ministers.
- (iii) The name, address and registration number of the Respondent.
- (iv) The reason why an extension is sought and
- (v) The date of receipt by the Scottish Ministers of the application under section 32 of the 2014 Act, namely 29th September 2018.

The Application had been signed and dated by Charlotte McHaffie, a representative of the Scottish Ministers, as required.

3.2 Requirements of section 33 of the Housing (Scotland) Act 2014.

Section 33(2) of the Housing (Scotland) Act 2014 requires the Scottish Ministers to determine an application for registration of a Letting Agent within 12 months of receiving the application.

Section 33(3) of the said Act provides that the Scottish Ministers may apply to the First- tier Tribunal for an extension of the time limit by such period as the Tribunal thinks fit.

Section 33(4) of the said Act provides that the Tribunal may not extend a period unless the Scottish Ministers apply for the extension before the period expires.

The Scottish Ministers received the completed application from the Respondent on 29th September 2018. They submitted the application for extension to the First tier Tribunal on 27th September 2019 ('The Tribunal Application'). The Tribunal Application had been received timeously.

3.3 In terms of Tribunal Rule 18(1) the Tribunal may make a decision without a hearing where the facts are not disputed and to do so would not be contrary to the interests of the parties.

Tribunal Rule 18(2) provides that before making a decision under Tribunal Rule 18(1) the Tribunal must first consider any representations submitted by the parties.

The Tribunal issued a Direction to the parties dated 2nd October 2019 directing them to provide the Tribunal with written representations as to whether or not they would wish a hearing to be fixed.

The Applicants sent the Tribunal written representations on 18th October 2019 which confirmed that they are content that no hearing is fixed provided the Respondent is in agreement and the Tribunal is minded to grant the Application.

The Respondents sent the Tribunal an email on 21st October 2019 which confirmed that they are content that no hearing is fixed.

The Tribunal determine that a decision will be made without a hearing as the facts are not disputed and it is not contrary to the interests of the parties to do so.

The Tribunal determine that the time period for the Scottish Ministers to determine the application for registration of the Respondent as a Letting Agent under section 30 of the Housing (Scotland) Act 2014 is extended to 30th March 2020 as the Respondent agrees with the Application and it is in the Respondent's interest for the Application to be granted.

Jacqueline Taylor

Legal Member

30th October 2019

