



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

3/1 27 Mannering Court, Shawlands ("the Property")

Case Reference: FTS/HPC/PF/21/0109

Lynette Allison, 5 Burnshot Walk, Oatlands, Glasgow ("the Homeowner")

Lowther Homes, 22 Cochrane Street, Glasgow ("the Property Factor")

1. The Homeowner submitted an application to the Tribunal on 15 January 2021 in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act") and Rule 43 of the Rules. On 22 January 2021 the Tribunal issued a request for further information and documents to the Homeowner. The Homeowner was asked to sign and date the application form and to provide a copy of the Property Factor's written statement of services. She was also asked to amend the application form as the sections of Paragraph 7 of the Code referred to in the form did not exist and had to be clarified. The Homeowner was also advised that evidence of notification of a complaint regarding property factor duties was required if a complaint in relation to these duties was to proceed and that the letter provided notifying the Property Factor of the Code of Conduct complaints did not provide sufficient notice as the relevant sections of the Code were not specified. She was asked to submit further evidence that the Property Factor had been appropriately notified. She was also asked to provide evidence that she had followed the Property Factor's complaints

process before submitting her application. Following a reminder from the Tribunal, the Homeowner submitted an email addressed to the Property Factor which states that they have failed to carry out property factor duties. She subsequently notified the Tribunal that no response was received to this email. She did not respond to any of the other requests from the Tribunal. A further letter was issued on 16 April 2021, and a reminder on 19 May 2021, that the remainder of the Tribunal's requests had to be answered or the application may be rejected. No response has been received. .

DECISION

2. The Legal Member considered the application in terms of Rule 8, Rule 5 and Rule 43 of the Chamber Procedural Rules and Section 17 of the 2011 Act. 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. “

3. **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 43 and Section 17 of the 2011 Act.

REASONS FOR DECISION

4. The Homeowner's application is in terms of Section 17 of the 2011 Act and Rule 43. Section 17 states that an application must set out "the homeowners reasons for considering the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty" (Section 17(2)). Section 17(3) states that no application may be made unless the homeowner has notified the Property Factor in writing of the complaint and the property factor has refused or delayed resolving the matter. Rule 43 states, "(1) In addition to the homeowners reasons as required by Section 17(2) of the 2011 Act,...(2) The homeowner must attach to the application a copy of – (a) the notification from the homeowner to the property factor for the purposes of Section 17(3)(a) of the 2011 Act; (b) any response provided by or on behalf of the property factor to that notification;...(d) any statement of services provided by the property factor to the homeowner as required by the property factor code of conduct. (3) The application must be signed and dated by the homeowner or the homeowner's representative"
5. The Homeowner has failed to sign and date the application or provide the written statement of services, as required by Rule 43 of the Rules. She has also failed to provide evidence that the Property Factor has been notified of all complaints, as required by Section 17 of the 2011 Act. The Homeowner has also failed to provide this information and documentation, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

Josephine Bonnar, Legal Member
10 June 2021