



**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/22/0575

**Parties**

**Mr Michael Lynch (Applicant)**

**Speirs Gumley Property Management Limited (Respondent)**

**Flat No 7, 56 Milnpark Gardens, Glasgow, G41 1DP (Property)**

**Tribunal Member: Jacqui Taylor (Legal Member)**

The Tribunal rejects the application by the applicant received by the Tribunal on 2<sup>nd</sup> March 2022, being an application under section 17(1) of the Property Factors (Scotland) Act 2011.

On various dates the Tribunal issued requests for information emails to the Applicant. The last email requesting information was dated 5<sup>th</sup> July 2022. The email was in the following terms:

*‘A legal member of the Tribunal has considered the correspondence sent by you on 14th June 2022. It appears that, because of an administrative error, the legal member who made the decision to reject the application did not have access to your email of 23rd May 2022. He has now decided that, in the interests of justice, the decision to reject the decision should be withdrawn.*

*The legal member has now considered the application together with the correspondence which has passed between the Tribunal and you.*

*The Tribunal cannot provide legal advice to applicants but can give guidance.*

*On 22nd March 2022, a detailed letter was sent to you seeking further information and setting out some guidance on what you would require to do to progress matters. It is suggested that you consider carefully the terms of that letter. In the letter you were asked whether or not you considered that breaches of the Code occurred after 16th August 2021 and that, if you did, a*

*Form C2 would require to be submitted. This is because a new version of the Code was introduced which was effective from that date and property factors require to comply with the 2022 version of the Code. It is noted that, in one of your communications to the Tribunal, you refer to your property factor's "continuing" failures. This would appear to suggest that you will need to consider whether or not there have been breaches of the Code after 16th August 2021. You were asked to clarify the paragraphs of the Code which you consider the property factor has not complied with. You were advised that, in terms of Section 17 (3) of the 2011 Act, before an application can be made to the Tribunal, a property factor has to receive notification of the alleged breaches and that the Tribunal required a copy of such notification and evidence that the notification had been sent. You were asked to provide more detail and also proof of notification in relation to property factor's duties.*

*On 25th March 2022, you advised the Tribunal that your application had been submitted after you had taken advice from a solicitor and that you considered that the basis of the application was "crystal clear."*

*On 31st March 2022, you were advised that the application cannot progress until you dealt with the matters raised in the Tribunal's letter of 22nd March 2022.*

*On 6th April 2022, you stated that you had received advice from a solicitor and your email provided no additional substantive information with regard to the application. On 21st April 2022 you were asked, since you had not complied with the requirement to provide further detail on breaches of the Code, if you wanted to restrict the application to property factor's duties alone and not the Code. 'Property factor's duties' is generally taken to apply to any duties other than those under the code of conduct. The source of a property factor's duties could be, for example, the factor's written statement of services, the title deeds for the property, any other relevant contract, or the general law of agency.*

*You were advised, in the letter of 22nd March 2022, that notification also requires to be made on the property factor in respect of property factor's duties.*

*On 27th April 2022, you wrote and stated that you did not know what is meant by property factor's duties and you were advised on 6th May 2022 that the Tribunal cannot provide legal advice to applicants.*

*On 17th May 2022, you wrote to the Tribunal and said that you had considered the terms of the Tribunal's letter of 22nd March 2022 with your legal adviser and you attached a copy of a letter which you had sent to Speirs Gumley.*

*It is considered that this letter does not provide sufficient notification in terms of Section 17(3) of the 2011 Act. It does not state why you consider that the property factor has failed to comply with the Code and property factor's duties. In relation to the Code, it makes no reference to the relevant paragraphs which you consider have been breached.*

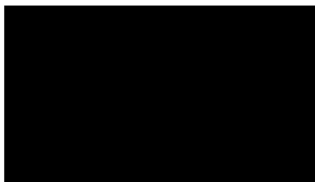
*The legal member has reviewed the application together with all the correspondence received from you. You have referred on more than one occasion to having legal advice and, despite this, have not dealt with the issues raised by the Tribunal. You will require to consider the terms of the Tribunal's letter of 22nd March 2022 and take appropriate action. To assist, both versions of the Code are attached. Two template letters of notification in respect of each version of the Code are attached and you may find these useful. A template letter in respect of property factor's duties is also attached.*

*The legal member has asked that you be made aware that, if he had access to your email of 23rd May 2021 on 30th May 2021, he would have rejected the application and that you are now being given another opportunity to deal with the defects in your application. If the requested information is not provided by 26th July 2022 the President may decide to reject the application.'*

The applicant has not provided the Tribunal with the required information despite sending a further reminder dated 25<sup>th</sup> August 2022.

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: Jacqui Taylor

Date: 27 September 2022