

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/19/2835

Parties:

The Scottish Government ("the Applicant")

Kenneth Hill Trading as Stevenson and Johnstone ("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 10th September 2019. They subsequently submitted a request to the Tribunal to amend the application dated 14th October 2019, which they had intimated to the Respondent by recorded delivery letter on 24th October 2019.

2. The Tribunal issued a Direction to the parties dated 20th November 2019, in the following terms:

The Applicants have lodged with the Tribunal a request to amend their application, dated 14th October 2019.

The amended application, states inter alia that the Applicant's received the Respondent's application under section 32 of the Housing (Scotland) Act 2014 on 14th September 2019 and the Registration Team began processing the application on 13th February 2019.

The Tribunal believes that the date of 14th September 2019 may be incorrect. The Applicants are directed to confirm to the Tribunal whether or not the said date of 14th September 2019 is correct. In the event that the said date is incorrect the Applicants are directed to submit to the Tribunal a further application to amend their

application to correct the error and to intimate the application for amendment to the Respondents as required by Tribunal Rule 14.

The said documentation should be lodged with the Tribunal no later than close of business on the 11th December 2019.'

3. The Applicants sent the Tribunal written representations on 5th December 2019, in response to the said Direction. The Applicants confirmed that the dated of the original application should be 14th September 2018. They also submitted a request to the Tribunal to amend the application dated 14th October 2019, which they had intimated to the Respondent by recorded delivery letter on 27th November 2019.

The amended Application stated:

'The application was made under Section 32 of the Housing (Scotland) Act 2014 and was received by the Scottish Ministers on 14 September 2018. The registration team began processing the application on 13 February 2019.

The application indicated that the business was a partnership. After investigations it was determined that the business was in fact a sole trader (Mr Kenneth Hill) trading as Stevenson & Johnstone.

As Mr Hill is a sole trader, regulations 5 and 6 of the Letting Agent Registration (Scotland) Regulations requires that Mr Hill hold a relevant qualification. This issue was discussed with Mr Hill and he indicated that as he was not involved in the letting agency work that he would not seek to obtain one. Discussions were then had between Mr Hill and Scottish officials around the registration requirements and the options available with regards to the application.

On 17 April 2019 Mr Hill asked that the application proceed as it stands.

On 02 May 2019 a consideration of refusal notice was sent on behalf of Scottish Ministers in accordance with section 32(6) of the Housing (Scotland) Act 2014.

On 28 May 2019 Mr Hill's written representations were received. These representations indicated the possibility that Mr Hill may set up a limited company. as Mr Hill employs a member of staff with a relevant qualification this would negate the need for him to obtain one himself.

Discussions have been ongoing around this possibility and Mr Hill has now incorporated a company but will require time to put in place other items to comply with the registration requirements.

The Respondent has now contacted the Applicant to advise that they will now be withdrawing from conducting letting agency work and will be contacting their clients to advise this.

The Applicant 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 notify all Landlords that they will no longer be conducting Letting Agency work and ensure all management responsibilities of their properties are undertaken by another agent or the Landlord themselves.

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.

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.

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

4. The Tribunal accepted the Applicant's application to amend their application dated 5th December 2019.

5. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicant were:

3.1 A copy of an email from the Respondent dated 10th September 2019 confirming that they had no objection to the Application being made to the Tribunal.

6. Decision

4.1. Requirements of Section 93 of the Procedure Rules.

In connection with the requirements of section 93 the amended 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 14th September 2018.

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

4.2 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 14th September 2018. They submitted the application for extension to the First tier Tribunal on 12th September 2019 ('The Tribunal Application'). The Tribunal Application had been received timeously.

4.3 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 25th September 2019 directing them *inter alia* 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 14th 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 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 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

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..... Legal Member

11th December 2019