

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/19/3887

Parties:

The Scottish Government ("the Applicant")

SC Business Gateway Ltd ("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 5th December 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 6th December 2018.

The registration team began processing the application on 28 May 2019.

Due to an issue with the Respondent's email they did not initially respond to the Applicant's requests for documentation and information required to assess their application to join the Scottish Letting Agent Register.

On 17th October 2019 the Applicant sent the Respondent a notice advising they were considering refusing the Respondent's application to join the Scottish Letting Agent Register.

The Respondent contacted the Applicant on 19th November 2019 advising they had not received any of the previous emails sent by the Applicant.

Further correspondence between the Applicant and the Respondent provided some of the documents and information required to assess their application to the Register.

The information provided by the Respondent indicates that they have a law degree and not a qualification that meets the requirements for registration but they have been attending a course that would provide an appropriate qualification. The information also indicates that the professional indemnity insurance policy in place for the business does not cover the Respondent's letting agency work. The Respondent also does not appear to have the correct type of bank account in place nor a client money protection insurance policy.

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 provide written confirmation from their bank that the account meets the requirements of the Letting Agent Code of Practice as required by the Letting Agent Code of Practice (paragraph 122) or to obtain a dedicated client bank account or accounts (paragraph 121) in the event that their current account is not appropriate and to provide written confirmation from their bank that the account meets the requirements of the Letting Agent Code of Practice.
- (2) To obtain a client money protection insurance policy (as per paragraph 126)
- (3) To provide a copy of the certificate for the client money protection insurance policy.
- (4) To obtain a relevant qualification for letting agency work (as required by regulation 5 of the Letting Agent Registration (Scotland) Regulations 2016).
- (5) To provide a copy of the certificate for the relevant qualification.
- (6) To either arrange for the current professional indemnity insurance policy for the business to also cover the letting agency work or to obtain a professional indemnity insurance policy that covers letting agency work.
- (7) To provide a copy of the professional indemnity insurance policy showing cover for letting agency work.
- (8) To enable the applicant to fully assess the additional documentation and information provided by the Respondent.

The Applicant seeks an extension to the time limit to determine the application for registration as a letting agent to the 30th May 2020 to enable the Respondent and Applicant to carry out the actions detailed.'

2. Decision

2.1. 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 6th December 2018.

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

2.2 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 6th December 2018. They submitted the application for extension to the First tier Tribunal on 5th December 2019 ('The Tribunal Application'). The Tribunal Application had been received timeously.

2.3 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 11th December 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 12th December 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 did not lodge any written representations in response to the Tribunal's Direction and consequently the Tribunal consider that the Respondents do not object to the Tribunal making a decision on the Application without a hearing. 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 May

2020 as the Respondent agrees with the Application and it is in the Respondent's interest for the Application to be granted.

.....  **Legal Member**

18th December 2019