



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/re/22/1704

Re: Craigivar House, 17/6 Craigmount Brae, Edinburgh, EH12 8ZQ ("the Property")

Parties:

Places for People Scotland ("the Applicant")

Touchstone Residential ("the Applicant's Representative")

Scott Fairley ("the Respondent")

Tribunal Member: Martin J. McAllister (Legal Member)

The Tribunal rejects the application by the applicant dated 31st May 2022 which is an application under Section 28 A(1) of the Housing (Scotland) Act 2006 and Rule 55 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Background

1. The Applicant's Representative was asked on 15th June 2022 to provide further information to enable the application to be considered. The request for information was in terms of Rule 5 (3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").
2. The information requested was evidence of why the Applicant considered it competent for a registered social landlord to make such an application in view of the terms of Section 28A (a) of the Housing (Scotland) Act 2006.

3. On 14th July 2022, the Landlord's Representative responded:

“Castle Rock Edinvar Housing Association Limited, trading as Places for People Scotland are the heritable proprietor. There is a Head Lease in place confirming the mid market rent properties are not social housing and that they are occupied under the terms of either a Short Assured Tenancy or Private Residential Tenancy. The purpose of requesting a Right of Entry is to ensure that we can meet compliance legal requirements, annual landlord safety inspections and electrical installation check report inspections, to safeguard the health and safety of the tenants.”

4. On 15th August 2022, the Tribunal rejected the application but set that decision aside on 1st September 2022 after reviewing it in terms of Sections 43 and 44 of the Tribunals (Scotland) Act 2014. It did so because, in making the decision, it did not have sight of the email of 14th July 2022 which had been submitted by the Landlord's Representative.

Reasons

5. The Legal Member considered the application in terms of Rule 5 and Rule 55 of the Chamber Procedural Rules. Rule 5 provides: - (1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “
6. The Legal Member considered the terms of Section 28 A (9) of the Housing

(Scotland) Act 2006:

No application may be made under subsection (1) where the landlord is-

(a) a local authority landlord (within the meaning of the Housing (Scotland) Act 2001

(b) a registered social landlord (being a body registered in the register maintained under section 57 of that Act.

7. The Landlord's representative had provided no representations as to why the application should be determined notwithstanding the provisions of the 2006 Act. It has not complied with the Tribunal's request for information in this regard. The reasons for the application are noted but it is not the nature of the lease or whether or not a property is social housing which is relevant in considering whether or not an application should be accepted for determination. The Applicant is a registered social landlord and cannot make an application under Section 28 A of the 2006 Act.

8. After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application." The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule 55 and Sections 28 A (4) and 28 A (9) of the 2006 Act.

Martin J. McAllister, Legal Member, 1ST September 2022