



**Written Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Reference numbers:**

FTS/HPC/PF/22/2003

Re: Property at 5/15 Drummond Street, Drummond House, Edinburgh, EH8 9TT (“the Property”)

**The Parties:**

Red Box Property Limited having a place of business at 19/19, Salamnder Place, Edinburgh, EH6 7JJ (“the Homeowner”)

James Gibb Residential Factors having a place of business at 4, Atholl Place, Edinburgh, EH3 8HT (“the Property Factor”)

**Tribunal Members**

Karen Moore (Chairperson)    Mary Lyden (Ordinary Member)

**Decision**

The Tribunal refused application PF/22/2003 for the reason that it does not comply with Section 17 of the Act.

**Background**

1. The Homeowner made three applications to the First-tier Tribunal for Scotland (Housing and Property Chamber) for determinations that the Property Factor had failed to comply with the Code of Conduct for Property Factors 2012 (“the 2012 Code”), the Code of Conduct for Property Factors 2021 (“the 2021 Code”) and had failed to comply with the Property Factor’s duties. Applications FTS/HPC/PF/22/1225 and FTS/HPC/PF/22/1784 are dealt with under separate note (“the CMD Note”) of even date hereof.
2. Application PF/22/2003 and dated 22/06/22 (“the Application”) was on Form C2 and complained of breaches of the 2021 Code at Overarching Standards of Practice at OSP 2 and OSP5 and Debt Recovery at paragraphs 4.4, 4.9 and 4.10. Intimation letter dated 16/06/2022 and marked code of conduct letter notifying breaches of the 2021 Code at Overarching Standards of Practice at OSP2 and

OSP5 and Debt Recovery at paragraphs 4.4, 4.9 and 4.10. No further background information accompanied the Application.

3. A legal member of the Chamber with delegated powers of the Chamber President accepted the Applications and a Case Management Discussion (CMD) was fixed for 26 August 2022 at 10.00 by telephone conference call for all three applications.
4. Prior to the CMD, the Property Factor submitted detailed written representations with regard to applications PF/22/1225 and PF/22/1784. With regard to the Application, PF/22/2003, Property Factor made preliminary pleas that the Application does not demonstrate breaches of the 2021 Code and that insufficient time was given to it between the intimation letter of 16 June 2022 and PF/22/2003 being lodged on 22 June 2022. The Property Factor did not ask the Tribunal to encourage the Homeowner to amend the Application as it did in respect of applications PF/22/1225 and PF/22/1784.

#### **Case Management Discussion**

5. The CMD took place on 26 August 2022 at 10.00 by telephone conference call. The Homeowner was represented by Mr. Graham Morris. The Property Factor did not take part and was not represented.
6. The Tribunal advised Mr. Morris that the purpose of the CMD was to identify if matters were disputed or could be resolved and if a Hearing on evidence is required. The Tribunal advised him that although the Property Factor was not present the Tribunal required to have regard to its written representations and preliminary pleas.

#### **Basis of the three applications.**

7. The Tribunal asked Mr. Morris to confirm that the issues which give rise to the three applications are that Property Factor did not obtain 100% permission for the security patrols, that the Property Factor seeks to recover co-owner debts and the cost of pursuing same from the co-owners and that the Property Factor did not respond to complaints and communications within its timescales. Mr. Morris agreed that these three issues were core and to all three applications. The Tribunal sets out discussion in this Decision as also set out in the CMD Note for applications FTS/HPC/PF/22/1225 and FTS/HPC/PF/22/1784
8. Mr. Morris expressed the view that the tribunal system is “stacked against” homeowners from the outset as the property factors had “helped design the process”. He stated that the homeowner has to think as a property factor to take part in the process and found the whole system “disgraceful”.
9. With regard to his complaints, Mr. Morris expanded on the applications and stated that the Property Factor does not respond to its customers and that he gets “no answers back from them”. Mr. Morris pointed out that despite a 55 minute phone call

with Rick Anderson of the Property Factor, he received an incomplete reply and an offer of £75.00 compensation as an apology for the Property Factor's communications failures.

10. With regard to unauthorised works, the Property Factor had instructed security patrols at the development of which the Property forms part without the full consent of all of the owners. He stated that the Property Factor did this some years ago and did so in the knowledge that in terms of Scottish Government legislation and the Codes, the Property Factor is bound to obtain 100% agreement as the security patrol is an improved service. He advised that originally there had been a video entry system but that this was not replaced, and that security was now by way of a buzzer entry system and the security patrols. His understanding is that the Property Factor attempted to justify this improvement to the service by saying it was an emergency response. Mr. Morris said that he thought that there had been issues with people gaining access to the common entrance and using drugs.
11. With reference to the debt recovery issue, Mr. Morris stated that the Property Factor can recoup sums due to it but that it should not pass the costs of collecting debt on to the owners. He considered that the Property Factor should carry out its own debt collection in the small claims court and should not employ a solicitor at the cost of the homeowner. He stated that the Property Factor would not reveal the names of debtors and that the homeowners should know bills they are being asked to pay. Mr. Morris stated that he cannot rely on or trust the Property Factor in this regard.
12. With regard to property factor duties, a breach of property factor duties is not complained of in the Application.
13. In response to questions from the Tribunal, Mr. Morris explained that Drummond House is an old building of around 50 properties of which Red Box Property Limited own one flat which was purchased in 2006/7. He explained that Red Box Property Limited is a private landlord with properties in Edinburgh, Fife and West Lothian, some of which are factored, and that the Property Factor is the only factor with whom there are issues.
14. Mr. Morris expressed concern that the Property Factor is relying on technicalities and not the substance of the Homeowner's complaint. He expressed concern that the Tribunal acted in secret and that the tribunal process is not easy to deal with. Mr. Morris stated that he expected the Property Factor to have a "black mark" against it in the proceedings for failing to attend the CMD, when its director said that he would attend. The Tribunal advised that its processes are set out in its Rules and in terms of the Act and that it acted impartially.
15. The Tribunal advised that it would adjourn the CMD to consider all of the points raised by both Parties in the proceedings to date and would decide if a Hearing was required and on which applications, given the Property Factor's preliminary pleas. In response to Mr. Morris's questions, the Tribunal advised that its decisions are issued in writing, that they can be appealed on a point of law and that the Tribunal cannot assist the Parties on how best to proceed.

## **Issue for the Tribunal**

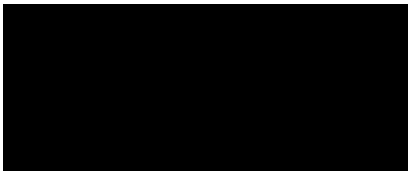
16. With regard to the Application, the Property Factor made preliminary pleas that the Application does not demonstrate breaches of the 2021 Code and that insufficient time was given to it between the intimation letter of 16 June 2022 and PF/22/2003 being lodged on 22 June 2022.
  
17. The Tribunal had regard to Section 17 of the Act which states:- *"(1)A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed (a)to carry out the property factor's duties, (b)to ensure compliance with the property factor code of conduct as required by section 14(5) (the "section 14 duty"). (2)An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty. (3)No such application may be made unless (a)the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and (b)the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern."*

## **Decision of the Tribunal and reason for the Decision**

18. The Tribunal considered: does the information contained in the Applications amount to compliance with Section 17 of the Act? The Tribunal had regard to the content of the intimation letter dated 16 June 2022 as narrated above. This letter raises alleged failings but does not state why these failings are breaches of the Code. It does not state clearly what the failings are and what the Property Factor should have done to comply with the Code. Therefore, the Tribunal took the view that the intimation letter does not comply with Section 17. The Tribunal then had regard to the copy email correspondence between the Parties which accompanied the application. This email correspondence is dated between 14 June 2022 and 16 June 2022. The application was lodged on 22 June 2022, 6 working days later. The emails refer to complaints but do not specifically state what the complaints are or how they breach the Code. Therefore, the Tribunal is not satisfied that Section 17 is complied with and so the Tribunal is of the view that, as application PF/22/2003 does not comply with the Act, it falls to be refused.
  
19. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussion .....including making a decision" and so proceeded to refuse application PF/22/2003.
  
20. The decision of the Tribunal is unanimous.

## **Right of Appeal**

In terms of section 46 of the Tribunals (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. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.



\_\_\_\_\_ 14 September 2022 \_\_\_\_\_  
**Legal Member** **Date**