



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.

Case reference FTS/HPC/PF/20/0623

Parties

Mr John Connell (Applicant)
Hacking and Paterson Management Services (Respondent)

Ardleighton Court, Dunblane, FK15 0NE (Property)

Tribunal Member: Jacqui Taylor (Legal Member)

The Tribunal rejects the application by the Applicant dated 17th February 2020, being an application under section 17(1) of the Property Factors (Scotland) Act 2011 (hereinafter referred to as 'The Act').

The Tribunal Administration sent an email to the Applicant on 19th March 2020 in the following terms:

'On the basis of your notification to the factor and the response received, it would appear that you have a concern regarding compliance with the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006. We are not able to provide you with any legal advice regarding this legislation and whether it is applicable to private premises managed by a factor as opposed to a workplace. May we suggest that you contact a solicitor, a Citizens' Advice Bureau or a University Law Clinic in order to ascertain the extent and applicability of that legislation in relation to your concerns. It is possible that the Health and Safety Executive might be able to assist, since it does have a regulatory function in relation to matters of public health and safety, although this is merely a suggestion.

In relation to whether you might have a claim within this Tribunal's jurisdiction, please refer to the Code of Practice for Property Factors. Sections 2-7 provide for specific duties which you might wish to found upon. By way of example and not to be taken as a suggestion, section 6.1 provides that factors must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. Your

application should be based upon a specific obligation such as that one, rather than any explanatory text.

Your factor has stated that it is not in breach of its own Written Statement of Services ("WSS"). Non-compliance with a WSS may form the basis of a breach of a factor duty. The important point of the WSS is that it is the statement of contract between the factor and the homeowner to whom it supplies services. If there is nothing within the WSS that provides for a periodic inspection of fire safety equipment for example, then it would be correct to state that there has been no breach of any duty arising from the WSS. Therefore, if you wish to apply to this Tribunal on the basis that there has been a breach of the terms of the WSS, then we would require you to point to a specific obligation within that document and explain to us why it has not been complied with. There may also be wider duties out with the WSS (e.g. arising from the title deeds), but you will require to take legal advice regarding this, if you consider that appropriate.

As matters stand, we do not consider that you have made a relevant application which falls within the jurisdiction of this Tribunal. Should you wish to submit an amended application having taken legal advice, we would be happy to consider it.'

On 17th June 2020 the Applicant sent an email to the Tribunal Administration in the following terms:

'Thank you for your e-mail, I have -

*a) reviewed the content of your colleague's e-mail 19 March 2020 and -
b) with recommendation that I consider consultation with a solicitor or citizens' advice bureau or a university law clinic, was - in my 86th year with health problems - a challenge which was 'a step too far!'*

Progressively - with Covid D restrictions and their barrier to hospital medical treatment -

it would have been impractical to have continued 'positive' in following up my exposure

to non-compliance with Fire Legislation.

The Property Factor I employ for professional management of my home-ownership responsibilities, has implemented management and maintenance of formerly inoperative

emergency lighting fixtures in common owned stair and hallway areas - factoring I willingly pay for.'

The Applicant has not amended his application, as requested in the email from the Tribunal Administration dated 19th March 2020. The Tribunal determine that the Applicant has not made a relevant application. Accordingly the Tribunal have good reason to believe that it would not be appropriate to accept the application and reject the application in terms of rule 8 (1)(c) of the Tribunal Rules.

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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 first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them

Legal Member

Date: 29th June 2020